

# ANNUAL REPORT 2008

AUTORITÉ DE CONTRÔLE  
DES ASSURANCES ET DES MUTUELLES



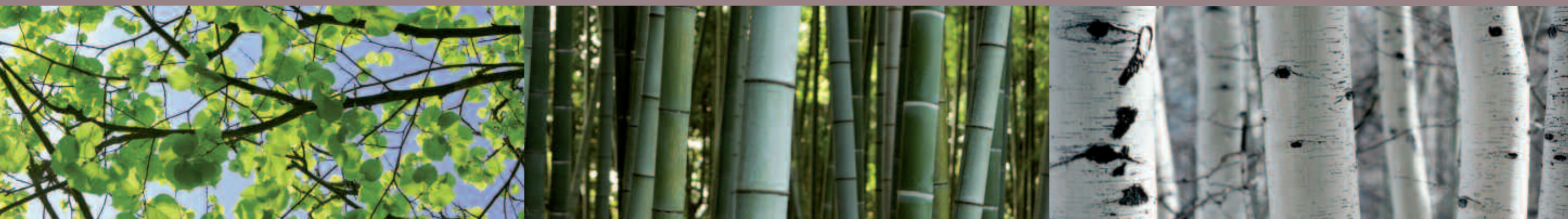
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# C O N T E N T S

Appendix - The French insurance market in figures. This document can be viewed and downloaded from ACAM's website: [www.acam-france.fr/rapport2008](http://www.acam-france.fr/rapport2008) or [www.acam-france.fr/chiffres2008](http://www.acam-france.fr/chiffres2008)



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Chairman's  
message

2008 was a year of crisis, but above all it was a year of dramatic contrast. It is easy to forget that the economic forecasts were still optimistic at the beginning of the summer even though the subprime crisis was already well underway, and that inflationary pressure was still lively. The dramatic slump in expectations, prices and production in the second half, accompanied by its cortege of recession, rising unemployment and looming deflation, threatened the situation of several major financial groups, including one of the world's leading insurers, AIG. It should be noted, however, that it was not the insurance side of this huge conglomerate's business that failed, it was the derivatives markets activities, which, through excessive use of leverage, had grown to represent commitments totalling hundreds of billions of dollars.

Fortunately, the French insurance market has shown its solidity despite the turmoil. Invested mainly in bonds, insurers had ventured little into the high-risk activities that are now seen as toxic. Although the stock-market slump wiped out the bulk of the capital gains accumulated by French insurers in previous years, their fundamentals remained firm. Admittedly, the inflow of savings slowed considerably due to competition

from high interest rates on regulated savings deposit accounts (notably the savings banks' accounts) before the recent reduction in interest rates. Overall, premiums were down by 4.2% and savings placed in life insurance investments stagnated at around €1,250 billion in terms of net book value. However, insurance companies remained profitable (with profit of €8 billion for the sector as a whole), and complied, without much difficulty, with all the prudential requirements.

ACAM is naturally working closely with the sector to consolidate this situation. From 2007, checks were carried out to measure exposure to risky investments. In the autumn of 2008, regular monitoring of net inflows into life insurance was put in place as well as projections of results both at sector level and at individual entity level. The simulations of possible risks in the event of a further deterioration in the situation – which preceded the 'stress tests' put in place for US banks by the Federal Reserve – are updated constantly. The relatively comfortable situation of French insurers is illustrated by the fact that the rates of return paid to policyholders remained high in 2008, with an average of 3.90%. ACAM notes, however, that insurers need to tread carefully in this area during crisis periods so as to

maintain adequate reserves. We also advise caution in terms of minimum guaranteed rates of return offered: during periods of very sharply fluctuating costs some rates, at the limits of what is legally possible, may threaten the insurer's future stability and/or prove misleading for the policyholders.

Many other measures have been taken to strengthen supervision – monitoring UCITS in unit-linked contracts, introduction of new prudential filters, new quarterly report on investments, reflecting ACAM's increased vigilance during this time of crisis.

I would also like to stress the work carried out in collaboration with other supervisory bodies (AMF, Commission Bancaire and Conseil National de la Comptabilité) to clarify the conditions of application of the accounting regulation with regard to the breakdown by asset class and the valuation method to be used in the absence of an active market. A joint recommendation was issued in September 2008, followed by a supplementary recommendation for the insurance sector in December 2008.

The past year also featured a major step forward in international discussions on financial regulation. A definitive agreement was reached on the terms of the Solvency II directive which will provide the prudential framework for insurers, provident institutions and mutual insurers as from 2012.

The completion of the work carried out over the past seven years is a major step forward, even though there is still a lot to do, with the help of ACAM staff and of other European supervisory bodies, to put in place the level 2 and 3 application measures. These measures include, among other things, the calibration of capital requirements by introducing softer measures for investments in equities (the so-called dampener) and the specific treatment obtained by France for retirement savings schemes with a life of twelve years or more.

A second very important area of international cooperation is implementation of the G20 guidelines on financial supervision – creation of a Financial Stability

Board and, at European level, of a Systemic Risk Council – harmonisation of accounting standards and tighter supervision of hedge funds, off-shore centres and credit rating agencies.

As in the preceding years, ACAM was obliged to issue a number of sanctions, some of which were made public. In other cases, emergency measures were taken such as the appointment of a provisional administrator or the drawing up of a recovery plan. However, ACAM's action should in no case be perceived as limited to these measures, whose limited number reflects the generally responsible behaviour within the sector. ACAM's role is above all preventive, in constant contact with the supervised insurers, and educational, as witnessed by the success of its supervision conferences and publications: "Analyses et synthèses" published since the end of 2007 and the regular newsletter "Lettre de l'ACAM".

At the same time, true to its role of protecting policyholders, ACAM continued to deal with queries from the public relating to application of their contracts. More than 3,300 queries were dealt with and ACAM, although it has no official mediation role, made every effort to find a solution. A positive outcome was achieved in two thirds of the cases handled.

With a view to strengthening financial regulation and supervision, 2009 is likely to see some major changes in financial supervision in France. The government has adopted the principle of a single supervisory body merging ACAM and Commission Bancaire. Joint working groups have been set up to examine the practical aspects of this merger, which under the conditions of the Parliamentary delegation authorising the Government to legislate by decree, should be organised before the end of the year.

2009, which we now hope will see the beginning of an exit from the present economic and financial crisis, will be yet another year of reform in this area as in others.

*Philippe Jurgensen*

Secretary  
General's  
message



From being merely a factor warranting attention in 2007, the financial crisis became the top priority in our prudential supervision in 2008. French insurers have little or no exposure to structured credit products, but they are exposed to a fall in the value of conventional assets such as corporate bonds and equities, and there was a very pronounced fall in 2008. Moreover, the generalised loss of confidence in the financial markets added to the systemic nature of the crisis, both through sharp fluctuations in the value of assets and through the distrust it could generate in policyholders.

This exceptional backdrop both highlighted and accentuated ACAM's preventive role, namely to ensure that the more vulnerable entities take corrective action before the situation deteriorates and policyholders lose confidence. Taking life insurance as an example, in addition to the usual stress tests carried out on insurers' balance sheets, additional information and more specific simulations have been requested in order

to obtain a clearer forward-looking view of the entity's financial situation and its room for manoeuvre, in particular its capacity to pass on the fall in the value of their investments through a reduction in the returns offered to their policyholders. These analyses – not limited to a purely accounting view, which does not adequately take into account all the risks hanging over the balance sheet – were introduced in mid-2008 and have been adjusted as the crisis unrolled. In the light of the additional work within very tight deadlines required by the crisis, I would like to applaud the responsiveness and motivation shown, and still being shown, by ACAM's staff.

ACAM nonetheless continued to work on several major ongoing projects. In line with our objectives, we strengthened supervision of compliance with anti-money laundering requirements and of intermediaries by putting together dedicated teams. Also, until the end of 2009, the transformation of supplementary

retirement institutions is being supervised by ACAM, which verifies that the substitute insurance commitments are adequate. ACAM also continued to modernise: in June 2008 it published its Supervision Charter and at the beginning of 2009 it launched a revamped website, offering more information for insurers, intermediaries and policyholders and a new electronic document exchange functionality, which is greatly appreciated by the insurers.

Naturally, helping French insurers to prepare for Solvency II naturally continues to be one of ACAM's key commitments. The strong involvement of French insurers was reflected in their high response to the fourth quantitative impact study and numerous and fruitful debates on technical issues. As an extension to this survey, it has been decided to propose to all insurers that they provide ACAM with an annual statement showing the balance sheet based on Solvency II principles. In addition, a well-attended seminar on internal models highlighted the need to start an early dialogue with supervisors to identify in good time all the practical and technical issues relating to developing an internal model.

There is still a long way to go and it is hoped that the right lessons have been learnt from the crisis in the banking sector. I would point to two relating to the manner of defining and applying the prudential regulations: in terms of quantitative rules, the principle of fair value measurement in the absence of an active market – structured bank products and underwriting reserves in insurance – results in a significant overestimation of capital when it is applied without adequate supervision; in terms of governance and internal control, financial innovations – structured credit products in banking, complex minimum guarantee life insurance contracts in insurance – require particularly close surveillance, to avoid a natural tendency to let oneself be carried away by sophisticated financial models and forget the gap between these models and reality.

Another major lesson to be drawn is the need, acknowledged by the G20, to add a macro-prudential side to financial supervision. Although the insurance sector may appear to be less concerned, this would extend ACAM's role to monitoring financial stability with a view to preventing systemic crises. In practice, ACAM will draw up new global risk analyses for the insurance sector. International cooperation will also be significantly strengthened, between sectors and at different geographic levels, to share and consolidate these analyses, and also to ensure better supervision of major international groups. ACAM sees these developments as a key factor for efficient protection of policyholders. It therefore welcomes them warmly and will not spare its efforts to ensure their success.

*Antoine Mantel*

# Part 1

## About ACAM

ACAM is an independent public body. It supervises all the companies, associations, groups and other entities that operate in the French insurance sector, in the interests of the policyholders. It checks that entities and groups within its remit comply with the applicable regulations, and that they are able at all times to meet their underwriting liabilities vis-a-vis their policyholders or members.

The authority was created by the Financial Security Act of 1 August 2003 (Act no. 2003-706). It was initially called the Commission de Contrôle des Assurances, des Mutuelles et des Institutions de Prévoyance (CCAMIP), and was the result of the merger of two supervisory authorities, the Commission de Contrôle des Assurances (CCA) and the Commission de Contrôle des Mutuelles et des Institutions de Prévoyance (CCMIP), which were responsible for the oversight of, respectively, the insurance sector, and mutual insurers and provident institutions. It was renamed the Autorité de Contrôle des Assurances et des Mutuelles (ACAM) by virtue of law no. 2005-1564 of 15 December 2005. It is a separate legal entity in its own right.



# C O N T E N T S



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## Profile



## Supervision

↳ Its role is to **supervise** all entities operating in the insurance sector. Acting on behalf of the state, it closely analyses the risks and prospects of insurers. The purpose of this strategic prudential assessment is to ensure that companies are at all times able to meet their underwriting liabilities vis-à-vis their policyholders. ACAM may make recommendations, and in urgent situations it may take measures to restore financial stability. When necessary, it can also impose sanctions. It is a fully independent body with financial autonomy and broad investigative powers.

## Prevention

↳ ACAM also has an important **preventive** role, informing insurers about potential risks, detecting risks and issuing advance warnings, and encouraging the development of partnerships and mutual support solutions. In addition it facilitates interpretation of the applicable laws and regulations. These preventive actions are often sufficient in themselves to solve many of the problems faced by insurers.

## Our primary mission: to protect policyholders



## Information

↳ In addition, ACAM is a key source of **information** for policyholders. In the event of a dispute with an insurer, any interested party may consult ACAM's Contract Law and Policyholders department at any time. Most referrals are made by individuals, although consumer associations, mediators, solicitors, insurers and insurance intermediaries also make use of this service. The underlying objective is to ensure policyholders' rights are respected.

ACAM is one of the three regulatory pillars of the French financial sector, along with the Commission bancaire, the banking regulator, and the Autorité des marchés financiers (AMF), the financial markets regulator.

## Participation

↳ Lastly, ACAM takes part in:

- ◆ the drafting of new regulations;
- ◆ European studies and consultations on the future of financial regulation;
- ◆ consultations on the future of the Paris stock exchange;
- ◆ many other initiatives, including the fight against money laundering and terrorism.





# I - A dual structure: a College and a Secretariat General

## 1. The College

➔ ACAM's policy-making and decision-making body is known as the 'College'. It determines the internal organisation of ACAM, defines the control methodology and approves the budget.

The College has important decision-making powers with regard to supervised entities. It can:

- ◆ recommend suitable solutions to improve the entity's financial situation, management methods or governance;
- ◆ take emergency or protective measures, such as placing an entity under special scrutiny, requiring a recovery plan to be drawn up, placing an entity in administration, etc;
- ◆ impose sanctions, which may include: warnings, official reprimands, prohibition of certain business activities, restrictions placed on business activities, temporary suspension, removal of one or more company directors, partial or total withdrawal of a licence (which may result in the winding-up of the entity), partial or total transfer of the portfolio, etc. Sanctions may be imposed on entities and/or on their directors.

The College has nine members, who are appointed for five years. Their appointment may be renewed once. Seven alternate members are appointed under the same conditions. Members and their alternates cannot be removed from office. The Chairman is appointed by Presidential decree. Apart from the Governor of the Bank of France (Banque de France), who is automatically a member of the College, the other members are appointed by a joint decree issued by the Ministers of the Economy, Social Security and Mutual insurers.

Two government representatives are also sit members of the College: the Director of the Treasury and the Director of Social Security, or their representatives. They cannot take part in decisions but can ask the College to reconsider any decision other than a sanction.

The Secretariat General refers cases to the College when an insurer, mutual insurer or institution is in breach of the regulations or if its financial situation is such that it compromises its solvency or ability to meet its underwriting liabilities towards its policyholders or members. Referrals are based on the findings of inspection reports.

## 2. The Secretariat General

➔ The Secretariat General is responsible for monitoring and inspecting insurers.

The Secretary General, an experienced insurance supervisor, is appointed by a joint decree issued by the Ministers of the Economy, Social Security and Mutual insurers, after consideration of the College's opinion.

The inspection teams are responsible for on-site inspections and off-site monitoring of supervised entities, and operate under the authority of the Secretary General. Teams consist of supervisors (*commissaires-contrôleurs* and *contrôleurs*).

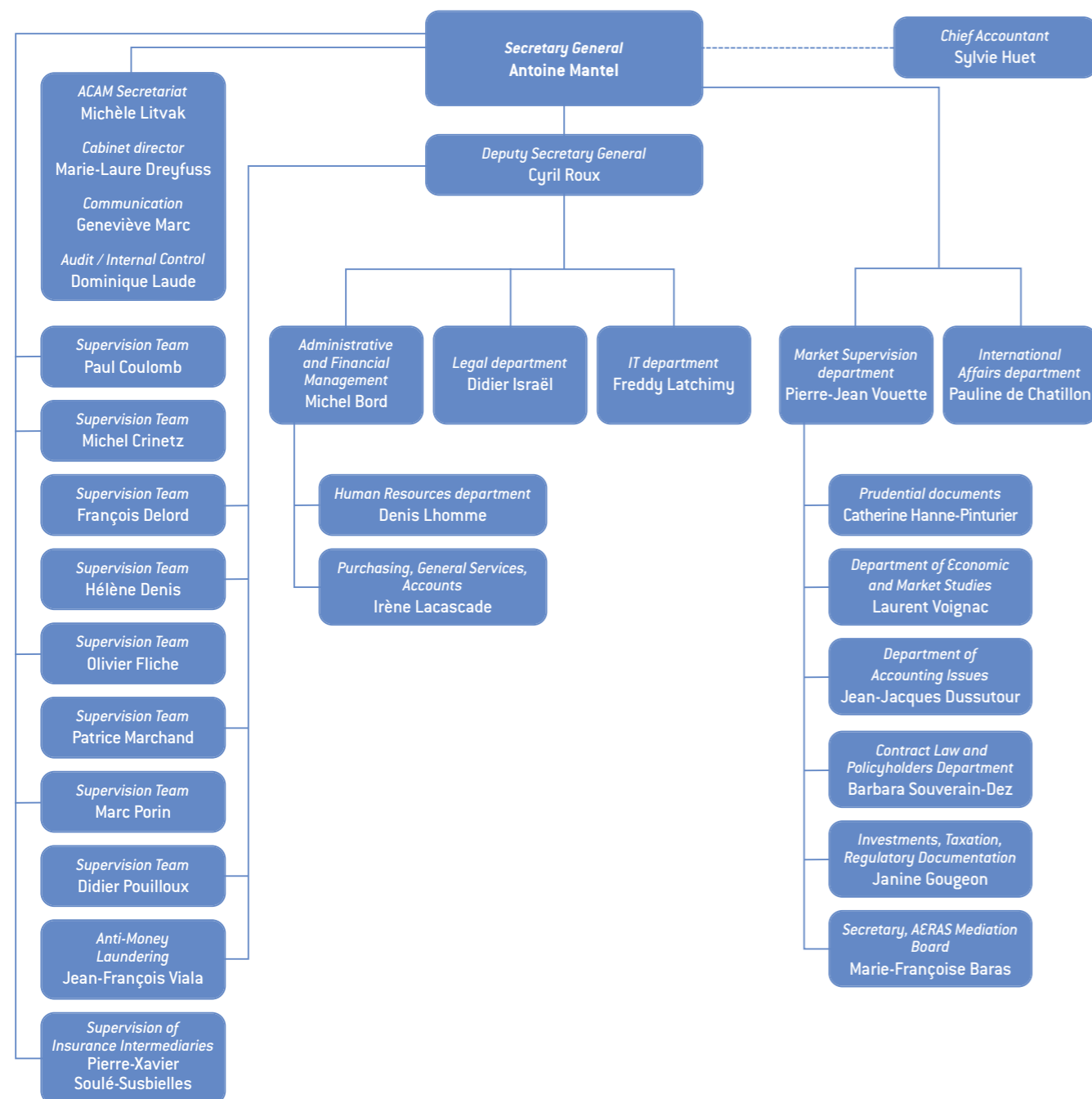
Its support functions are responsible for internal management and provide essential support for the inspection teams:

- ◆ administrative and financial management;
- ◆ legal affairs;
- ◆ international affairs;
- ◆ market watch, which includes the DDCRA<sup>1</sup>;
- ◆ IT.

These departments assist and support the monitoring and inspection function.

1. Contract Law and Policyholders department

## Organisation chart of the Secretariat General



## The 9 members of ACAM's College

### Chairman

1 - Philippe Jurgensen  
Inspecteur général des Finances

### Ex-officio member

2 - Jean-Paul Redouin  
Governor of the Bank of France,  
Chairman of the Commission bancaire,  
represented by the first deputy governor

### Senior members of the Judiciary

- 3 - Jean-Philippe Vachia  
Deputy President and senior judge,  
Cour des comptes
- 4 - François Lagrange  
Conseiller d'État
- 5 - François-Régis Croze  
Cour de cassation

### Members selected for their expertise in the field of insurance, mutual insurance and provident insurance

- 6 - Hervé Cachin
- 7 - Jacques-Philippe Chanet
- 8 - Lucien Uzan
- 9 - Jean Barroux

### Two government commissioners are also members of the College

- 10 - Fabrice Pesin  
representing the Director General of the Treasury and Economic Policy (directeur général du Trésor et de la politique économique)
- 11 - Jean-Luc Izard  
representing the Director of Social Security (directeur de la Sécurité sociale)

*Government commissioners do not have the right to vote, but may ask the College to hold a second vote on any matters other than sanctions.*

- 12 - Antoine Mantel  
Secretary General



Acam's  
role

## II - ACAM's role

### 1. Supervision

#### THE NEED FOR SUPERVISION IN THE INSURANCE SECTOR

Insurance is a service industry. Insurance allows consumers to avoid all or part of a risk by passing the financial consequences to their insurer. Insurance is therefore the transfer of risk from one party, who wishes to reduce or eliminate the risk, to another party, who knows how to manage it by pooling it.

There is a substantial economic difference between the insurance sector and the other industries that provide goods or services: the

insurer sells its services before it provides them. The final cost – including the amount paid out on claims – is therefore only known several months, or indeed several years, after the signature of the contract. This is an "inverted production cycle".

This means the insurance business is exposed to very specific risks. For instance, if the level of claims is underestimated by the insurer when it fixes the premium rates, it will have to pay out more than initially expected and may be unable to settle all its liabilities. A similar situation could arise if management costs rose unexpectedly. Moreover, if the insurer invests premiums in

high-risk assets or illiquid assets it may not have sufficient available assets to pay claims as and when they arise.

These risks are specific to the insurance sector, hence the need for a special regulatory and supervisory framework. All developed or developing countries have a body which is responsible for the prudential supervision of their insurers, whose aim is to protect the policyholders.

The supervisory authority may be transnational, serving several countries, or it may be incorporated into a larger financial regulatory and supervisory body.



#### 1.1. Prudential supervision

“Prudential” supervision is designed to ensure that insurers are capable of meeting their underwriting liabilities vis-a-vis their policyholders at all times. This consists of an analysis of the policies and contracts recording their commitments, verification that these are correctly reflected in the accounts, and an examination of the operating methods and the appropriateness of financial management. These extremely broad controls enable a detailed assessment of the entity to be made, and updated each year.”

#### 1. Permanent and preventive controls

##### ■ WHO WE SUPERVISE

The entities supervised by ACAM have a number of different legal forms:

- ◆ French insurers subject to the French Insurance Code (*Code des assurances*);
- ◆ French reinsurance companies subject to the Insurance Code;
- ◆ insurers governed by the laws of countries that are not in the European Economic Area but that operate in France;

#### SUPERVISED ENTITIES IN FIGURES

- ◆ 386 insurers subject to the French Insurance Code
- ◆ 1,707 mutual insurers, of which 386 are 'substituted' mutual insurers (Livres II)
- ◆ 62 provident institutions
- ◆ 63 supplementary pension institutions

- ◆ mutual insurers subject to the French Mutual Code (*Code de la mutualité*);
- ◆ provident institutions subject to the French Social Security Code (*Code de la Sécurité sociale*);
- ◆ supplementary pension institutions subject to the Social Security Code.

#### ■ OBJECTIVES

ACAM's primary mission is to supervise all entities operating in the French insurance market, irrespective of their status, to ensure they are capable of meeting their underwriting liabilities vis-a-vis their policyholders. It monitors compliance by supervised entities and groups with the applicable regulations.

Insurers are governed by a large number of laws and regulations, whose main aim is risk prevention. Their financial soundness is dependent on three essential criteria:

- ◆ a prudent assessment of their underwriting liabilities;
- ◆ the ownership of sufficient certain, liquid, profitable and diversified assets to cover the estimated liabilities;
- ◆ sufficient capital to form a safety net and absorb significant unforeseen losses.

#### ■ CONTROL METHODOLOGY

“ Controls consist essentially of examining an insurer's financial situation and operating conditions. This is a prospective assessment, as the insurer must be capable of meeting its short -medium- and long-term commitments. ”

#### OFF-SITE MONITORING

Many different but overlapping criteria need to be taken into consideration when an entity is monitored. The assessment of the prudential nature of the liabilities entails an examination of the relevance of the provisioning and management methods. An appraisal of the entity's corporate governance and internal control system, together with an examination of the applicable policies and contracts and the entity's articles of association or rules also form an integral part of the assessment of the entity's financial soundness.

An assessment, which is updated every year, is made on the basis of these extremely broad controls. Preliminary signs of a deterioration in the entity's financial situation can be detected and any necessary corrective action can be identified. The assessment is also based on regular exchanges of information and discussions with the relevant entity, which allow ACAM to adjust its analysis. As part of its permanent supervisory duties, ACAM gives the French insurance licensing authority (*Comité des entreprises d'assurance*), and the Social Security authorities its opinion on licence applications for new insurers, applications to extend existing licences, mergers and portfolio transfers, for insurers that fall within their jurisdiction.

#### ON-SITE SUPERVISION

In addition to off-site monitoring (the permanent control procedure) an on-site supervision may be organised, the findings of which will be recorded in a report. This usually consists of an analysis of the entity's financial statements and an assessment of its organisation, operations and level of compliance with regulations. The entity has the right to reply to the report within a set time period. ACAM will usually then provide it with a final report on its findings. In some cases the report will be sent to ACAM's College, which will recommend measures to restore financial stability, if necessary.

Investigations and controls cover a specific time period and usually focus on a given cut-off date. Although the scope of enquiries will depend on the predetermined objectives of the inspection, it may be extended or made more precise as the inspection progresses. The order of priority of on-site inspections will be based on the findings of off-site controls, the quality of the data received and the entity's financial situation. ACAM will also take account of complaints from policyholders and its annual cross-sectoral inspection targets. The order of priority will not be influenced by the size of an entity, its legal form or its business sector.

#### INSURERS' OBLIGATIONS

The insurers supervised by ACAM must provide it with the following periodic reports and documents:

- ◆ accounts and financial statements;
- ◆ annual report;
- ◆ quarterly statements;
- ◆ reports on solvency and internal control.

This information, which is essentially financial and accounting information, forms the basis of the comprehensive, off-site monitoring process. The information provides a continuous picture of the financial situation of the supervised entities, and enables ACAM to verify the consistency and quality of the information provided from one year to the next.

#### OFF-SITE MONITORING AND ON-SITE SUPERVISION: TWO SIDES OF THE SAME COIN

Off-site monitoring and on-site inspections are interdependent and are carried out by the same team, which has full responsibility for the entities in its remit.

While on-site inspections are conducted after an off-site examination of documents, as a natural extension of such monitoring, they also provide essential raw material for the off-site controls. Supervisors look at:

- ◆ level of provisions;
- ◆ quality of the management;
- ◆ corporate governance rules;
- ◆ tools and procedures;
- ◆ reinsurance;
- ◆ awareness of risks, risk management.

The in-depth, on-site inspection will focus on issues identified during the off-site monitoring of documents. Such inspections help ACAM to build up a complete picture of a supervised entity.

#### ■ SCOPE

The assessment of an entity's financial soundness and its ability to meet its underwriting liabilities requires an overall view of its activities and operations combined with an assessment of potential risks.

ACAM therefore examines the entity's:

- ◆ technical and legal management, analysing its liabilities vis-a-vis policyholders and the provisions booked on the liabilities side of the balance sheet to cover them;
- ◆ financial management, assessing whether these liabilities are covered by certain, liquid and profitable assets. ACAM will also consider whether non-life and life insurers' solvency margins are sufficient in the event of any valuation errors.

### ■ SPECIFIC SUPERVISION FOR MUTUAL INSURERS

#### DECENTRALISED MONITORING BY LOCAL PRÉFECTURES

The law provides for the decentralised monitoring of the following mutual insurers by the local préfetures:

- ◆ mutuals and grouping unions (unions) covered by Livre III of the Mutual Code (health and social protection schemes);
- ◆ substituted mutual insurers covered by Livre II (registered insurers that do not bear insurance risks themselves);
- ◆ mutual insurers and grouping unions covered by Livre II that are not substituted and that satisfy the following three criteria:
  - they only provide accident and sickness cover (branches 1 and 2);
  - they do not enter into long-term operations over several years;
  - their annual premium income is less than €45 million and they pay out less than €36 million in claims and benefits per annum (over the past three financial years).

The regional Social Security authorities (*Directions Régionales des affaires sanitaires et sociales – DRASS*) are usually responsible for monitoring these entities, through off-site monitoring of documents and on-site supervisions. However, if any serious problem is detected the matter will be referred to ACAM, which has sole authority to introduce measures to restore financial stability or impose sanctions.

#### MONITORING BY ACAM

ACAM directly monitors at a national level those mutual insurers that are not eligible for decentralised monitoring. This is the case for:

- ◆ the larger mutual insurers (Livre II, for insurance activities);
- ◆ smaller mutual insurers that insure risks other than sickness or accidents (Livre II);
- ◆ entities not covered by Livre II or Livre III, in other words, “technical” groups that provide services for their members;
- ◆ federations and guarantee federations.

“ However, ACAM also has authority to unilaterally decide to control any mutual insurer that is usually monitored locally. ”

#### MONITORING LIVRE III MUTUALS AND GROUPING UNIONS

The purpose of Livre III mutuals and grouping unions is to manage health, social and cultural services, or organise social actions. Services may be provided by private hospitals, health centres, dental practices, pharmacies, opticians, retirement homes or crèches.

Such mutuals are supervised by ACAM because, prior to the 2001 decree overhauling the Mutual Code, any single entity could engage in this activity and also have an insurance activity. This was confirmed by the Financial Security Act of 2003, particularly as the separation between insurance activities and “social” activities – and therefore between Livre II mutual insurance companies and Livre III mutuals – had not entered into effect for all entities at that time.

ACAM discovered in the course of its supervisory activities that, contrary to the law, insurance services were still being qualified as social actions and had been wrongly transferred to Livre III mutuals in 2002 in application of the 2001 decree. This situation is fast being remedied, but it is clear that the large number of mutuals supervised by ACAM and the persistence of certain long-standing practices require on-going vigilance.



“ The supervision charter explains that the purpose of supervision is to anticipate potential problems and that ACAM’s role is not merely to sanction<sup>2</sup>. ”

### ■ BROAD INVESTIGATIVE POWERS

“ The financial soundness of an entity cannot be established merely by assessing the entity itself: the supervisor also needs to consider the environment. ACAM is therefore vested with extremely broad investigative powers. ”

#### RELATIONS WITH STATUTORY AUDITORS

All proposed appointments or re-appointments of statutory auditors must be referred to ACAM for an opinion.

During their term of office, statutory auditors have an obligation to respond to any request for information received from ACAM concerning the activities of supervised entities, and they may not refuse to answer on the ground of professional secrecy. They must inform the Authority automatically if the continued operation of the business is at risk, or if there is a possibility that it will not be possible to certify the accounts.

Lastly, the Authority may appoint an additional statutory auditor if it considers this necessary, at the entity’s expense.

#### SUPERVISION OF ACTIVITIES RELATED TO THE TRANSFER OF RISKS

ACAM supervises all the operations performed by supervised entities, and it can request any type of information it considers necessary.

The Financial Security Act of 1 August 2003 authorised ACAM to examine contractual and advertising documents, require them to be revised, and order the withdrawal of any that are contrary to the applicable laws and regulations.

2. See below - Part II- 5- Debates and current issues - 5.4 The continuing work of the Haut comité de place

ACAM may also extend its supervision of an entity to any related entities or any other entity with which it has entered into a group insurance agreement (see below), management agreement, reinsurance agreement or any other contract that may affect its autonomy in terms of its operations or decision-making. This means ACAM may decide to supervise:

- ◆ any intermediation operations;
- ◆ any individual or legal entity authorised by an insurer to offer or manage insurance policies, who/that has taken out a group insurance policy or who/that engages in any insurance or reinsurance intermediation activity in any respect whatsoever.

#### MONITORING THE INSURANCE ENVIRONMENT

ACAM is responsible for monitoring compliance with the laws and regulations on the fight against money laundering and the financing of terrorism (see below).

It keeps a record of all associations formed as Groupements d'Épargne Retraite Populaire (GERP), which set up PERP individual retirement savings plans (*Plans d'Épargne Retraite Populaire*) with insurers. Each GERP is required to provide ACAM with:

- ◆ a copy of the notice published in the Official Journal (*Journal Officiel*) announcing the creation of the association;
- ◆ a copy of the GERP's articles of association;
- ◆ if applicable, a copy of its internal rules and regulations and/or code of practice.

ACAM has two months in which to issue a registration number, which must be printed on all contractual documents relating to savings plans taken out by the association. The number will consist of the association's business registration (Siren) number and a serial number. The association must inform ACAM within thirty days of:

- ◆ any amendment to the articles of association;
- ◆ the dissolution of the association;
- ◆ the cessation of its activity as a GERP;
- ◆ signature of a new PERP savings plan;
- ◆ closure of a GERP.

ACAM also monitors licences granted to adjusters and appraisers. Appraisers who attest to the value of real property held by supervised entities must be approved by ACAM.

## 2. Outcome of monitoring and supervision

### a) Monitoring implementation of recommended action

As part of its off-site monitoring, ACAM expresses an opinion on insurers' governance, management and provisions. It monitors implementation of recommended action, in accordance with a jointly-agreed calendar and procedure.

If the entity fails to act on recommendations, the Secretariat General will refer the matter to the College which will decide on appropriate action. ACAM can issue further recommendations, take emergency or protective measures (see below) if the entity's situation jeopardises the policyholders and, lastly, impose sanctions.

The Financial Security Act of 1 August 2003 replaced the previous injunction system by a system of recommended corrective action. While the previous procedure was implemented only when a problem was identified, recommendations can be issued merely in light of the perceived need to "take all appropriate measures to restore or reinforce the entity's financial stability, improve its management methods or ensure the organisation is appropriate in light of the entity's activities or development objectives".

### b) Emergency and protective measures

“ ACAM may impose emergency and protective measures when the financial situation of the supervised entity, or its operating conditions, are such that the interests of the policyholders and beneficiaries are or may be compromised. The purpose of such measures is to prevent the entity's insolvency. ”

#### SPECIAL SCRUTINY

When ACAM decides that emergency or protective measures are necessary, it may place an entity under special scrutiny to be promptly informed of any major decisions made by the entity. Surveillance may be ordered in isolation or in conjunction with other recovery measures, which can thus be monitored more closely.

#### RECOVERY PLAN

ACAM must require an entity to submit a recovery plan if its solvency margin is insufficient. A short-term financing plan must be put in place as soon as the margin falls below the minimum level, known as the "guarantee fund". The plan is drawn up by the entity and submitted to ACAM for approval. The College may simultaneously impose sanctions against the entity for the same reasons.

ACAM may require a recovery plan when the entity's financial situation is such that the interests of its policyholders and beneficiaries are

compromised. In this case the entity has one month in which to submit a plan to restore financial stability. ACAM will then assess the merits of the plan.

This solution presupposes that ACAM considers that the entity's directors are capable of leading the entity to recovery.

ACAM can also freeze assets or temporarily suspend certain activities.

#### APPOINTMENT OF A PROVISIONAL ADMINISTRATOR

ACAM may request the appointment of a provisional administrator (*administrateur provisoire*) in three situations:

- ◆ if this is requested by the entity's directors, because they consider they can no longer properly perform their duties;
- ◆ when the entity can no longer be managed in normal conditions;
- ◆ when one or more of the company directors is/are temporarily prohibited from engaging in insurance business.

“ The requirement to improve the solvency margin was introduced as a result of the transposition into French law of the European directive known as the Solvency I directive. This directive also introduced the right for the supervisory authority to reduce reinsurance levels in the calculation of the solvency margin. ”



### SEVEN EMERGENCY OR PROTECTIVE MEASURES

Seven measures are available, some of which can be combined:

- ◆ special scrutiny;
- ◆ obligation to submit a recovery plan or short-term financing plan;
- ◆ obligation to draw up a recovery calendar;
- ◆ obligation to improve the solvency margin
- ◆ freeze of assets;
- ◆ temporary prohibition on conducting certain types of business;
- ◆ appointment of a provisional administrator.



#### c) Disciplinary action

##### REFERRAL TO ACAM

ACAM considers imposing sanctions on the basis of inspection reports prepared by the Secretariat General. In order to ensure that the proceedings appear to be impartial, it is made clear in the letter setting out the reasons why sanctions are being considered that sanctions are merely a possibility.

The entity also receives a copy of the supervision report so that it can reply. The entity can consult and copy any other documents in ACAM's files and be assisted or represented by anyone of its choice. It has fifteen days in which to submit a written response.

##### DISCIPLINARY HEARING

A disciplinary hearing is held at least three weeks after notice of the causes of complaint has been sent. The hearing is held in private, unless one of the accused parties requests otherwise. The Chairman conducts the proceedings and can call any person as a witness. The accused person or entity may be assisted by a specialist and may also call witnesses. The supervisor in charge of the case presents his report, after which the accused person or entity or his/its legal representative can address the hearing.

After the hearing the College will retire to deliberate in private, with only the secretary of the meeting allowed to attend. In accordance with the principle of proportionality, the sanctions imposed must reflect the gravity of the case. The College may defer its decision.

##### NOTIFICATION OF THE DECISION

The sanctioned person or entity will receive notice of the decision. ACAM may publish its decision in any medium of its choice, at the expense of the sanctioned entity or person. Publication of the notice constitutes a sanction in itself. The sanctioned person or entity may contest the decision by filing an appeal with the Conseil d'Etat [highest administrative court], within two months of notification of the decision.

### SIX DISCIPLINARY MEASURES

Six sanctions may be imposed:

- ◆ warning;
- ◆ official reprimand;
- ◆ prohibition on carrying out certain operations or other limitations on the business;
- ◆ temporary suspension of one or more company directors (or removal of one or more directors);
- ◆ total or partial withdrawal of licence;
- ◆ mandatory transfer of all or part of the portfolio of policies.

In addition, the following sanctions may be imposed on intermediaries:

- ◆ removal from the ORIAS register;
- ◆ prohibition on engaging in the intermediation business.

“ The disciplinary proceedings must comply with the quorum requirements laid down by law and must also comply with three major principles: collegiality, impartiality and the right of defence. ”

## 1.2 Monitoring intermediaries

“ Insurance intermediaries are individuals or legal entities who propose or arrange insurance or reinsurance policies, for a fee. When an entity's business activities are limited to the management, assessment and settlement of claims the entity is not deemed to be an intermediary. ”

#### a) A new regulatory framework

Eight separate laws have been enacted since December 2002 to transpose Directive 2002/92/EC of 9 December 2002 into national law. More specifically, the Law of 15 December 2005 introducing various provisions adapting EU law to the insurance sector, known as the DDAC Law (*Loi portant Diverses Dispositions d'Adaptation au droit Communautaire dans le secteur de l'assurance*) requires intermediaries to be registered.

New laws and regulations came into effect on 1 May 2007. Intermediaries now need to be registered with the Registry of Insurance Intermediaries (*Organisme pour le Registre des Intermédiaires d'Assurance - ORIAS*), which is a key tool in the supervision of insurance intermediaries. Registration is mandatory, and a registration fee is charged.

In the event an intermediary no longer meets the requisite conditions it will be removed from the ORIAS register. Following this, all business with insurers must be brought to an end, as insurers have a legal obligation to ensure that their intermediaries are validly registered with ORIAS.

Removal from the register therefore means that the intermediary must cease all business activities and may not offer insurance policies.

This new regulatory framework has resulted in a large number of requests for further information from intermediaries and also from the general public. ACAM therefore organises regular meetings with the relevant industry associations and attends fairs and conferences addressing this topic. Relations between ORIAS and ACAM are governed by Article L514-4 of the Insurance Code.

#### ORIAS

The purpose of this new regulatory framework is to ensure policyholders know whether their insurance intermediary is registered or not. The ORIAS register is the cornerstone of the new system. It can be consulted at the ORIAS website, [www.orias.fr](http://www.orias.fr).

Intermediaries must satisfy criteria relating to integrity and professional ability when they register. They must subsequently submit documentary proof that they have third party liability insurance cover and sufficient financial guarantees on an annual basis.

Registration is not tantamount to a professional licence, however. Nor should it be considered as a sign of the approval of the public authorities, and as such is not comparable to the licences that must be held by insurers in order to insure risks.

As at 31 December 2008, 40,758 insurance intermediaries were registered, with a total of 47,758 entries<sup>3</sup> (because some intermediaries are registered in more than one category).

#### b) Compliance checks

“ Intermediaries are monitored to ensure that they are registered in the ORIAS register, they satisfy the requisite conditions for acting as an intermediary and that they comply with the applicable laws and regulations. ”

Intermediaries operating in France are monitored by ACAM. As they are not exposed to specific risks, ACAM does not operate a permanent control system and instead monitors intermediaries on a case-by-case basis, as and when it considers this appropriate.

ORIAS has a duty to provide ACAM with any information it may consider necessary for supervision purposes. ACAM decides to monitor a particular intermediary at its own discretion, or on the basis of information set out in complaints received from policyholders or if it is aware that policies are being offered that do not comply with the law. An intermediary may also be monitored within the framework of anti-money laundering procedures.

Monitoring may take different forms. It tends to focus on the information the intermediary gives to customers, but also covers relations between the intermediary and its supplier, to ensure information and premiums are passed on to the insurer. The intermediary has an obligation to inform its customer at every stage of the relationship:

- ◆ the customer must receive written information about the intermediary and its level of independence vis-a-vis insurance companies;
- ◆ documents must describe the proposed insurance operation: the intermediary must make written enquiries to ensure the product is appropriate.

Moreover, Article R. 511-12 of the Insurance Code requires “supplier” insurance companies to ensure that their intermediaries are registered with ORIAS (or in the relevant national register when they use foreign intermediaries with an establishment in France or working under the free provision of services system). ACAM’s monitoring of the insurers themselves establishes whether they comply with this requirement.

Similar checks have to be made when brokers act as “wholesale brokers” as, by virtue of Article R. 511-2 of the Insurance Code, they can only pass commissions on to registered individuals or entities.

“ ACAM pays particular attention to assessing the level of training and qualifications of insurance intermediaries. ”

#### INTERMEDIARIES OPERATING IN THIRD COUNTRIES

Intermediaries registered in their home country can now also operate in third countries, provided they inform the registrar in the country where their registered office is located.

They can either open a branch or operate under the free provision of services system. CEIOPS (Committee of European Insurance and Occupational Pension Supervisors) has proposed the following definition of free provision of services to the European Commission: “An Insurance Intermediary (“IIM”) is operating under FOS if it intends to supply a policyholder, who is established in a Member State (“MS”) different from the one where the IIM is established, with an insurance contract relating to a risk situated in a MS different from the MS where the IIM is established.”

#### 1.3. Anti-money laundering (AML)

##### a) ACAM

ACAM monitors the implementation of measures intended to prevent money laundering and the financing of terrorism by the entities it supervises. It may also verify compliance by intermediaries.

##### ■ SUPERVISION PROCEDURE

ACAM has considerably reinforced its anti-money laundering unit which now employs eight people, reflecting the importance of this issue. The specialised unit works in close collaboration with the inspection teams, organising specific on-site checks and ensuring that entities implement and improve their anti-money laundering procedures.

Anti-money laundering controls are carried out by the inspection teams and the members of the anti-money laundering unit, who have been specifically authorised by the College.

3. A registered intermediary may be registered in one or more of the four categories defined by Article R-511-2, point I of the Insurance Code: insurance broker, general agent, insurance representative, insurance intermediary.



Findings are reported in a specific section of the general inspection reports or in special AML (Anti-Money Laundering) reports.

When drawing up its inspection schedule, ACAM focuses first and foremost on the most vulnerable entities, in terms of the type of policies they offer or their production networks, as well as any entities that seem less well-equipped because of potential weaknesses in their internal organisation.

#### OFF-SITE MONITORING:

The unit conducts surveys designed to measure the level of compliance and assess the scope of application of anti-money laundering regulations in the most exposed entities. For instance ACAM surveyed life insurance companies in 2007, followed by mutual insurers and provident institutions in 2008. Individual, written replies were sent to all participant entities.

#### ON-SITE INSPECTIONS:

On-site anti-money laundering inspections are conducted by insurance supervisors or those members of the anti-money laundering unit authorised by the Secretariat General. Findings are reported in a specific section of the general inspection reports or in special AML reports.

To increase awareness within the industry and highlight the need for genuine and effective procedures to fight money laundering, the unit has also organised a number of information and training initiatives, including meetings with industry players, attending conferences and developing training tools.

#### SANCTIONS

ACAM has the authority to impose sanctions on any entity that has failed to set up or follow appropriate procedures, even if a detailed examination of its portfolio subsequently establishes that it has not been used to launder money.

“ To help insurers to comply with their anti-money laundering obligations ACAM’s College approved a handbook of good practice in March 2005. It is freely available on ACAM’s website ([www.acam-france.fr](http://www.acam-france.fr)). ”

ACAM’s preventive action also consists of developing good relations with the market authorities and TRACFIN<sup>4</sup> correspondents, and working on the application of the new principles laid down in the 3rd European Directive (Anti-Money Laundering Directive of 26 October 2005).

#### b) Relations between insurers and their brokers

Relations between brokers and insurance companies are of primary importance, given the way insurance products are distributed and the international importance of the “Know your customer” (KYC) rule. This is an area of particular concern to ACAM.

In addition to the applicable laws and regulations, such relations are governed by contractual provisions. It is therefore essential that any relations between an insurer and an intermediary are recorded in a written brokerage agreement defining each party’s rights and obligations. Such agreements usually specify the duration, the conditions for extending or terminating the relationship, the terms of payment of the broker and rules for taking out insurance policies.



#### c) Cooperating with other bodies in the fight against money laundering

##### INTERNATIONAL COOPERATION

ACAM contributes to the work of the Financial Action Task Force on money laundering (FATF). The FATF is an intergovernmental body created at the 1989 G-7 Summit in Paris to develop and promote international anti-money laundering policies.

The FATF has published 40 Recommendations, describing the measures national governments need to take to effectively combat money laundering. Together with the nine Special Recommendations to combat terrorism, these constitute a strong, broad and coherent framework to combat money laundering and the financing of terrorism.

The FATF organises work groups that look, in particular, at how to improve the mutual evaluation of financial systems in terms of the fight against money laundering, and examine current methods and trends.

ACAM is a member of a work group on risks in the insurance sector. Its findings should be made public during 2009.

ACAM also collaborates with the banking and financial regulators of other European countries within a work group called the AMLTF (Anti-Money Laundering Task Force), along with the Commission bancaire. The objective of this sub-group of the Level 3 committees (3L3, see below), based in London, is to harmonise the actions of supervisory authorities in terms of the fight against money laundering and to develop better practices in Europe.

4. TRACFIN – Traitement du renseignement et action contre les circuits financiers clandestins (French government’s anti-money laundering unit)

### ■ NATIONAL COOPERATION

Along with the other supervisory authorities, ACAM has worked on the transposition of the 3rd Directive no. 2005/60/EC of 26 October 2005 on the fight against money laundering and the financing of terrorism, under the aegis of the Directorate General for the Treasury and Financial Policy\*. This has led to the enactment of decree (ordonnance) no. 2009-104 of 30 January 2009, extending the obligations concerning the fight against money laundering and the financing of terrorism. The decree also modifies obligations of vigilance, focusing on a risk-based approach (cf. Section V).

In conjunction with TRACFIN, ACAM also seeks to increase awareness of this issue within the French market. The accuracy of reports of suspicious transactions is more important than their frequency. It is important that reports sent to TRACFIN are sufficiently documented and can be acted on promptly.

Lastly, surveys of life insurers provide ACAM with a comprehensive view of the opinions and experiences of private sector companies.

### JOINT ACTION WITH THE COMMISSION BANCAIRE

ACAM cooperates actively with the Commission bancaire and the AMF in the fight against money laundering and the financing of terrorism. For example, anti-money laundering surveys of banks offering insurance products are conducted jointly with the Commission bancaire. At the same time, the joint ACAM-CB meetings provide opportunities for in-depth discussions, as do the regular cooperation meetings organised by the bodies' general secretariats.

## 2. Oversight: centralising data

### 2.1. Prudential documents

“ ACAM collects and analyses information on the French insurance industry as a whole. ”

ACAM's main mission is to monitor all entities operating in the French insurance sector, irrespective of their form or status. It collects information from all the entities governed by the regulations that transpose the European directives on insurance into French law.

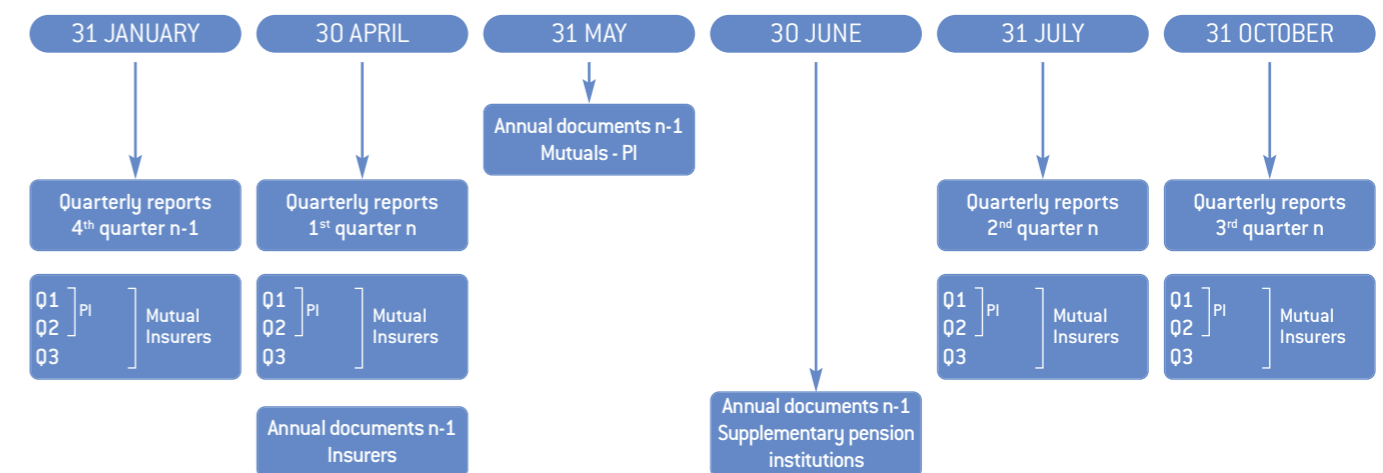
The information it collects can be divided into four main categories:

- ◆ accounting information, prepared in compliance with the rules laid down by the French Accounting Regulation Committee (*Comité de la réglementation comptable*);
- ◆ regulatory reports to facilitate analysis of the financial statements;
- ◆ general information obtained from the regulated entities;
- ◆ statistics that provide an overview of the socioprofessional aspects of the insurance industry, which are passed on to national and European statistics offices.

Most of the information is received in the form of mandatory reports and statements filed on set dates (see the schedule below), in compliance with the Insurance Code, the Social Security Code and the Mutual Code. The information collected varies slightly depending on the applicable Code, although a harmonisation process is underway.

With respect to entities subject to the Mutual Code, the relevant directives have been transposed more recently. This has been accompanied by a complete overhaul of the applicable chart of accounts and the creation of a set of standard reports to facilitate analysis of their accounts.

### SUBMISSION DEADLINES FOR PRUDENTIAL DOCUMENTS BY SUPERVISED INSURERS



ACAM has developed a number of tests to enable it to carry out its supervisory role. During the year, each entity must send ACAM the following:

- ◆ quarterly statements:
  - Q1: quarterly flows;
  - Q2: quarterly statement on amount of investments;
  - Q3: simulations covering assets and liabilities.
- ◆ an annual report including, in particular:
  - general information;
  - published financial statements and related documents;
  - reports on solvency, internal controls and its reinsurance policy;
  - annual statements analysing commitments and corresponding cover, the solvency margin and the liquidation of provisions.

### STATISTICS

ACAM uses all the information it obtains in the course of its prudential supervision (its primary function), its supervisory activities and its market watch.

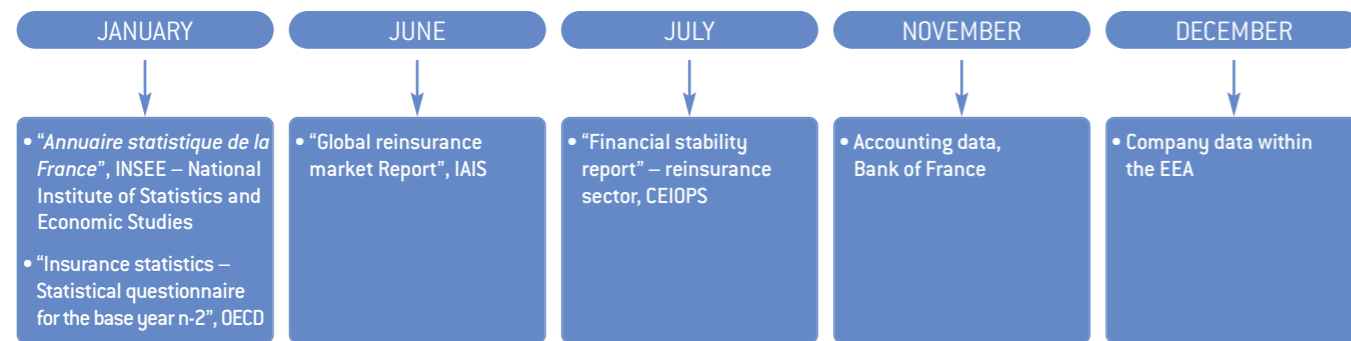
Consolidation of all the individual replies received allows it to produce series of statistics:

- ◆ annual financial results (consolidated data per type of business);
- ◆ summarised tables (overview of insurance population: companies, operations, etc.).

\* DGTPE : Direction générale du Trésor et de la politique économique.

ACAM is a member of the French National Council for Statistical Information (*Conseil national de l'information statistique - CNIS*) and contributes to its survey on "Money, finance and the balance of payments". ACAM also contributes data to a number of French and international organisations.

#### REQUESTS FROM EXTERNAL ORGANISATIONS RECEIVED BY ACAM



## 2.2 Relations with the policyholders

### 1. Monitoring of insurance policies

The monitoring of policies is an integral part of ACAM's oversight activities. It looks at how policies are drafted, marketed and subscribed, how they are implemented, the scope of the cover provided, policy amendments and termination when it verifies that insurers meet their underwriting liabilities vis-a-vis their policyholders.

These checks are made during on-site inspections, and also by the Contract Law and Policyholders department (DDCRA).

### 2. Protecting policyholders' rights

“ The role of the Contract Law and Policyholders department is to examine, analyse and deal with complaints, to monitor insurance policies and to carry out a legal watch. ”

The Department works in conjunction with the inspection teams to verify that insurers comply with the regulations governing insurance policies and the contractual provisions entered into with their policyholders.

#### ■ HANDLING COMPLAINTS

The Department contributes to the supervision of the market and the protection of policyholders' rights. Complaints concerning insurance policies may be referred to the DDCRA\* by policyholders and also by consumer associations, mediators, solicitors, insurance intermediaries, groups taking out group policies and insurers themselves.

A complaint will be considered if there is a written record of the dispute between the policyholder and the insurer. If the DDCRA\* judges that the complaint is justified, it may invite the insurer to reconsider the matter and comply with its statutory, regulatory or contractual obligations. However, it does not have the power to compel either party to an individual dispute to act or refrain from acting.

The DDCRA\* does not provide policyholders with legal advice or advice on insurance products. It does not have the authority to express an opinion on the reality of the case referred to it or on any disputed findings of experts. It has no authority to consider a complaint referred to it if, at the same time, an application is made to the courts concerning the same subject.

**The department operates a call center for urgent enquiries from individuals (+33 01 55 50 41 00).**

The DDCRA\* acts in close collaboration with the supervision teams. It requests their opinion on technical aspects and keeps them updated on complaints referred to it. It also issues regular reports and statistics and carries out cross-sectoral analyses of complaints. This valuable data may be a factor when selecting which entities are to be controlled or inspected. The DDCRA\* may also work alongside the inspection teams when they look at the management of claims, the complaints process, litigation and insurance policies.

#### ■ LEGAL WATCH

The DDCRA\* examines and verifies legal compliance of the insurance policies referred to it, and also advises and assists other ACAM departments. It carries out research in various areas of private law relating to insurance policies (content, marketing, underwriting, performance, termination) and the management of relations with policyholders (claims, complaints, litigation).

The DDCRA's ancillary tasks include a legal watch, training, involvement in ACAM actions, communication, advising government on technical issues, and international negotiations within the framework of CEIOPS.



### SPECIAL TREATMENT OF INDIVIDUALS WITH SERIOUS HEALTH PROBLEMS

The AERAS Convention (*S'Assurer et Emprunter avec un Risque Aggravé de Santé* – Insurance and Loans with an Increased Health Risk) was signed with a view to extending access to insurance and financial loans for individuals who have or have had a serious health problem.

The ACAM acts as secretary of the AERAS convention's Mediation Board.

The Board examines individual claims referred to it by individuals seeking a loan. It verifies compliance with the Convention, paying particular attention to the following:

- ◆ three-tier examination of insurance applications;
- ◆ time taken by the insurer and the bank to examine the application;
- ◆ information provided by the loan applicant on the medical reasons which resulted in an excess premium, exclusion, a deferral or refusal to insure;
- ◆ identification and implementation of alternative guarantees by the bank;
- ◆ borrower's eligibility for the pooling mechanism, subject to resources;
- ◆ confidentiality of medical data disclosed to the insurer;
- ◆ acceptance of external insurance (delegation).

The Board does not have authority to express an opinion on insurance limitations or exclusions, the level of the premium or any excess premium. Nor does it internee if a loan has already been granted.

For more information on the AERAS convention: [www.aeras-infos.fr](http://www.aeras-infos.fr)

## 3. Cooperation

### 3.1 In France

The 2003 Financial Security Act maintained separate regulation and supervision of the insurance sector, the banking sector (*Commission bancaire*) and the financial markets (*Autorité des marchés financiers*).

Parliament considered that separation was necessary because of the different types of risk to which the various sectors were exposed, while expressing a wish for increased cooperation between the three regulators, in particular in light of the increasing number of financial conglomerates operating in both the banking and insurance sectors, and the number of issues relating to the marketing of financial products.

#### a) Cooperation with the Commission bancaire

ACAM cooperates with the banking regulator, the Commission Bancaire, on several levels. One example of this cooperation is the mixed ACAM / CB teams which carry out coordinated on-site inspections.

Joint assignments take place regularly. They may focus on groups that engage in both banking and insurance activities, or on issues that affect both sectors. Knowledge and experience on topics that share certain similarities are exchanged, for instance during joint inspections.

This mutual exchange system ensures both bodies are aware of individual cases and contributes to the harmonisation of control methods.

### ACAM AND COMMISSION BANCAIRE SHARE CLOSE LINKS

The President of the Commission bancaire is automatically a member of ACAM's College, and the President of the ACAM is automatically a member of the Commission Bancaire. The two bodies meet twice a year to discuss matters of joint concern.

A Cooperation and Information Charter is available on ACAM's website and was last updated in 2004. It organises the collaboration between the two authorities.

#### b) Cooperation with the Autorité des marchés financiers (AMF)

Cooperation with the AMF is less official, due to the fact that there are fewer links between the two bodies' activities.

The ACAM and the AMF have continued to work together on the marketing of financial products, following on from the Delmas-Marsalet report (November 2005). This involves analysing the information and advertising materials intended for consumers of financial products, whether they invest directly or through a unit-linked life insurance policy.

### EXCHANGE OF INFORMATION BETWEEN ACAM AND THE BANK OF FRANCE

A Memorandum of Understanding has been signed by ACAM and the Bank of France to exchange information on insurers. This arrangement enables the Bank of France to contribute to statistics on the insurance sector for the ESCB (European System of Central Banks) without placing any extra reporting burden on its member banks, while at the same time improving its national financial data.

ACAM provides the Bank of France with reference data and financial data on the insurance sector. In exchange, the Bank of France provides ACAM with the statistics it produces using this information.

### 3.2 European cooperation

#### HARMONISED PRUDENTIAL RULES WITHIN EUROPE

These prudential rules are set out in EU directives, which define in particular the solvency rules governing insurance companies and institutions for occupational retirement provision (IORP) within the European Economic Area.

Compliance with these rules is verified by each Member State's supervisory authority. The Member States have entered into agreements to facilitate cooperation and organise the exchange of information, in compliance with the directives.

#### a) ACAM's coordinating role

Many insurance groups operate in several different Member States via subsidiaries, branches or under the freedom to provide services system. Although each country is responsible for supervising the legal entities operating in its territory, collaboration between the various national regulators is essential.

In particular, it is important that controls and inspections within a single insurance group are coordinated, as the solvency of a company could be affected and impact on the financial situation of other entities within the same group. The assessment of ability to meet underwriting liabilities vis-a-vis policyholders should therefore be carried out at a consolidated, group level.

The French supervisor therefore meets with its European counterparts on a regular basis to coordinate actions concerning issues affecting a group as a whole and to share information obtained from group entities. For each European group a coordination committee is created, comprising each entity's head of prudential supervision. ACAM is responsible for organising the coordination committees, coordinating monitoring and supervisions, and for conducting joint supervisions of groups when the parent company is French. In such cases it acts as 'lead supervisor'.

When a European group has French subsidiaries but the parent company is not French, it attends the coordination committee meetings organised by another supervisor.

“Cooperation with the other supervisory authorities in the European Union takes the form of intensive preparatory work in view of the adoption of the forthcoming solvency measures, known as “Solvency II”, as well as contributions to opinions requested by the European Commission.”

b) The role of CEIOPS (Committee of European Insurance and Occupational Pension Supervisors)

“The countries of the European Economic Area cooperate, within the framework of CEIOPS, to develop common policies for all supervisory authorities and supervised entities in Europe, in preparation for the new Solvency II directive.”

ACAM essentially cooperates with other supervisory authorities within the framework of CEIOPS.

The Committee was created by virtue of a decision of the European Commission dated 5 November 2003 under the “Lamfalussy” process as applied to the insurance and pension fund sector. It has replaced the ‘Conférence des Autorités de Contrôle des Assurances des États membres de l’Union européenne’ set up in 1958, for which France acted as secretary.

#### ■ ORGANISATION

CEIOPS (Level 3 Committee) is composed of high-level representatives of the supervisory authorities of 30 Member States of the European Union and the European Economic Area (EU/ EEA)<sup>5</sup>, and the European Commission. The supervisors of insurers and pension funds in EU Member States are voting members of CEIOPS' decision-making body, the “Members' Meeting”. Supervisors of other EEA

countries have Observer status. Each Member State nominates a delegation.

The European Commission, which is an Observer only, can refer matters to CEIOPS for a technical opinion and request proposals for Level 2 measures under the “Lamfalussy” process. CEIOPS is governed by a “Managing Board”, elected for two years.

#### ■ ACTION

CEIOPS advises the European Commission on regulations covering insurance. It also organises cooperation between the various supervisory authorities of the Member States of the European Economic Area.

Accordingly, ACAM cooperates with the other EU/EEA supervisory authorities within the framework of CEIOPS, more specifically on the introduction of the future “Solvency II” measures. CEIOPS acted as technical advisor to the European Commission for the preparation of the “Level 1” draft directive.

It monitors the application of EU Directives concerning the insurance and pension sector and oversees the proper operation of coordination committees. In 2007 agreements were signed to improve mediation and cooperation between supervisory authorities who are CEIOPS members and non-members.

Lastly, CEIOPS is working on proposals to organise training on a European level and the exchange of personnel between supervisory authorities.

#### EUROPEAN SUPERVISORY AUTHORITIES: A VARIETY OF STRUCTURES

CEIOPS currently has 30 member countries, with 27 active Members and 3 Observers (Iceland, Norway and Liechtenstein).

In 25 of the 30 member countries one single authority supervises both the insurance and the pension fund sectors. In some countries the role of the authority is limited to these two sectors, while in third countries the authority also supervises the financial markets and/or the banking sector.

Thus, in 14 member countries one single authority supervises all these sectors (integrated supervision). These are: Germany, Austria, Belgium, Denmark, Estonia, Hungary, Latvia, Malta, Czech Republic, Slovakia, Sweden, United Kingdom, Ireland, Poland (January 2008).

France is one of the 11 countries that has a specialist authority for the supervision of the insurance sector (separate supervision). The banking and financial sectors are supervised by separate entities. This solution has also been adopted by Cyprus, Finland, Greece, Luxembourg, Lithuania, Portugal, Slovenia, Spain, Italy and Romania.

#### Important

*A supervised entity operating in one European country may open a branch in another European country, provided it complies with that country's laws of contract. A foreign company located in the European Economic Area can therefore offer insurance policies in France.*

*However, the branch will continue to be supervised by the home country's supervisory authority. Pursuant to Article 11 of Directive 2002/83/EC on direct life insurance, the supervisory authority for the country in which the branch is located may take part in the supervision process.*

<sup>5</sup> EEA: EU + Iceland, Norway and Liechtenstein

### c) Cooperation between Level 3 Committees

CEIOPS and the other two Level 3 Committees (known as the 3L3 or 3 Level 3 Committees), the CESR (Committee of European Securities Regulators) and the CEBS (Committee of European Banking Supervisors) have held joint working meetings since 2005.

They have five objectives:

- ◆ sharing information in order to have compatible approaches;
- ◆ exchange of experiences which can facilitate supervisors' ability to cooperate;
- ◆ producing joint reports on topics of mutual interest;
- ◆ reducing supervisory burdens;
- ◆ having similar basic functioning of the Committees.

The 3L3 committees focus in particular on issues relating to financial conglomerates, anti-money Laundering and the similarities between the Bâle II and Solvency II directives.

ACAM contributes to work on the comparability of rules governing financial products (unit-linked life insurance policies / direct investments in UCITS-type funds).

### d) Cooperation with a view to managing cross-border financial crises

Given the need to strengthen cooperation in the event of a cross-border systemic crisis affecting the European financial sector, the European Union began to consider the possibility of an agreement back in 2001. Two years later, an initial Memorandum of Understanding (MoU) was signed by the Union's banking supervisors and central banks. A second, similar but tripartite, document was signed by the supervisors, the central banks and the Member States' Finance Ministers in the summer of 2005 replacing the initial MoU.

The new version of this MoU, which took effect on 1 June 2008, completed the 2005 agreement. It factors in the entry of Romania and Bulgaria into the EU and extends its scope to the insurance sector and the stock exchanges. It also introduces reinforced procedures for the sharing of information. The agreement also lays down a series of high-level principles ("burdensharing", priority for market solutions, etc.) to manage crises, and the appointment of a "leader" authority to coordinate action in the event of a cross-border crisis and to set up contacts with the private sector.

## 3.3 International cooperation

“ ACAM's International Department monitors and organises cooperation and the exchange of information relating to the prudential supervision of insurers at an international level. ”

International cooperation outside Europe is organised within the framework of the IAIS (International Association of Insurance Supervisors), the IOPS (International Organisation of Pension Supervisors) and the OECD.

ACAM attends plenary sessions and working groups organised by these bodies. It may be represented by its Secretary General, members of the International Department, supervisors or employees representing other departments, depending on the case.

### a) IAIS (International Association of Insurance Supervisors)

“ The main purpose of the IAIS is to promote cooperation between its members, which are for the most part insurance supervisors and regulators, and also to foster collaboration with the supervisory authorities of other financial sectors (banks, financial markets, etc.). Such cooperation is becoming increasingly necessary given the internationalisation of insurance groups and their diversification into banking and asset management activities. ”

The IAIS was founded in 1994 and represents almost 190 bodies in 140 countries world-wide. Its members regulate and supervise insurers. The mission of the IAIS is to:

- ◆ promote the exchange of information between supervisors concerning regulations, markets and entities;
- ◆ define core principles on supervision and produce a set of standards for general application;
- ◆ help regulators in emerging countries to set up an appropriate regulatory framework and an effective supervisory system. The IAIS is a non-governmental body and does not have authority to issue mandatory rules;
- ◆ contribute to the stability of the financial markets.

The IAIS is organised into various sub-committees and working groups, each with its own specialist area. Issues addressed include: accounting treatment of insurance policies, reinsurance and risk transfer, financial conglomerates, solvency and the fight against money laundering and the financing of terrorism. These sub-committees aim

to produce standards and principles that can be applied by all supervisory authorities.

The influence of the IAIS recommendations is growing. The International Monetary Fund and the World Bank use the Insurance Core Principles defined by the IAIS to assess their members' supervisory systems. The European Union also uses these principles to assess the supervisory system of candidates for accession, and is careful to ensure that the "Solvency II" project remains consistent with the work of the IAIS. A multilateral cooperation and exchange of information mechanism has been set up and all IAIS members are invited to participate. Furthermore, the "Insurance Groups and Cross-Sectoral Issues" sub-committee, chaired by ACAM, has prepared a paper on "Principles applicable to the supervision of international insurers and insurance groups".

The IAIS is also heavily involved in supporting emerging countries.

“ The IAIS and IOPS are international organisations representing insurance supervisors and occupational pension fund supervisors, respectively. They both conduct research, develop international standards and promote cooperation. ”

b) IOPS (International Organisation of Pension Supervisors)

IOPS is an independent organisation with governing members, associate members and observer-status members from around fifty countries at various levels of economic development.

Its objectives are four-fold:

- ◆ to set international standards;
- ◆ to promote good practice in terms of the supervision of private pension funds, not covered by the state social security systems;
- ◆ to promote international cooperation;
- ◆ provide a forum for the exchange of information.

IOPS works in close collaboration with the other international organisations concerned by pension-related issues: the IAIS, the International Monetary Fund and the World Bank.

The OECD is responsible for its administrative and secretarial work. ACAM, which supervises part of the private pension liabilities in France (pension products marketed by insurance companies, occupational pension funds and supplementary pension institutions), is a member of IOPS' technical committee.

c) OECD (Organisation for Economic Cooperation and Development)

The OECD's 30 member states account for approximately 98% of the world's insurance revenues. Within this governmental body an Insurance Committee meets twice a year (as does a private pensions working group). ACAM contributes to these bodies, along with the Ministry of the Economy, Industry and Employment.

#### MULTILATERAL COLLABORATION

ACAM also collaborates and cooperates with other, mainly French-speaking countries and countries that are candidates for accession to the European Union, providing technical support.

For example, it collaborates with CIMA, the Inter African Conference for the Insurance Market (*Conférence interafricaine des marchés d'assurance*), which has organised a single supervisory system for its 14 member countries, which are all Sub-Saharan African countries in the CFA zone. Its decision-making body in terms of introduction and compliance with regulations, the Regional Insurance Supervision Commission, meets four times a year. Two of ACAM's supervisors attend meetings to provide expert advice.

## 4. Communication and information

↳ Thanks to its on-site inspections and the data it receives every year from other linked entities, the ACAM has first-hand knowledge of the challenges facing the insurance industry and the market. It is constantly developing tools to heighten awareness, inform, and facilitate exchanges of information.

### 4.1 External communication tools<sup>6</sup>

a) The annual report

Once a year ACAM reports on its activities in its annual report, which is widely distributed.

b) The ACAM Newsletter

The Newsletter was launched in 2007. It contains the latest information on findings from on-site inspections, new regulations or court decisions, and ACAM's interpretation of laws and regulations that apply to insurers.

c) *Analyses et synthèses*

This is a new publication, also launched in 2007 by ACAM's Research and Market Watch department (*le département Etudes et suivi du marché*). Its purpose is to present in-depth studies based on ACAM's statistics. The first issue was devoted to the French insurance market and the main lessons to be learned from the third quantitative impact study (QIS3). The second issue covered the lessons to be learned from the fourth quantitative impact study (QIS4) while the third looked at the transposition of the Reinsurance directive.

d) The website (<http://www.acam-france.fr>)

The ACAM website was completely overhauled in 2008, with the aim of reaching a much wider public. With an attractive, user-friendly design, it is now a practical, easy to access source of information for both the general public and players in the insurance sector.

Four different entry points provide customised access for four main user types: supervised entities, intermediaries, policyholders and the press. New functionalities have been introduced: for instance, supervised entities can view the schedule for the submission of documents to ACAM and can also upload their reports and other documents via the site.

### 4.2 Actuarial research by ACAM's supervisors<sup>6</sup>

Various professional publications, including the *Bulletin français d'Actuariat*, have recently reported on actuarial research by ACAM's supervisors. A number of articles have been published, covering topics such as the insurance of options in a highly-fluctuating market, or the appropriateness of long-term equity investments. A paper has also been prepared on the valuation of commodities derivatives.

This work is indicative of the quality of the training received by ACAM supervisors, who have a comprehensive understanding of the most recent developments in financial modelling, and who are able to contribute to developments in actuarial techniques. They also demonstrate ACAM's ability to rise to the Solvency II challenges, along with the market.



6. A detailed account of action taken in 2008 can be found in Part II - 5/ Debates and current issues - 5.5 The continuing work of the Haut Comité de Place



### 4.3 Cross-sectoral surveys

These are conducted by ACAM's Secretariat General through theme-based controls and questionnaires sent out to all market operators.

The surveys covering topics such as the continued fall in interest rates (1998), inadequate reinsurance programmes (2000), the unsuitability of the mortality tables used for certain life policies (2001), insufficient rates and provisions for the maximum cover offered to policyholders under unit-linked life insurance policies (2002), use of credit risk transfer instruments (2003), and differences in the application of accounting rules for provisions for long-term depreciation (2004), have enabled a number of insurers to identify and assess previously undetected risks.

For the first time the cross-sectoral survey conducted in 2006 was sent out to all the insurers supervised by ACAM. Its main aim was to alert them to the danger of the poor assessment of risks transferred to reinsurers in limited or finite reinsurance treaties.

### 4.4 External actions<sup>7</sup>

**Supervision conferences have a dual purpose:**

- ◆ to present to insurers the findings of the cross-sectoral surveys and the lessons to be learned;
- ◆ to explain the purpose of, and discuss compliance with, the new prudential requirements (new prudential reports for mutual insurers have been gradually introduced since the 2005 financial year), the public consultations (CP) and quantity impact studies (QIS) launched by CEIOPS as part of the Solvency II project.

**ACAM also regularly participates in seminars organised jointly with the professional press or training organisations.**

### 4.5 General recommendations<sup>7</sup>

ACAM's recommendations do not seek to impose a new set of standards on insurers, their purpose is to clarify existing requirements in terms of good practice, where the regulations require further explanation. Recommendations issued in recent years have covered:

- ◆ the need for solvency reports to include more information about future prospects (2000 and 2004);
- ◆ practical applications of the obligations relating to the fight against money laundering and the financing of terrorism for life insurance (2001 and 2005);
- ◆ governance of insurers and information required by ACAM on reinsurance treaties and finite risk transfer deals (2007);
- ◆ recommendations issued in 2008:
  - joint recommendation of 15 December 2008, issued by the National Accounting Council (*Conseil national de la comptabilité - CNC*) and ACAM, on investments by regulated entities during the financial crisis (accounts for the year to 31 December 2008);
  - joint recommendation issued by the CNC, the AMF, the Commission Bancaire and ACAM relating to calculation of the fair value of financial instruments when markets are inactive. The purpose was to provide clarifications on the preparation of IFRS-compliant interim and annual financial statements as at 30 September 2008 or thereafter;
  - transfers of reserves or provisions by supplementary pension institutions.

### 4.6 Relations with industry organisations<sup>8</sup>

Before launching any cross-sectoral survey or issuing recommendations, ACAM consults industry associations and organisations within the insurance, mutual insurance and providence industries, with a view to obtaining their opinion and assistance. However, as none of the three Codes within its remit requires all insurers to join a single, central industry association, there is no single representative body with which the ACAM can deal. ACAM has good, long-standing relationships with the federations that collectively represent most insurers.

“ Relations between ACAM and industry organisation were strengthened in 2008 following its undertaking to the Haut Comité de Place (Paris Financial Services High-Level Committee, set up to increase the attractiveness of Paris as a marketplace. ”

- ◆ **AFA** (*Association Française des Assureurs*) created at the end of 2007 by the FFSA and the GEMA.
- ◆ **FFSA** (*Fédération Française des Sociétés d'Assurance*) created in 1937, it represents 289 insurance companies of various forms (limited companies incorporated in the form of *sociétés anonymes*, mutual insurers within the FFSA, and branches of foreign companies).
- ◆ **GEMA** (*Groupement des Entreprises Mutuelles d'Assurance*) industry association created in 1964, it represents 17 mutual insurers operating without any intermediaries and 24 of their subsidiaries incorporated as *sociétés anonymes*.
- ◆ **CTIP** (*Centre Technique des Institutions de Prévoyance*) created in 1986, it represents most of the provident institutions.
- ◆ **FNIM** (*Fédération Nationale Indépendante des Mutuelles*) created in 1989, its members include around thirty mutual insurers and grouping unions subject to the Mutual Code.
- ◆ **FNMF** (*Fédération Nationale de la Mutualité Française*) created in 1902, its members include almost all the 2,000 mutuals, mutual insurers and grouping unions subject to the Mutual Code operating in the insurance sector proper (so-called Livre II mutual insurers and grouping unions) or managing health and social protection schemes (so-called Livre III mutuals and grouping unions).

<sup>7</sup> A detailed account of action taken in 2008 can be found in Part II - 5/ Debates and current issues - 5.5 The continuing work of the Haut Comité de Place

<sup>8</sup> A detailed account of action taken in 2008 can be found in Part II - Part II - 5/ Debates and current issues - 5.5 The continuing work of the Haut Comité de Place



# Part 2

## ACAM's activity in 2008



# C O N T E N T S



## Part 2 ACAM's activity in 2008

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# I - Highlights of 2008

A brief look at the past year, with a chronological account of the most important events

## February

- ◆ ACAM issued recommendations concerning its reporting requirements with regard to reinsurance treaties and transfers of limited or "finite" risks.

## March

- ◆ ACAM sent replies to each of the life insurers that had been questioned as part of the survey on the fight against money laundering and the financing of terrorism, launched in 2007.
- ◆ The technical specifications of the fourth Solvency II Quantitative Impact Study (QIS4) were published by the European Commission.

## April

- ◆ Mr Cyril Roux was appointed as ACAM's deputy Secretary General.
- ◆ ACAM published its national guidelines for QIS4.
- ◆ Supervision Conference on mutuals and on the launch of the fourth Quantitative Impact Study (QIS4).
- ◆ April to July: QIS4.

## June

- ◆ ACAM published its Supervision Charter, developed in conjunction with industry associations, which aims to inform insurers about their rights and obligations during inspections.

## July

- ◆ ACAM and the Bank of France signed a memorandum of understanding on the exchange of data relating to insurers.
- ◆ The Government instructed the General Inspectorate of Finance (IGF) and Mr Bruno Delétré to conduct an audit with a view to the merger of Commission bancaire and ACAM.

## September

- ◆ Seminar on internal models and Solvency II, organised by ACAM for industry players.
- ◆ Death of Mr Jacques Bonnot, member of ACAM's College and honorary member of the Conseil d'Etat.
- ◆ Appointment of Mr Michel Laparra as a member of ACAM's College, replacing Mr Jacques-Henri Gougenheim.
- ◆ Retirement of Mr Noël Guibert, senior supervisor and head of ACAM's International Department, who is succeeded by Ms Pauline de Chatillon.

## October

- ◆ Joint recommendation by the French national accounting council (*Conseil national de la comptabilité – CNC*), the financial markets regulator (*Autorité des marchés financiers – AMF*), the banking regulator (*Commission bancaire – CB*) and ACAM on the fair value valuation of financial instruments.
- ◆ First vote on the draft Solvency II directive by the European Parliament (ECON Committee).
- ◆ The draft Solvency II directive is put to the ECOFIN Council for an informal straw poll vote.
- ◆ CEIOPS presented the first QIS4 European results to the industry.



## November

- ◆ Sudden death of Mr Michel Laparra, member of ACAM's College.
- ◆ Conseil d'Etat dismisses appeals by Mutuelle Le Sacré Coeur.
- ◆ Conseil d'Etat dismisses an appeal by Mr Maxime Mitondo, de facto manager of the broker Optima Conseil.
- ◆ CEIOPS report on QIS4 at European level.

## December

- ◆ Deadline for transformation of supplementary pension institutions (IRS) deferred until 31 December 2009 instead of 31 December 2008 (Act No. 2008-1330 of 17 December 2008 relating to the financing of social security for 2009). Institutions are advised to submit their application to ACAM before 31 March 2009.
- ◆ Joint recommendation by the French national accounting council (CNC) and ACAM on investments by insurers, reiterating the provisions currently applicable under French accounting regulations.
- ◆ Publication of the second edition of *Analyses et synthèses*, devoted to the results of the fourth quantitative impact study for Solvency II, by ACAM's Research and Market Watch department.

### FIRST FEW MONTHS OF 2009

## January

- ◆ Appointment of Mr François Lagrange, honorary member of the Conseil d'Etat, as a full member replacing Mr Bonnot, who died in 2008, and of Mr Pierre Guerder, honorary member and senior judge of the Court of Cassation, as an alternate member replacing Mr François-Régis Crozone, member of the Court of Cassation, who was appointed member of the College to replace Mr Auber following his death.
- ◆ Publication of the Delétré report.

## April

- ◆ Adoption of Solvency II directive.
- ◆ Organisation of the 3L3 seminar (CEIOPS-CEBS-CESR) in conjunction with the AMF and the SGCB, for other European supervisory authorities (27-28 April).
- ◆ Publication of the third edition of *Analyses et synthèses*, devoted to the transposition of the reinsurance directive, by ACAM's Research and Market Watch department.
- ◆ French insurers and reinsurers are invited to prepare a valuation of their prudential balance sheet, in line with the principles laid down in the Solvency II directive and send it to ACAM.

## May

- ◆ ACAM launches a new cross-sectoral survey of investments by insurers.

## 1. Sanctions and other significant decisions

### 1.1. The figures

Summary of College decisions in 2008

Type of decision		Insurers subject to the Insurance Code	Insurers subject to the Social Security Code	Insurers subject to the Mutual Code	TOTAL
Sanctions	Legal entity	3 published 1 unpublished	0	2 unpublished	6
Special scrutiny	Placement	2	0	1	3
	Maintenance	0	0	0	0
	Appointment	0	0	3	3
	Termination	0	0	2	2
Provisional administration	Placement	0	0	4	4
	Confirmation	0	0	0	0
	Extension	0	0	0	0
	Termination	0	0	1	1
Mandatory transfer of part of a mutual insurer's portfolio of policies		1	0	0	1
Recovery plan request		1	0	2	3
Freezing of assets		4	0	0	4
Withdrawal of licence		8	0	0	8
Winding-up (all decisions)		1	0	0	1
Approval of transfer of provisions or reserves by supplementary pension institution		0	7	0	7
Appointment of additional auditor		0	0	1	1
Refusal to authorise an insurer to raise a loan		0	0	1	1
Refusal of substitution agreements		0	0	1	1
Dismissal of recourses		0	0	1	1
Others		6	0	0	6
Opinion		1	0	0	1
General recommendations		1			1
	o/w one - all sectors				1
<b>TOTAL</b>		<b>29</b>	<b>7</b>	<b>19</b>	<b>56</b>

## FOR INFORMATION

*Acting in the interest of policyholders, ACAM permanently monitors the solvency of insurers. Supervised insurers must submit a detailed file every year including legal information, as well as financial and accounting data. This annual submission enables ACAM to systematically analyse the financial soundness of the insurers.*

## FOR INFORMATION

*The measure by which an insurer is placed in provisional administration falls outside the scope of ordinary law. Although the provisional administrator is appointed by a public authority, he acts under his own responsibility, like any other company manager. He replaces the Board of Directors and manages the company.*

## SUPERVISION AND PREVENTION

Like the banking and financial market authorities (Commission Bancaire and AMF), ACAM has a preventive role in addition to its supervisory and disciplinary roles.

This role implies that ACAM informs insurers of its views on the implementation of the laws and regulations, and provides information on best practices to be followed in this matter. ACAM's powers to order emergency or protective measures regarding insurers in difficulty also form part of this preventive role.

ACAM once again made use of its disciplinary and preventive powers in 2008 by issuing 56 decisions, to be compared with the 34 decisions issued the previous year<sup>1</sup>. Six sanctions were applied, 3 of them being subject to publicity. 18 measures were also taken under ACAM's emergency and protective powers.

## 1.2. ACAM's disciplinary and preventive decisions

## a) Sanctions and warnings

## ■ FAILURE TO COMPLY WITH REPORTING REQUIREMENTS

Two insurers were sanctioned in 2008 for failure to comply with reporting requirements, in particular for not transmitting their annual files within the requisite time period. The first insurer received a warning and a fine of €15,000. The second received a warning and a fine of €50,000. Although the amounts of the fines may seem low, they take into account the size of the entities, which were both small.

Applying a logic of prevention, ACAM decided to make these sanctions public, to underline the importance of a timely transmission of regulatory

information. Any delay is indeed an obstacle to the exercise of supervision.

Two insurers subject to the Mutual Code also received unpublished warnings for failing to transmit all the information required for supervisory needs<sup>2</sup>.

## ■ INSUFFICIENCY OF SOLVENCY MARGIN

ACAM applied the procedure for the mandatory transfer of the policies portfolio of MAPE (Mutuelle d'assurances des professionnels de l'étanchéité), an insurer providing construction liability insurance (class 13). The reason for this decision was that the insurer did not have sufficient equity and no longer held the minimum guarantee fund required by Article R. 334-7 of the Insurance Code.

## b) Emergency measures

## ■ PROVISIONAL ADMINISTRATION

On 26 November 2008, ACAM's College decided, after interviewing the companies' directors, to place FMP (Fédération mutualiste interdépartementale de la région parisienne) and Mutuelle Intégrance under provisional administration.

This emergency measure was justified in order to safeguard the interests of their policyholders and beneficiaries. The insurers' managers did not challenge the decisions.

## FMP (FÉDÉRATION MUTUALISTE INTERDÉPARTEMENTALE DE LA RÉGION PARISIENNE)

FMP is a major health and provident insurance provider. The decision to place it under provisional administration was taken after a long inspection process, spreading over more than twelve months, that revealed solvency and management problems. ACAM asked the company to present two recovery plans, in June and September 2008, but they were not sufficient to remedy the situation.

## LA MUTUELLE INTÉGRANCE

This mutual insurer was created by and for the disabled and their families and provides them with tailored health and social cover, savings solutions and assistance. ACAM placed it under provisional administration on the basis of an inspection report indicating that this insurer would probably not be authorised to renew its insurance policies or underwrite new business with effect from 1 January 2009. Delays in implementing changes and a very short-term management system could also jeopardise payments of benefits.

The current financial crisis has also led ACAM to apply Article L. 323-1-1 of the Insurance Code on several occasions and impose various emergency measures.

## ■ TEMPORARY SUSPENSION OF BUSINESS ACTIVITIES

ACAM considered that the financial situation or operating conditions of two subsidiaries of a foreign group were such that the interests of the policyholders might be compromised. It therefore ordered the temporary suspension of all financial operations between these two subsidiaries and the other group companies, subject to exceptions agreed by ACAM on a case-by-case basis.

## ■ REQUEST FOR SUBMISSION OF A RECOVERY PLAN

The deterioration in the financial situation of three entities – one insurer and two mutual grouping unions – led ACAM to require them to submit a recovery plan for approval, as provided in Article R. 323-1 of the Insurance Code and Article R. 510-3 II of the Mutual Code.

## c) Special measures

## ■ REFUSAL TO AUTHORISE AN INSURER TO RAISE A LOAN FOR DEVELOPMENT FUND

The draft plan was submitted to ACAM by a mutual grouping union pursuant to Article R. 212-5 of the Mutual Code. Various problems were identified:

- ◆ intermediation would have become the main business of the grouping's founding mutual insurers, which is contrary to Article L. 116-1 of the Mutual Code;
- ◆ Article L.114-4 of the Mutual Code only authorises an insurer to reinsure another insurer if the insurance branches that are covered by the reinsurance agreement are defined in the Articles of Association. The plan provided that each of the founding mutual insurers would reinsure the grouping for up to 90%, using as a basis the benefits and claims paid to its own policyholders. However, the Articles of Association of some of the mutual insurers did not allow for this type of activity.

Accordingly, ACAM refused to approve the draft plan.

1. All things being equal. According to last year's report, 34 decisions were made in 2007, with a different number of supervised entities.

2. In this case, the insurers failed to transmit the details of their accounts relating to miscellaneous payables and receivables, together with explanations relating to changes in these accounts.

### 1.3. Validation of ACAM's decisions: some examples

None of the appeals lodged against the ACAM have succeeded to date.

#### a) Conseil d'Etat, 24 November 2008, Mr Mitondo, case no. 301539

The Conseil d'Etat, France's highest administrative court which also rules on points of law, dismissed an appeal by Mr Maxime Mitondo to set aside ACAM's decision of 8 November 2006 prohibiting him from operating as an intermediary for five years, and fining him €30,000.

The appellant maintained that the decision challenged was not admissible and was procedurally flawed because the meeting's secretary was present when the case was deliberated. He also claimed a material error due to a confusion with his brother, and contested ACAM's finding that he was the de facto manager of Optima Conseil.

The Conseil d'Etat dismissed all the grounds for set aside raised by the appellant.

#### b) Conseil d'Etat, 7 November 2008, Mutuelle Le Sacré Cœur, cases no. 308886 and 310773

The Conseil d'Etat dismissed two appeals by Mutuelle Le Sacré Cœur to set aside ACAM's decisions of 20 June and 12 September 2007, placing and maintaining it under provisional administration.

Both these decisions provide valuable information on the extent to which the ACAM is required to justify individual disciplinary measures and the conditions for placing a mutual insurer under provisional administration.

As regards the obligation to justify its decision, the Conseil d'Etat recalled that Law no. 79-587 of 11 July 1979 requires the administrative authority

to state, in decisions falling within the scope of application of this Law, the legal considerations on which its decision is based. It added that this obligation does not include a duty to produce evidence of the factual considerations that are the basis of the decision.

With regard to the substantive issues, the appellant challenged the legitimacy of ACAM's decisions, citing a decision by the Basse-Terre Court of Appeal of 7 May 2007 setting aside a judgment handed down by the Pointe-à-Pitre Regional Court (*Tribunal de grande instance*) Tribunal on 3 February 2005, ordering its liquidation. The Conseil d'Etat ruled that the conditions laid down in the Code of Commerce (*Code de commerce*) that have to be met for a court to order liquidation are not the same as those laid down in Article L. 510-9 of the Mutual Code that have to be met when ACAM places a mutual insurer under provisional administration.

Because the codes form two independent sets of legislation, the ACAM may order such measures, provided it does not exceed its authority, without this affecting any decisions that may be taken within the context of insolvency proceedings.

#### c) Conseil d'Etat, 2009, Mr Glane, case no. 297699

The Conseil d'Etat confirmed the order handed down in summary proceedings in the same case two years previously (CE, 27 February 2007, Mr Glane, case no. 301231) and dismissed the appeal by Mr Sébastien Glane against ACAM's decisions of 19 July 2006, maintaining l'Orphelinat mutualiste de la police nationale (OMPNI) Assistance et Prévoyance in provisional administration (CE, 18 March 2009, Mr Glane, case no. 297699).

The appellant, as the former chairman of the two entities created as a result of the demerger of OMPNI, claimed that ACAM had failed to respect the statutory three-month time period when it announced the continuation of the provisional administration procedure, and that accordingly its decisions were neither valid nor lawful.

The Conseil d'Etat ruled that although ACAM has three months maximum in which to announce whether provisional administration is lifted or maintained, it may reach a decision within a shorter time period provided it has given the entity's managers an opportunity to be heard. The Court also stated that ACAM is not under any obligation to stipulate on the day it announces a measure when such measure will be lifted, as it may decide to lift the measure at some time in the future in light of changes to the insurer's situation.

### 1.4 Successful action following decisions

#### 1.4.1 The MGMR (*La Mutuelle de Gestion des Maisons de Retraite*)

The MGMR is a Livre III mutual that was placed under provisional administration by ACAM on 16 May 2007 following the resignation of the previous provisional administrator, who had been appointed by the *Préfet* for the Ile de France region.

The MGMR managed two retirement homes, in which essential work to bring the buildings into line with the applicable standards had not been carried out because of a lack of funds. Withdrawal of the license would have led to the closure of the homes and the transfer of their residents.

On 30 April 2009, after interviewing the administrator, ACAM was pleased to record that a new manager had been found for both retirement homes, who had promised to keep on all the staff and to allow all the existing residents to remain.

The administrator sought solutions to ensure that the staff and residents would benefit from conditions identical to those that applied before the transfer. He also provided the transferor and the transferee with assurances regarding the schedule for the operation, which had seemed compromised on several occasions due to problems encountered when executing his mission.

#### 1.4.2 La France mutualiste

La France mutualiste, which provides pension schemes specifically for the ex-armed forces, was placed under special scrutiny pursuant to Articles L. 510-9 and R. 510-3-1 of the Mutual Code, on 4 April 2007. The main reasons for this decision were the unsatisfactory nature of its corporate governance, the lack of managers with the proper skills to manage the mutual, the inadequacy of its portfolio of assets in view of its commitments in 2005, the imprudent management of its real estate assets, and also a lack of adequate anti-money-laundering and internal control procedures.

Two years later, on 13 May 2009, ACAM's College observed that the mutual had identified and implemented a number of measures to correct these problems, and the special scrutiny measure was lifted.



### 1.4.3 OMPN

OMPN-Assistance, a Livre III mutual, was placed in provisional administration and under special scrutiny on 8 June 2006. At that time the members of the mutual's general assembly had not been properly appointed and the spin-off from its sister company, OMPN-Prévoyance, initiated in 2002, had not been fully completed. After considerable work carried out under the supervision of the administrator the mutual's operations returned to normal and the provisional administration measure was lifted on 8 November 2007. However, ACAM decided to maintain the special scrutiny measures as the renewal of the mutual's governing bodies required close attention. Since that date the management team has demonstrated that it has the necessary human, institutional and financial resources to achieve the mutual's objectives successfully. ACAM's College accordingly lifted the special scrutiny measure on 28 May 2009.

OMPN-Prévoyance, a Livre II mutual insurer, was also placed in provisional administration and under special scrutiny on 8 June 2006. This company's situation was worse than OMPN-Assistance as, in addition to similar management problems, it had failed to book provisions for some long-term commitments and its balance sheet was dangerously unbalanced when these were taken into account. A restructuring of its guarantees, within the limits defined by the Evin Act, was necessary in order to save the company. After extensive work, including accounting adjustments over several years, the mutual insurer's situation finally merited the lifting of the provisional administration and the corresponding decision was announced on 8 November 2007. However,

the special scrutiny measure was maintained, for the same reasons as its sister company. Since then, the mutual insurer has demonstrated that it has sufficient technical and financial capacity to operate normally and that special measures were no longer necessary. As a result, the special scrutiny was lifted on 28 May 2009.

## 2. Surveys and market trends

### 2.1 Issues shared by the market as a whole

#### 2.1.1 The impact of the financial crisis

##### a) Insurers' structural capacity for resistance

“ The global financial system has been experiencing severe turmoil since the summer of 2007. Insurers have been affected by the crisis, not as insurers but as investors. ”

### THE CRISIS HAS NOT AFFECTED INSURANCE COMPANIES AND BANKS IN THE SAME WAY

Since the summer of 2007, insurance companies have been faced with a fall in the value of their assets. The prices of bond assets have fallen due to the widening of spreads, even though sovereign debt benefited from the fall in interest rates at the end of 2008. At the same time, in the equity markets, the gains of the past few years have been wiped out. On a more temporary basis, the markets for certain assets have sporadically revealed a limited liquidity.

However, the impact of these events is not the same for insurance companies as for other financial stakeholders. Insurers are structurally long-term investors and their generally positive overall business balance (premiums received – claims settled) means they are not obliged to sell assets prematurely. As an example, insurers came through the 2000-2003 market fall virtually unscathed whereas the CAC 40 index lost nearly two thirds of its value over the same period. Similarly, the repercussions of the present crisis have not endangered the solvency of the insurance market.

All in all, insurance companies have shown firm resistance to the financial crisis for several reasons:

- ◆ share prices, like property assets, had risen significantly over the preceding years. Insurers had therefore accumulated a substantial stock of unrealised capital gains which cushioned the 2008 downturn;
- ◆ an insurance company is not exposed to a fall in the bond markets except in the case of massive mismatching of assets and liabilities. Bond

assets form part of insurers' asset/liability management and are generally intended to be held to maturity. When this is not the case, they can use the reserve for long-term capital gains to offset any capital losses;

- ◆ in terms of their possible exposure to particularly toxic securities, insurers are protected by the risk spreading rules by which they are bound;
- ◆ in the case of life insurance policies in euro, insurers are protected not only by the risk spreading rules but also by the possibility of setting aside a provision to cover policy holders' share of profits. To smooth life insurance returns, insurers have a period of eight years in which to pay policy holders their share of profits. Insurance companies can therefore constitute provisions that they can draw on during periods of low financial returns so as to maintain an attractive annual rate of capital growth.

#### b) ACAM's actions and tools

ACAM permanently supervises insurers' compliance with the three pillars of prudential regulation:

- ◆ prudently estimated provisions;
- ◆ certain, liquid and profitable assets;
- ◆ a safety margin, known as the "solvency margin".

#### ■ REPORTING TOOLS

ACAM has annual and quarterly reporting tools, adapted to normal conditions and designed to give an early indication of insurers' capacity to resist financial shocks.

Regarding off site inspection, ACAM receives a yearly report containing statistical data that enables it to assess each insurer's situation. It also receives solvency and internal control reports in which each entity gives its view on the potential risks.



These various reports enable it to measure the impact of market shocks. Each quarter, the T3 report enables it to recalculate assets and liabilities according to different economic scenarios while the T2 report enables it to measure exposure to the different asset classes. The annual C6bis report provides a measurement of the financial risk linked to liabilities (surrenders of life insurance policies, for instance).

In normal conditions, ACAM therefore obtains a forward-looking view of each insurer and can therefore react rapidly if the need arises.

#### ■ SUPERVISORY TOOLS

The deterioration in the financial situation since 2007 has led ACAM to add to its supervisory tools.

Each crisis has specific characteristics that call for specific reporting tools that would be superfluous in normal conditions.

Right from the beginning of the present crisis in August 2007, ACAM began to measure exposure – which fortunately proved to be very low – to so-called “toxic” assets such as sub-prime mortgages. In December 2007, given the extension of the crisis, ACAM wrote to all the insurers requesting them to perform stress tests based on the situation at end-December 2007 and to report to ACAM on the results of these tests within two months. The aim was also to heighten senior management’s awareness through the obligation to report the test results to them. Given the diversity of insurers’ investments in terms of type of investment and breakdown, ACAM left it to each insurer to determine the stress test best adapted to its specific situation. Generally speaking, the insurers’ tests concerned the risk of loss of value of the three main asset categories: fixed-income (interest rate curve and spread stress tests), equities and property assets.

ACAM also kept a close eye on the consequences of Lehman Brothers’ collapse and the other difficulties encountered by financial groups.

More recently, in October 2008, ACAM put in place a system for monitoring life insurance underwriting flows (premiums, surrenders, etc.) closely. The data requested concerns weekly flows relating to euro-denominated and unit-linked policies. This data enables ACAM to monitor closely the evolution of the assets managed by insurers and, consequently, their capacity to maintain the investments in their portfolios. Euro-denominated contracts remained stable, reflecting policyholders’ confidence in the solidity of the French insurance market.

Lastly, ACAM verifies that the capital growth rates granted to life insurance policyholders are compatible with the regulated entity’s financial capacities.

#### CONSEQUENCES OF THE PRESENT CRISIS

Insurers have experienced a fall in the value of their assets that has negatively affected their regulatory solvency margin, which nonetheless remains adequate. In this respect, the existing investment regulations, under which assets are valued at historical cost, enable insurers to smooth the impact of the fall in the financial markets.

#### 2.1.2 Regulations relating to the minimum guaranteed rate

To protect policyholders, the regulations contain strict criteria for the rate of return that may be guaranteed on a policy. The technical interest rate on a policy may not exceed 75% or 60% of the average issue rate, or 3.5%, depending on the term over which the rate is guaranteed (see Article A. 132-1).

However, an insurer may guarantee a higher rate over a one-year period for some policies. This guaranteed rate is limited, with the maximum level being set based on the average rate of return achieved on the insurer’s assets over the two previous years (Articles A. 132-2 and A. 132-3). An annually indexed rate may also be guaranteed over a maximum period of eight years (A. 132-3, paragraph 2).

However, in recent months, ACAM noted that several insurers were marketing policies offering particularly high guaranteed rates. This situation warrants several observations:

- ◆ Article A. 132-3 sets an obligatory limit on the guaranteed rate;
- ◆ the regulations only permit annually revised guaranteed rates (Article A. 132-3 alinea 1);
- ◆ communicating about returns for periods of less than one year is contrary to the spirit of Article A.132-3, and more generally to the philosophy of life insurance, which is a long-term investment product. Communicating about a high rate guaranteed for a quarter or half-year period does not constitute balanced information to policyholders;
- ◆ when these promotional guaranteed rate practices concern policies with no initial charge or surrender fee, the policy in reality resembles a remunerated demand account rather than a life insurance product, and therefore carries particularly high risk of surrender compared with conventional life insurance policies.

On the basis of these observations, ACAM makes every effort to ensure that the insurers it supervises comply with the regulations relating to their commitments.

#### 2.1.3 Prevention of money laundering

##### a) Increased communication

In 2008, ACAM’s anti money laundering unit organised various communication events for professionals: conferences, talks, training, etc.

The drafting of the questionnaire addressed to provident institutions and mutual insurers involved in life insurance activities also provided an opportunity to reinforce contacts with the organisations representing the industry. Two conferences were held, on 11 March and 15 April 2008, to present the survey and its objectives. In addition, the survey results were communicated via the industry organisations, FNM and CTIP, on 26 and 27 November 2008.

Communication actions also concerned the brokerage sector. By invitation from the insurance brokers’ union for Eastern France (*Syndicat des courtiers d’assurance de l’Est de la France*), ACAM reminded brokerage firms of their obligations in terms of organisation, procedures and relations with customers.

Lastly, ACAM reinforced its cooperation with TRACFIN by introducing the principle of regular, joint meetings. At the beginning of 2009, ACAM continued its efforts to heighten awareness of this issue in the French market in collaboration with TRACFIN.



“ Above and beyond the growth in the number of reports of suspicions, which is expected to continue over the coming years, the suspicions reported to the financial intelligence unit must be adequately supported so that they can be used. ”

b) On-site inspections: 2008 target achieved

ACAM's target for 2008 was to perform on-site inspections at more than half of the life insurance companies, and it achieved its target. The number of on-site inspections has increased significantly over the past two years and is expected to remain high. As in previous years, these inspections will concern all sectors: insurance, provident institutions, mutual insurers and brokerage activities.

During 2009, the members of the anti-money laundering unit will have one-to-one meetings with numerous TRACFIN correspondents to examine the conditions for implementation of the provisions of the 3<sup>rd</sup> Directive at their respective entities.

c) Provident institutions and mutual insurers

“ Provident institutions and mutual insurers have moderate or low exposure to the risk of money laundering. These insurance entities must nonetheless, in particular in the context of implementation of the 3<sup>rd</sup> European Directive, adapt their prevention of money laundering system to take market reality into account. ”

ACAM has continued to fulfil its role of permanent control by circulating a specific questionnaire on prevention of money laundering and financing of terrorism to provident institutions and mutual insurers.

This wide-scale survey related to:

- ◆ the application of the regulations relating to prevention of money laundering and financing of terrorism;
- ◆ the preparedness of the surveyed entities to meet the new requirements in this area established by the European Union's 3<sup>rd</sup> money laundering directive.

Participation in the survey was very strong, with 241 responses. The numerous comments sent in with the questionnaires reflected great interest in the issue of compliance with money laundering regulations.

The survey revealed that many provident institutions and mutual insurers have already initiated significant action in this direction with the support of the industry organisations. However, a certain number of entities are still unfamiliar with the basic provisions of these regulations. The most common deficiencies related to:

- ◆ organisation of the prevention of money laundering function;
- ◆ drafting and circulation of anti-money laundering procedures;
- ◆ staff training;
- ◆ setting in place of an internal control system;
- ◆ absence of any system for detecting unusual transactions and fighting against the financing of terrorism.

There is therefore room for further progress and improvement in this sector.



2.2. Supplementary pension institutions

“ 2009 will feature the disappearance of Supplementary Pension Institutions (*Institutions de Retraite Supplémentaire – IRS*). However, the pension and retirement schemes to which they are linked will not disappear: they may be taken over in part or wholly by insurers, after having been modified if necessary. ”

Act No.2003-775 of 21 August 2003 relating to the reform of pensions schemes provided for the disappearance of IRS at 31 December 2008. This deadline was deferred for a year by Act No. 2008-1330 of 17 December 2008 relating to the financing of social security for 2009. This postponement in no way changes the technical conditions for the transformation of IRS as provided for in the 2003 Act and the associated application decrees (Decree of 26 December 2007 and Order of 25 July 2008).

a) Supplementary pension institutions: a wide variety of institutions

Initially created by businesses as part of their labour relations policy, IRS were designed to manage 'in-house' defined-contribution pension schemes for the employees of member companies as a supplement to the official mandatory and complementary pension schemes.

The benefits paid out to around 400,000 beneficiaries were estimated at €1 billion as at 31 December 2007. The discounted amount of the associated commitments is estimated at around

€20 billion. These figures nonetheless cover very contrasting situations: while some IRS managed large companies' pension commitments to several thousands of employees or former employees, a significant number, on the contrary, had very few participants.

Neither is the IRS's mode of operation homogenous. While some institutions have been allocated sufficient funds to finance their commitments, most do not hold sufficient assets to do so and pay out the benefits by calling on the employer for funds.

#### b) The IRS transformation process

#### PRESENT SITUATION

Before the transformation process started, 81 IRS were listed as active, i.e. meeting at least one of the following criteria: directly paying benefits during the financial year, with commitments to retired employees or future pensioners, or the existence of an active decision-making body.

Of these 81 IRS, three were still open, meaning that all the employees of the member companies continue to acquire rights.

The other institutions were either closed to new employees (only the employees already in the scheme could continue to acquire rights) or in extinguishment mode, with no new rights being acquired). Many of the closed IRS are in extinguishment mode.

The IRS can:

- ◆ apply for authorisation to operate as a provident institution or to merge with an authorised provident institution;
- ◆ change, without creating a new legal entity, into a supplementary pension scheme management institution (*Institutions de Gestion de Retraite Supplémentaire – IGRS*);

- ◆ failing one of the above, the IRS will be officially dissolved and the funds it holds at that date will be converted into annuities in the conditions provided for in the Decree of 25 July 2008.

In the case of transformation into an IGRS, whose corporate purpose is strictly limited to administrative management of the pension scheme, any funds held in the IRS must be transferred to an insurer as soon as ACAM has approved the changes to the scheme decided by collective agreement. If the IRS holds no funds, Decree No.2007-1897 of 26 December 2007 provides for the filing of the new IGRS's Articles of Association with ACAM and the ministry concerned.

“ At 31 December 2008, ACAM had approved 7 transfers of funds held by IRS that had opted for conversion to IGRS. Two IRS merged with provident institutions during the 2008 financial year. ”

#### THE SPECIFIC CASE OF DISSOLUTION

A number of IRS have opted for dissolution. In some cases, these IRS have funds that they could transfer to an insurer.

At the technical level, ACAM assesses the planned transfer terms and conditions in the same way as for conversion to an IGRS.

#### c) Assessment of transformation projects

As part of its duties, ACAM verifies the terms of the collective agreement modifying the pension scheme with a view to the IRS's transformation.

In the case of a transformation involving a transfer of funds, ACAM ascertains that the insurance policy is compatible with the terms of the collective agreement and that the policy is correctly drawn up.

If the pension scheme cannot be totally outsourced to an insurer, ACAM also verifies that the employer's residual commitment in the financing of the scheme is clearly stated.

An analysis of the transformation projects examined in 2008 revealed that a number of IRS were finding it difficult to comply fully with these requirements. The main difficulty is that the IRS, set up by employers, have not sufficiently taken into account the fact that on transformation into an IGRS their corporate purpose is strictly defined by the Law and that the transfer of funds to an insurer is subject to specific regulations.

#### APPROVAL OF TRANSFER OF PROVISIONS BY IRS

ACAM approved the transfer by four IRS of their provisions and reserves to insurance entities. This type of decision is likely to become more common in 2009 as Article 116 of Act No.2003-775 of 21 August 2003 relating to pension reform gave IRS the possibility of choosing one of the following options before 31 December 2008 (deadline subsequently deferred to 31 December 2009):

- ◆ to apply for authorisation to become a provident institution, or to merge with a provident institution;
- ◆ to change the IRS into an IGRS. In this case, the IRS must obtain ACAM's approval of the collective agreement modifying the pensions scheme's rules with a view to transferring the provisions and reserves already constituted to an insurer;
- ◆ failing one of the above, to dissolve the IRS.

#### SOME FUNDAMENTAL RULES RELATING TO THE TRANSFER OF FUNDS

The transfer of funds is subject to specific regulations.

The insurance policy must clearly state the commitments towards the beneficiaries of the schemes, in exchange for the initial transfer of funds, in accordance with Article L. 131-1 of the Insurance Code. In particular, the insurance policy must guarantee the rights acquired by retired employees under the scheme. These rights are stipulated in the memorandum drawn up by the insurer and transmitted to scheme beneficiaries by the employer.

For its part, indexation of benefits to external indices (change in Agirc, Arrco, etc.), will not be the subject of a guarantee from the insurer except when limited to the amount of a profit sharing fund.

These points are set forth in an information memorandum published by ACAM, which was transmitted at the end of 2008 to each IRS with funds to be transferred to an insurer. The IRS should thus be in a position to adjust the planned mechanism and present projects that comply with these requirements during 2009.





### 2.3 Mutual insurers governed by the Mutual Code

a) A decline in the number of mutual insurers

#### ■ GENERAL TRENDS

Steady growth in the supplementary health insurance market has attracted insurers' interest and exacerbated competition in this sector.

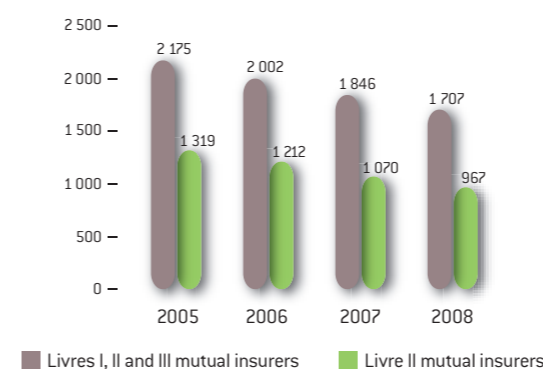
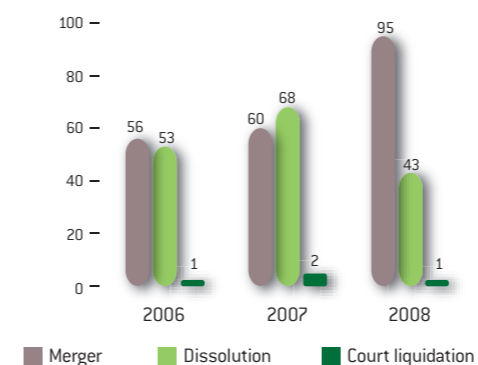
One consequence has been a steady fall in the number of insurers governed by the Mutual Code. Moreover, the supplementary health insurance business is becoming increasingly complex and requires governance and management structures that involve a minimum size.

Also, as from 1 January 2008, the minimum guarantee fund required for exercising an insurance activity has been raised to €1.6 million for supplementary health insurance and €2.4 million for life insurance. Competition and more stringent regulatory requirements have prompted numerous entities to adapt their strategies and re-examine the critical size required to survive over the long term. A growing number of insurers have called on ACAM's Secretariat General to assist them at an early stage in carrying out their project.

“ Increased competition for the mutual insurers: competition increased in 2008 as the result of the reform of civil servants' supplementary health insurance: each government department staged an invitation to tender opening the field to insurance companies and provident institutions. Some mutuals linked to a same ministry grouped together in order to respond more efficiently to calls for tender. ACAM's Secretariat General was called upon to assist with these operations. This reform will also concern local government employees and hospital staff. ”

#### ■ THE MAJOR MOVEMENTS: GROUPINGS, TRANSFERS, MERGERS, SUBSTITUTION, ETC.

In 2008, 62 entities governed by Livre II transferred their portfolios in the context of mergers by absorption, eight transferred their portfolios without merging and two merged without transferring their portfolios. In addition, 31 Livre III mutual insurers were grouped.



Of the 967 mutual insurers governed by Livre II, 386 were substituted.

Thirteen applications for authorisation of new mutuals were received by ACAM's Secretariat General in the framework of Mutual Insurance Higher Council's Licencing Commission (*commission agrément du Conseil supérieur de la mutualité*). Nine licences were granted by the administrative authority.

Following enactment of the Act for the Modernisation of the French Economy (Loi LME) of 4 August 2008, new provisions relating to governance were drafted. The Mutual Insurance Code now provides for delegates to vote by proxy. The rule relating to cumulative offices has been eased and directors of a mutual insurer or grouping may now hold offices in conditions similar to those provided for by the Insurance Code.

Lastly, the possibility of creating a Mutual Grouping Union (*Union mutualiste de groupe – UMG*), equivalent to a Mutual Insurance Group Company (*Société de groupe d'assurance mutuelle – SGAM*), enables mutual insurers to group together. The aim is to ensure the distribution of their products while conserving their own mode of functioning and their own identity.

2008 featured the first creation of a public limited company (*société anonyme*) governed by the Insurance Code within a mutual insurance group based on the transfer of the portfolios of two Livre II groupings within the larger group.

#### b) Ongoing off-site and on-site inspections

Off-site inspection of mutual insurers, put in place in 2007, was continued and extended in 2008.

In 2007 non-substituted Livre II mutual insurers were for the first time under the obligation to present to ACAM all the prudential statements defined in 2005. In 2008, the quality and completeness of the information submitted had improved but there was still room for further progress.

The supervision is primarily based on the annual documents, which must be submitted within the stipulated deadline. When this is not the case, ACAM sends a reminder to the mutuals in the form of a formal notice.

#### FOR INFORMATION

*When an insurance entity is substituted, it no longer retains the insurance risk, which is transferred by agreement to the 'substituting' mutual insurer.*

“ Since January 2009, electronic data transmission channels are available for quarterly reporting data. ”

Less than one third of the 581 mutuals concerned transmitted their 4<sup>th</sup> quarter 2008 report electronically. This experimental phase is nonetheless promising.

ACAM also performed on-site inspections at mutual insurers, with a focus on mutuals operating in life insurance, and on urgent cases.

#### MANDATORY REPORT ON INTERNAL CONTROL

Decree No.2008-648 of 19 May 2008 stipulates that Livre II mutuals and groupings must submit to ACAM an annual report on internal control, approved by their Boards of Directors.

For mutual insurers supervised by ACAM, the first report was to be submitted by 19 November 2008 at the latest. Two thirds of the entities concerned duly submitted their reports but a reminder had to be sent out to the other third.

The majority of the reports highlight the efforts made, and those planned, to put in place an internal control system. They describe the procedures put in place or to be put in place and the resources allocated to internal control. Some entities also provided a mapping of their risks.

The internal control report should be considered a steering tool for the management. It will need to be adapted to take into account the different risks identified during the year, together with the action taken and provided for in the audit plan.

The reports from Livre II mutual insurers were to be submitted by 19 May 2009 at the latest.

#### 2.4 Insurance intermediaries

In 2008, the supervision of insurance intermediaries continued to integrate the new legislation. It focused on the following areas:

- ◆ replies to the various questions relating to insurance intermediaries raised by the public. There were slightly fewer requests for information than in 2007, which had been an exceptional year due to the introduction of the Registry of Insurance Intermediaries (*Organisme pour le registre des intermédiaires en assurance – ORIAS*) which lists all the intermediaries authorised to operate in France. There was nonetheless a significant flow of questions, in particular relating to the obligation to register in order to operate as a remunerated insurance intermediary.

“ The most frequent questions concerned the obligation to register with ORIAS. ”

The 'legal status' (agent, for example) does not on its own provide an answer to this question: it is necessary above all to know whether the activity effectively carried out by the person enters within the scope of insurance intermediation as defined in Articles L. 511-1 and R. 511-1 of the Insurance Code.

- ◆ The very numerous queries received by ACAM have been listed by theme and will be accessible on ACAM's website, thereby adding to the FAQ section. In addition, the expertise acquired in the course of dealing with these questions provided the basis for the following articles published in ACAM's newsletter (*La Lettre de l'ACAM*), thus responding to market concerns:

- No. 4, first quarter 2008, Subsidiarisation and relocation of intermediaries (*Filialisation et délocalisation des intermédiaires*);
- No. 5, second quarter 2008, Some information on insurance indicators (*Quelques éléments sur les indicateurs d'assurance*);
- No. 6, third quarter 2008, Voluntary networks (*Les réseaux bénévoles*);
- No. 7, fourth quarter 2008, Verifying the good character of intermediaries on registration (*Le contrôle de l'honorabilité des intermédiaires lors de leur immatriculation*);
- No. 8, first quarter 2009, Remuneration and registration (*Rémunération et immatriculation*).
- ◆ ACAM's various departments drew on their expertise to assist the Department of Treasury and economic policy of the Ministry of Economy in drafting the Ministerial Order establishing the diplomas required for registration with ORIAS as an insurance intermediary ("Diplomas Order").
- ◆ As in 2007, ACAM took part in various professional events with the aim of informing intermediaries of their obligations under the new legislation.
- ◆ Three on-site inspections of insurance intermediaries were also performed in 2008. These inspections – performed based on case-by-case decisions taken by ACAM – focused on the following:
  - ORIAS registration. In some cases the inspection prompted the entity to take the necessary steps to register with ORIAS. In other cases, the inspection revealed that the entity continued to operate despite being struck off the ORIAS register;
  - general professional and financial liability insurance. In several cases, the inspection revealed the lack of insurance cover. In some case, this lack of cover was the reason for not

registering with ORIAS. In other cases, the insurance certificate was not authentic;

- the circulation of false or inaccurate information to customers;
- the absence of an anti-money-laundering control mechanism;
- the payment of insurance brokerage fees to people not licensed to act as insurance intermediaries.

This last point is a central focus of inspections currently being carried out and is the object of particularly close surveillance.

The on-site inspection procedure is as follows:

- ◆ the supervisors perform the on-site inspection, completed if necessary by exchanges of documents, notably electronic exchanges;
- ◆ a preliminary report is sent to the inspected intermediary;
- ◆ the intermediary responds to the preliminary report;
- ◆ the supervisors draft their final conclusions in the light of the responses provided.

On the basis of these documents, the Secretariat General can transmit the case to ACAM's College, which may decide to instigate disciplinary proceedings. The intermediary in question can present his comments to the College in writing within a given period, before being heard by the College. The College then deliberates on the sanction to be imposed, with only the College members and a secretary of the meeting attending. This procedure, similar to that applied to insurers, protects the rights of the intermediary in question.



### 3. Specific cases

➔ This section relating to specific cases is not doctrinal, it is designed to inform on how ACAM acted on the specific cases submitted to it in 2008, and to underline certain points of law.

#### 3.1. Provisioning

##### a) Pricing and provisioning based on gender tables

Following the transposition of Directive 2006/54/EC into French law, the general prohibition of discrimination applicable to provident institutions and mutual insurers governed by the Mutual Insurance Code has become explicit.

The regulations require that, when a single table is used for pricing, it must be the most prudent table. In this case, all the policies must be provisioned using, at the least, the same table as used for pricing. However, for annuities in course, Article A. 331-1-2 requires the use of the latest annuitants' tables.

##### b) Provision for future claims (construction risk insurance)

The specific provision for future claims applying in decennial construction insurance (*provision pour sinistres non encore manifestés – PSNEM*) is calculated in accordance with a regulatory method. This method reflects the economic basis of the PSNEM and captures the specific effects that the provision is designed to cover. It is based on the official construction work starting date (*date réglementaire d'ouverture du chantier – DROC*).

Consequently, any derogatory methods based on the financial year in which the claim is incurred are not appropriate. Only methods using DROC-based approaches will be approved by ACAM.

##### c) Liquidity risk provision

Although the new regulations relating to liquidity risk provisions authorise the spreading of the allowance to the provision using a debit account on the liability side of the balance sheet, this is no longer automatically spread over eight years but over the duration of the insurer's liability, within a limit of eight years.

Moreover, the amount of the deferred provisions is not deducted from regulatory commitments nor accepted to cover these commitments.

##### d) Transformation of class 26 schemes

On the transformation of "class 26" schemes, the obligation to distribute the assets provided for in Article R.441-28 means sharing out the entire special technical provision and reserving the unrealised capital gains to the scheme's beneficiaries.

#### 3.2. Other financial elements

##### a) Adding unrealised capital gains to the available solvency margin

The regulations provide for unrealised capital gains to be taken into account in the calculation of the solvency margin with the consent of the supervisory authority. The capital gains thus taken into account correspond to the net global capital gains on all investments, unless these are of an exceptional nature.

##### b) Segregation and breakdown of financial income between underwriting and non-underwriting accounts

The Insurance Code (R. 341-2) and the Social Security Code (R. 931-11-2) stipulate that the applicable chart of accounts is the General Chart of Accounts (*Plan Comptable Général – PCG*) unless provided for otherwise. The mutual insurance sector's chart of accounts (L. 114-46) directly integrates the general provisions of the General Chart of Accounts.

Consequently, under all three codes, the principal of a true and fair view takes priority over any specific provisions.

Some insurance entities break down financial income according to their own criteria. With regard to the legal or contractual separation criteria, an entity can derogate from the specific provision if it does so according to the rules of the General Chart of Accounts; in particular the notes must indicate very clearly the reason for such derogation, the method used and its impact on the results and financial situation. In parallel, even if technical provisions are covered by investments, the cost of financing the working capital is charged to the underwriting account. The same is applicable to interest on cash deposits from reinsurers.

##### c) Insurance securitisation vehicles

An insurance securitisation vehicle must directly hold the totality of the funds required to cover the guarantee [Article L. 310-1-2 of the Insurance Code, transposing EC Directive 2005/68/EC]. In particular, the possible hedging techniques applied to the vehicle, in particular to cover interest rate risk and currency risk, give rise to a counterparty risk. They cannot therefore be taken into account as an element of financing unless they are themselves collateralised. The condition laid down in Article D. 214-111 (5) of the French Monetary and Financial Code should therefore be considered necessary, although not necessarily sufficient.

##### d) Transformation of an IRS

The transformation of an IRS may require a change in the terms and conditions of coverage of the liabilities arising from employer/worker agreements, which may not necessarily be insurable. When a differential guarantee is granted by an employer, for instance when a guarantee is modified following an increase in the ARRCO or AGIRC Social Security pensions, this guarantee does not present the characteristics required by

the Insurance Code. It is therefore necessary to define an appropriate insurance guarantee: in particular, existing annuities must be consolidated. The simple guarantee of paying the outstanding pensions within the limits of available funding would be tantamount to pay as you go. Deferred pension entitlements require a separate provision. Under this mode of functioning, the employer can justifiably impose annual policy endorsements to adapt the insurance cover.

ACAM underlines that during the savings phase, the rights acquired can be expressed in accumulation units, but the margin requirement continues to be of 4% if the benefits are payable in euro.

Lastly, an IGRS can only carry out the administrative management of the scheme (issuance and receipt of subscriptions, calculation and payment of benefits). It would not be appropriate to give it a role normally reserved to employees' representatives.

#### 3.3 Governance

##### a) Internal control: a major issue

Internal control involves a general control on the insurer's operations. It is an issue that relates to all of an insurer's operations. Internal control is therefore not a specific function within an entity but a general concern: that of ensuring safe management.

Accordingly, internal control relies above all on the managers of each department rather than on a specialised unit. Internal control is adequate when the different departments within an insurer conduct their activities and/or exercise their responsibilities in a controlled manner. The specialised internal control units' role is to ascertain that this is the case.

##### b) Powers of the General Meeting

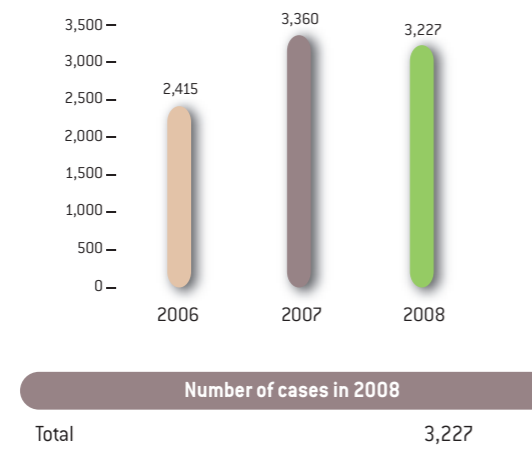
It should be remembered that the appropriation of income is decided by the General Meeting and not by the Board of Directors.

## 4. ACAM safeguards policyholders' rights

➔ This chapter analyses the complaints received by ACAM and the underlying issues. Only disputes between policyholders and their insurers are covered. The number of such disputes is low considering the overall number of policies in France. This information will be of interest to policyholders, while insurers will be able to identify areas for improvement. Although each case is different, patterns can be identified. Nevertheless they do not necessarily apply to the whole market.

### 4.1. Complaints handled by the DDCRA: the figures

#### Number of cases

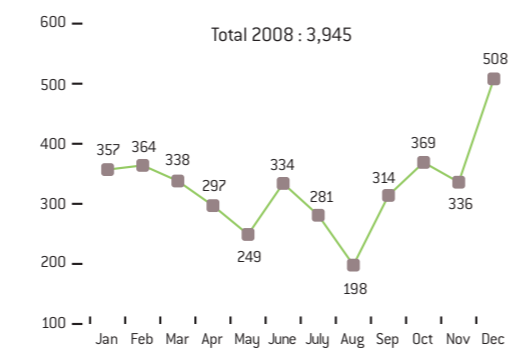


In 2007, 15% of the cases concerned requests for information about a specific event (an insurer being placed under special supervision by ACAM). If we eliminate these cases, the number of complaints referred to ACAM increased by 19% in 2008.

310 files were incorrectly sent to ACAM instead of the insurer, and were returned to the senders.

#### Number of calls to the call centre

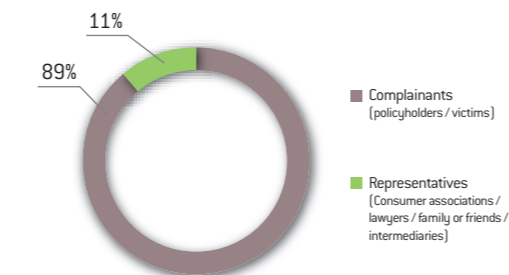
##### • Number of calls to the call centre per month in 2008



The number of calls increased significantly in December 2008 and continued to rise in January (686) and February 2009 (738), because of an increased awareness of the existence of the call centre.

#### Origin of complaints

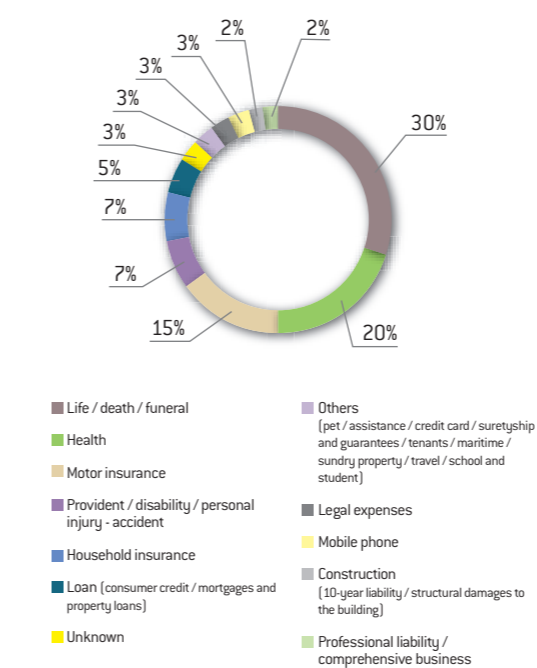
##### • Origin of complaints in 2008



As in previous years, most complaints were referred to ACAM by the policyholders themselves.

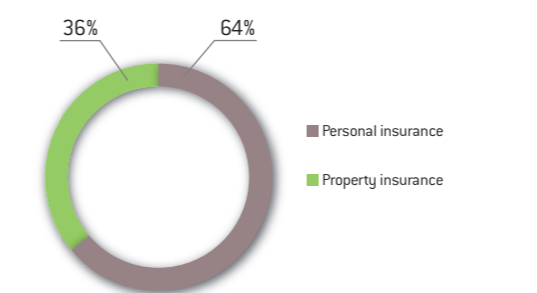
#### Number of complaints per category in 2008

##### • Insurance category in 2008

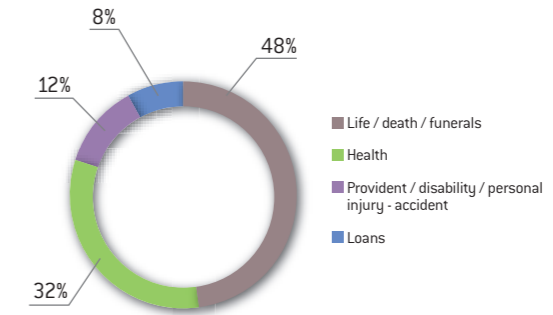


As in 2007, most of the complaints received by ACAM concerned personal insurance (64%).

##### • All insurance categories in 2008



##### • Personal insurance categories in 2008

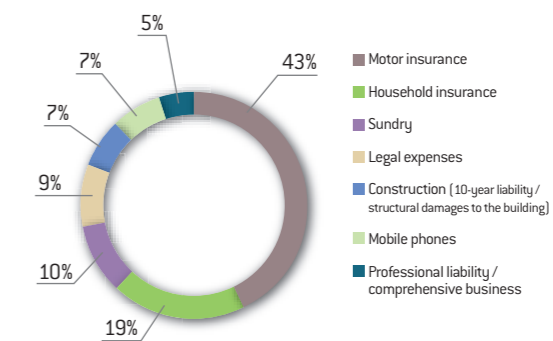


Life insurance still gives rise to more complaints than any other class (30% of all complaints and 48% of all personal insurance complaints). The actual number of complaints remained stable as compared to 2007. Although the financial crisis has not resulted in any significant increase in the number of enquiries from policyholders seeking information on the financial position of their insurers.

In 2008, the number of complaints relating to health insurance remained low given the number of policies, and essentially concerned premium increases.

There has also been a slight increase in the number of complaints about provident insurance, while the number of complaints about loan insurance has fallen.

##### • Property insurance in 2008

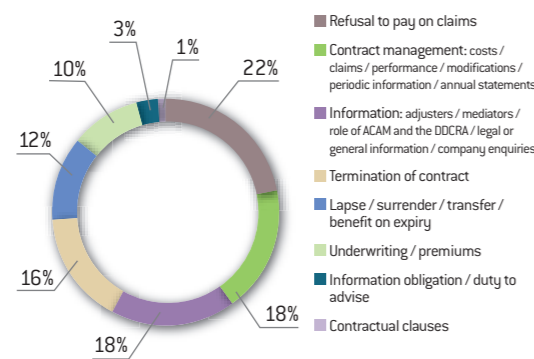


Yet again, the breakdown of property insurance complaints tends to mirror the relative importance of each category for the insurance market.

Naturally, motor insurance accounts for the largest number of complaints [43%], followed by householder's comprehensive insurance [19%]. However, complaints concerning legal expenses and mobile phone insurance, which increased in 2008, are disproportionate to the economic importance of these categories. A final point of interest is that complaints relating to householder's comprehensive insurance fell slightly as compared to 2007.

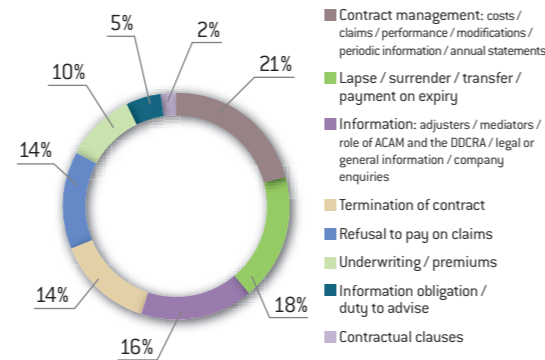
Subject of complaints

• Personal and property insurance – subject of complaints in 2008



In 2008 the breakdown of complaints according to subject matter remained almost identical to the two previous years (other than the large number of requests for information received in 2007 when ACAM placed an insurer under special scrutiny).

• Personal insurance – subject of complaints in 2008



Life insurance policy disputes referred to ACAM by policyholders concerned returns on the policies, and delays in the execution of arbitrage transactions, surrenders values or the payment of death benefits. Also note that some claims concerned mergers of insurance entities and subsequent problems with the management of policies (irregularities in the payment of annuities, delayed benefit payments).

In providence insurance, 2008 was marked by an increase in complaints concerning provident institutions' obligations to inform and advise. Holders of multi-cover insurance packages complained that they had been poorly advised at the outset and had since realised that certain cover that they believed formed part of the package was not, in fact, included.

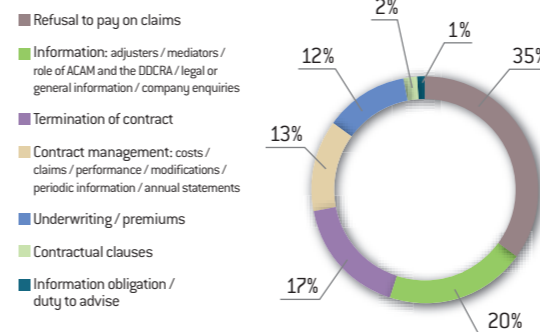
Again with respect to provident institutions, interestingly enough the number of cases where the policyholder questioned a discrepancy between the disability ratings applied by the insurer and by other social security bodies fell as compared to 2007.

HEALTH INSURANCE

In 2008 several cases concerned the termination of health insurance policies. In some instances, insurers refused to terminate a policy at the policyholder's request, either on anniversary date or not. Requests for termination were sometimes due to a sharp increase in premiums or sometimes because the policyholder was required to take out a group insurance policy offered by their employer. Other complaints concerned refusals to cancel the contract when the policyholder considered he had not received sufficient advice at the time of the initial purchase of the policy.

Lastly, some complaints concerned medical costs the insurer had refused to refund, because of delays by the insurer managing the contract, or because of a disagreement over application of the contractual clauses (exclusions, maximum cover, refund on a real cost basis or as a percentage of the amount refunded by the social security authority, etc).

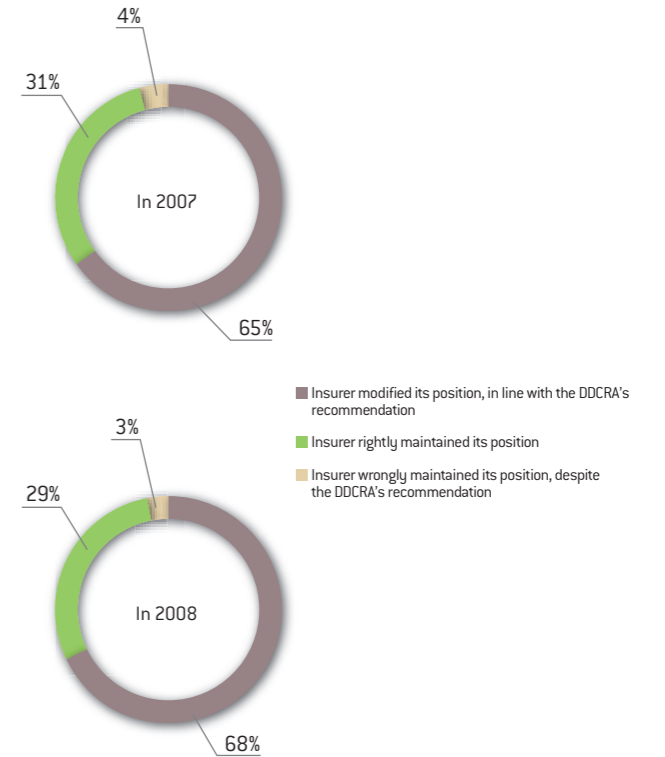
• Property insurance – subject of complaints in 2008



The bulk of complaints concerned the performance phase of the policy (payment on claims + management = 48%). A significant number of cases concerned termination of policies, either termination for non-payment or by virtue of the 'Chatel Act',

designed to facilitate the termination of automatically renewable policies. Interestingly enough, the number of complaints on the underwriting process continued to increase in 2008 [9%]. Once again, distance selling of policies resulted in some disputes, particularly in connection with motor insurance.

• Outcome following DDCRA's action



ARBITRATION AND LEGAL EXPENSES INSURANCE

ACAM reminds insurers offering legal expenses insurance that, in the event of a dispute with a policyholder and if the parties cannot agree on the measures to be taken to settle the dispute, the insurer has a legal obligation to inform the policyholder of the possibility of going to arbitration.



## 4.2. The variety of the raised issues

### a) Issues relating to the marketing of insurance policies

#### THE MARKETING OF INSURANCE POLICIES: A RECURRING PROBLEM

Policy marketing, though it is only one phase in the life of an insurance policy, attracted considerable attention in 2008:

- ◆ there was a great deal of legislative activity throughout year 2008 and at the beginning of 2009;
- ◆ it has remained a constant and significant cause of the disputes referred to ACAM. Many policyholders complain that they did not really want to take out the policy sold by the insurer, or that they were badly informed or advised when they took out, or sought information on, the policy.

#### ■ DISTANCE SELLING

“ There has been a sharp increase in distance selling, and this has resulted in a significant number of complaints. ”

The main problem concerns the existence of a document proving that the policyholder agreed to take out the policy. In many cases the insurer, having delegated the sale phase to a third party, was unable to produce written proof that the potential client had accepted the offer.

In all the cases referred to ACAM the problem was resolved and the insurers promptly improved their procedures to avoid similar problems in the future. However, the nature of the complaints shows the need for constant vigilance when setting up distance selling systems, especially when the sale function is delegated.

#### ■ CANVASSING

Act 2008-3 of 3 January 2008 introduced specific provisions concerning the canvassing of non-life insurance products, to be included in the Insurance Code. These new provisions came into force on 1 July 2008, and provide that:

- ◆ canvassing only concerns insurers subject to the Insurance Code. Unlike distance selling, which is covered by both the Insurance Code and the Mutual Code, there is no equivalent provision to this new Article L. 112-9 of the Insurance Code in the Mutual Code. Considering the decision of the Court of Cassation's criminal division dated 2 October 2007, insurers subject to the Mutual Code are advised to apply the rules set out in the Consumer Code (*Code de la consommation*) when canvassing non-life insurance products;
- ◆ Article L. 112-9 of the Insurance Code has reproduced part of the criminal sanctions set out in the Consumer Code. According to this article, the insurer may face a €15,000 fine if it fails to refund the policyholder the part of the premium corresponding to the period when the risks were not covered, within 30 days of the policyholder's decision to withdraw from the contract. In addition to the possibility that the insurance policy may be found null and void, this type of criminal sanction increases the legal risks and risk of damage to the reputation of any individual or legal entity who/that fails to comply with the legal requirements.

#### CANVASSING: BEWARE!

When a product is sold as a result of canvassing, the advice given to the customer may be inadequate or inappropriate.

Several policyholders have complained that as a result of canvassing they agreed to take out a new health insurance policy but that no checks were made to establish whether they could terminate their existing policy. They were subsequently requested to pay the premiums of two insurance contracts that covered the same risk.

Several other complaints revealed that canvassers deliberately created confusion as to the actual identity of the insurer for which they were acting. Lastly, some elderly or vulnerable policyholders disputed the validity of their agreement to purchase insurance.

The conduct criticised in these complaints equates to unfair business practice. The existence of criminal sanctions clearly increases the legal risks to which insurers are exposed in connection with the marketing of policies.

#### ■ UNFAIR BUSINESS PRACTICE

The Consumer Code lays down a general principle that unfair business practice is prohibited<sup>3</sup> (Act 2008-3 of 3 January 2008, Act 2008-776 of 4 August 2008).

Such practice may take the form of misleading information or over-forceful sales techniques and may give rise to serious penalties<sup>4</sup>. These may be imposed on legal entities when they carry out such offenses directly<sup>5</sup>, or when the offenses are carried out on their behalf<sup>6</sup>.

3. Transposing Directive 2005/29/EC of 11 May 2005.  
4. Cf. articles L. 121-6, L. 122-12 of the Consumer Code.  
5. Cf. articles L. 121-6 and L.122-14 of the Consumer Code.

It is probable that a policy taken out as a result of unfair business practice will be voided by a court, on the indirect basis of the rule of civil law that the validity of a contract may be challenged because of lack of consent (error, fraudulent misrepresentation) or simply because the contract does not comply with a mandatory legal provision and is contrary to public policy (Article 6 of the Civil Code). It may also be voided on the ground of the Consumer Code, whose provisions may be applied automatically by the court<sup>7</sup>.

Insurers and intermediaries are therefore advised to pay careful attention to this legislation when selling their insurance policies.

#### ■ OBLIGATION TO PROVIDE APPROPRIATE ADVICE

“ Decree (ordonnance) 2009-106 of 30 January 2009 strengthened insurers' and intermediaries' obligations to advise when marketing certain life insurance policies. ”

Decree 2009-106 of 30 January 2009 added to intermediaries' duty to advise, laid down in Article L. 520-1 of the Insurance Code, by introducing a new Article L. 132-27-1 in the same Code and a specific paragraph in Article L. 520-1. An equivalent provision exists for mutual insurers and groupings subject to Livre II of the Mutual Code<sup>8</sup>.

6. Article L. 121-5 of the Consumer Code.  
7. New Article L. 141-4 of the Consumer Code.  
8. New Article L. 223-25-3 of the Mutual Code.

#### FOR INFORMATION

Article L.122-15 of the Consumer Code expressly provides that if a contract is signed as the result of an “aggressive” selling technique, the contract will be null and void.



## FOR INFORMATION

*In unit-linked life insurance policies, investment and divestment transactions are not executed on the date of the request, but rather on a later "net asset value" date. There is therefore a time-lag between the triggering of the transaction and its execution.*

From 1 July 2010 on, an insurer<sup>9</sup> or intermediary marketing an individual life insurance policy which may be partially surrendered, a capitalisation policy or a policy covered by Article L. 132-5-3 or Article L.441-1 should, before the policy is purchased, make a record of the requirements and needs of the policyholder<sup>10</sup>, and of the reasons why it is advising this particular type of policy. The article also provides that the explanations must be adapted in view of the complexity of the insurance policy or capitalisation contract.

#### THE INSURANCE CODE TIGHTENS UP REGULATIONS GOVERNING THE ADVERTISING OF LIFE INSURANCE POLICIES

The decree of 30 January 2009, creating Articles L. 132-27 of the Insurance Code and L. 223-25-2 of the Mutual Code, is designed to ensure that life insurance policies are properly marketed.

Both articles, which will come into force on 1 July 2010, provide that all information relating to life insurance policies<sup>11</sup> that may be partially surrendered, capitalisation policies or group life insurance policies that may be partially surrendered or transferred must be accurate, clear and not misleading. Advertising and promotional materials must be clearly identified as such.

This new legislation is essential. In previous years ACAM observed that some promotional documents were not sufficiently accurate or clear. For example, stated interest rates did not always correspond to actual interest rates, net of costs. Some promotional documents might also be confused with contractual documents.

The new legislation will accordingly provide a better protection for policyholders.

#### b) Issues relating to life insurance

##### ■ UNIT VALUE DATES APPLIED TO SURRENDERS, ARBITRAGE TRANSACTIONS AND TRANSFERS

Sharp fluctuations on the financial markets have led to substantial variations in value between the date of a surrender, arbitrage or transfer request; and the date of its execution. As a result, ACAM is seeing a new type of complaint.

Policyholders who had not read the explanations regarding investments and divestments were unpleasantly surprised to find, after execution of the transaction, that they had less savings than expected. They had based their calculations on the net asset value on the date of their request, but this net asset value had subsequently fallen.

Furthermore, some clauses lack clarity, referring to the "submission of a request" or its "receipt" without specifying whether this means receipt by the intermediary or by the insurer, thereby adding to the confusion.

In cases where the delay in executing an order seemed negligent, ACAM issued a warning that the insurer could be held liable for any resulting losses.

In some cases where the value differed substantially the insurer agreed, as a commercial gesture, to use the date on which the order was received by the intermediary as the date of registration of the order, thus accepting the consequences of any lack of diligence on the part of the intermediary.

In other cases, the insurer insisted that their general terms and conditions should apply to the letter.

#### ■ FORMULA-BASED FUNDS

##### WHAT IS A FORMULA-BASED FUND

Formula-based funds (*fonds à formule*) are complex investment funds (UCITS) subscribed in connection with life insurance policies, that combine a guaranteed performance with a guarantee that the investor will recover the initial capital. The fund's performance will depend on the automatic application of a predefined calculation formula over a given investment period.

Management of such funds is generally "active". This enables the management company to invest funds on equity markets when the economic climate is favourable, and to switch to money market instruments and bonds when the outlook is more gloomy, so as to ensure it will be able to pay out the guaranteed capital.

ACAM received some complaints concerning formula-based funds in 2008. Investors in some funds that reached maturity in 2007 and 2008 only recovered the capital they had initially invested, less management costs. Although the investors did not lose their capital they were unhappy as they had hoped for a much better return on their long-term investment. In addition, several policyholders did not have a proper understanding of how the fund operated and were not aware that it used an "active" management approach and that there was a risk that they would only recover their initial capital.

To avoid such disappointment, it is essential that policyholders carefully read the documents they receive concerning the investment products in which their unit-linked life insurance policy invests; these documents also need to be clear and easy to understand.

“ It is important that when investing in complex, formula-based funds, policyholders carefully read the simplified prospectus approved by the AMF or the fund's particulars, in order to fully understand what they are investing in. ”

#### ■ COMPLIANCE WITH DEADLINES FOR EXPIRED POLICIES

Act no. 2007-1775 of 17 December 2007 requires insurers to pay the capital or annuities to the beneficiary of a life insurance policy after the death of the policyholder or expiry of the policy within one month of receipt of the necessary documents.

Although it is clear that this new provision has improved the situation of beneficiaries of expired life insurance policies, the fact that the legal time period runs from the date of receipt of the "necessary documents" by the insurer remains a potential source of dispute.

In the cases referred to ACAM, delays in payments were due to the fact that the insurer had not been able to obtain the necessary documents in time. However, ACAM also noted that some insurers were slow to request documents.

9. Or mutual insurer, under the Mutual Code, for the individual or group transactions referred to in Articles L. 223-1 or L. 222-1.

10. In light of his financial situation and objectives.

11. Or relating to the individual or group transactions referred to in Articles L. 223-1 or L. 222-1 for mutual insurers subject to the Mutual Code.

**FOR INFORMATION**

*Clauses that make payment of capital conditional upon production of the original policy are contrary to the new Article L. 122-11-1 of the Consumer Code. The Code qualifies as 'aggressive' the requirement that a consumer must produce documents that are not deemed relevant or necessary to establish the validity of the request.*

**PAYMENT OF CAPITAL ON EXPIRED POLICIES**

Certain insurers rely on contractual clauses that require beneficiaries to produce the original of the policy's special terms before making the payment. In many cases the beneficiaries never had this document in their possession. In this case, the insurer asks the beneficiary to produce a certificate of loss or issue an order to stop payment in application of Articles L. 160-1 and R. 160-4 of the Insurance Code. This procedure, which may block all payments on the policy for two years, is not appropriate for beneficiaries who have never had the original policy in their possession.

Such clauses may have been justified before the coming into force of the Act of 17 December 2007, which prohibits "policies to order" (Article 10). However, according to the new Article L. 132-8 of the Insurance Code, the insurer must always be informed of the beneficiary of one of its policies, except when this person is designated in a will. The designation or replacement of a beneficiary is always recorded in an endorsement to the policy or an instrument recorded in the manner provided in Article 1690 of the Civil Code.

■ **DISCLOSURE OF POLICY SURRENDER VALUES AT THE END OF THE FIRST 8 YEARS OF UNIT-LINKED LIFE INSURANCE POLICIES, SINCE THE DDAC ACT**

**FOCUS ON THE "DDAC" ACT BRINGING ASPECTS OF FRENCH LAW INTO LINE WITH EC LAW IN THE INSURANCE SECTOR**

Act 2005-1564 of 15 December 2005, called the "DDAC Act" (*loi portant diverses dispositions d'adaptation au droit communautaire dans le secteur de l'assurance*) amended existing provisions concerning disclosure of surrender values at the end of the first 8 years. It provides that the table of surrender values must show the total amount of premiums paid (Article L. 132-5-2) and that explanations must be provided as to the content and form of the information (Article A. 132-4-1).

Policyholders who joined a group policy or purchased an individual policy after 1 May 2006 have complained to ACAM that they received incorrect information about the surrender values of their policies at the end of the first eight years.

Those policies showed that some insurers did not disclose surrender values, as required by the new legislation, and did not systematically provide policyholders with clear information, which is also contrary to the law. The wording of the surrender values table is not always explicit or sufficiently detailed.

ACAM has also noted that the surrender value tables do not always show the total amount of premiums paid and that a warning that the value of the units may fall is not always given, as required by Article A. 132-5 of the Insurance Code. Information on calculation of the euro equivalent of surrender values is also missing in some cases.

Although the law leaves insurers some freedom as to how they provide this information, ACAM advises insurers to publish tables that are clear and easy to understand.

**4.3. Recent legal developments**

a) **Maintenance of insurance cover:**  
Article 4 of the "Evin Act"

On 13 January 2009 the Lyons Court of Appeal gave a ruling on a case that had been referred back to it by the Court of Cassation on 7 February 2008.

The Court of Appeal found that an insurer failed to comply with Article 4 of the Evin Act when it offered private medical insurance that was similar but not identical to cover provided under a mandatory group policy. It then clarified the position taken by the Court of Cassation, which had for the first time advised a strict interpretation of the concept of "maintenance of cover" in the case of private medical insurance, to the benefit of an employee leaving a company (due to retirement, unemployment or disability).

The Lyons Court of Appeal ruled that the company's group policy should allow former employees to request the maintenance of cover on exactly the same terms as when they were employees, subject to a premium surcharge of 50% maximum, without any trial period, medical examination or medical questionnaire.

The Court of Appeal ruled that "*premiums may only be increased by 50% maximum, in accordance with the regulations*", irrespective of the impact this may have on the technical equilibrium of the policy.

b) **Application of successive medical liability insurance policies**

In two rulings dated 2 October 2008 and 8 January 2009 the Court of Cassation ruled on the issue of the applicability of successive policies in light of Article 5 of the "About<sup>12</sup> Act" on medical liability of 30 December 2002 (Act no. 2002-1577), which came into force on 1 January 2003.

Given the existence of successive policies governed by the About Act, the Court of Cassation ruled on which policy should apply when the proximate cause predates the date on which the Act came into force but was not known at the time, and when a claim was made after such date.

The second, new insurer provides cover under the second policy for "unknown past events" when claims are made during the term of the policy, irrespective of the date of the proximate cause. The initial insurer must pay out for any part of the loss or injury not covered by the new insurer. This rule applies to all claims made after 1 January 2003 under policies taken out after this date and still valid at the time of the claim.

**FOCUS ON ARTICLE 5 OF THE ABOUT ACT**

Article 5, paragraph 1 of the About Act provides that Article L. 251-2 of the Insurance Code applies to policies taken out or renewed on or after the date of its publication. Article L. 251-2 basically provides that a policyholder is covered by the policy in effect at the time of the first claim, irrespective of the date of the proximate cause.

The second paragraph provides that claims will be covered by the insurer under a policy that was taken out before the Act came into force and was still in effect when the Act came into force, provided the proximate cause occurred when the policy was in effect and that the first claim was made no later than five years after the end of the policy.

c) **Loan insurance**

**LOAN INSURANCE – A DEFINITION**

The economic crisis at the end of the 1970s heralded a turning point in the history of loan insurance. Traditionally limited to cases of death, disability or temporary disability, it was extended to also cover loss of employment.

This type of insurance experienced a boom in the following years because of the significant expansion of the credit sector and the increase in consumer over-indebtedness.

Over 40 years later, the emphasis is now on the need to improve the disclosure of policies and increase competition, in the interest of consumers.

12. "About" is the name of the Member of Parliament who first drafted the bill (before it became an act).

Loan insurance is taken out as a security for the loan, and the two contracts are therefore closely linked. All the more so as in most cases the credit institution itself takes out the policy, is the beneficiary under the policy and also acts as the intermediary. This situation may result in credit institutions putting their own interests before those of their clients, by imposing a policy that themselves have negotiated.

Most complaints about this type of insurance concern the lack of transparency and inadequate advice when the policy was offered to the borrower. Policyholders have also said they would like to have the opportunity to take out a policy of their own choice with another insurer.

For several years now industry players and public authorities have striven to improve disclosure on these policies, and to extend access to them.

Non-mandatory measures were introduced prior to 2007<sup>13</sup>. However, these proved to be insufficient and, following the coming into force of Article L. 312-8.4.bis of the Consumer Code in 2008<sup>14</sup> which confirmed policyholders' freedom of choice, the Directorate General for the Treasury and Financial Policy and the Bank of France conducted two surveys on the improvement of information and advice and the comparability of offers. Following this, a reform of loan insurance was announced to increase disclosure and improve competition in the interest of consumers.

#### FOR INFORMATION

Along with conciliation and arbitration, mediation is an alternative dispute resolution system that introduces an independent third person with the task of issuing an opinion and helping the parties to come to an agreement.

#### 4.4. Mediation

“ Although this is not one of the DDCRA's primary roles, it can help policyholders and supervised entities to find an amicable solution to a dispute. There is a range of mediation possibilities that can be used to settle disputes without going to court. ”

##### a) Mediation – a definition

Unlike in the banking and financial market sectors, mediation in the insurance sector is not imposed by law. Instead, mediation systems were introduced by insurers over twenty years ago.

When all the internal recourses available within the insurance entity have been explored without success the policyholder or beneficiary (or the insurer itself) may refer a case to the insurer's mediator.

##### b) How mediation works

Two mediation systems are available to insurers subject to the Insurance Code:

- ◆ one is for members of the FFSA (*Fédération française des sociétés d'assurance*);
- ◆ the other is for mutual insurers and groupings that are members of GEMA (*Groupement des entreprises mutuelles d'assurance*).

##### MEMBERS OF THE FFSA

A mediation charter, adopted in 1993, sets out the dispute resolution rules. The mediator is either appointed by the insurance entity or group (as is the case for the larger insurers such as AXA, CNP, Groupama, Generali and MMA), or is appointed by the FFSA (whose mediator is Mr Francis Frizon).

A policyholder or his or her representative may refer a dispute with an FFSA member, provided the policyholder is a natural person. Cases may also be referred by the insurer, if the policyholder agrees.

The mediator will issue a reasoned opinion, based on law and equity, within three months of referral of the case. The opinion will not be legally binding and the parties undertake not to raise it in any possible court action.

##### MUTUAL INSURERS AND GROUPINGS THAT ARE MEMBERS OF THE GEMA

In 1989 GEMA members adopted a mediation protocol.

Only policyholders that are natural persons, or their representatives, can refer cases relating to specific risks to GEMA's mediator, Mr Georges Durry. The mediator will issue a reasoned opinion within six months of referral. The opinion will be based on law or equity and will only be binding on the mutual insurer involved in the dispute. The mutual insurer must undertake not to raise any opinion in its favour in any court action.

The CTIP and the FNMF are currently considering introducing a mediation system.

In the event a mediator issues an opinion in favour of an insurer, or if the insurer fails to act on any opinion in favour of the policyholder, the policyholder may take the case to court.



#### MEDIATION AND INSURANCE BROKERS

The union of insurance brokers, the CSCA (*la Chambre syndicale des courtiers d'assurances*), adopted a Mediation Charter at the end of 2007.

It appointed Mr Patrice Dedeyan as its mediator. Cases involving a dispute between a broker and a client may be referred to him by the client or the broker. The mediator will issue a reasoned opinion within three months of completion of the examination phase, but this will not be binding on the parties.

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Email: cscac@csca.fr  
Website: www.csca.fr

13. See p. 64 of the 2007 Business Report and p. 34 of the 2005 report. Recommendation n°90-01 by the *Commission des clauses abusives* (an authority set up to examine unfair contract terms) (BOCCRF of 28/08/90), Belorgy convention (6/07/06) and AERAS convention (6/01/07), commitment by the FFSA (24/06/03), Opinion of the CCF (6/04/06).

13 - 14. Act of 3 January 2008. This article offers property loan applicants the right to take out insurance cover with any insurer of their choice, except in the case specified in Article L. 312-9 of the same Code.

### ■ MEDIATION REMAINS LARGELY IGNORED

Despite the existence of these procedures, most policyholders still know little or nothing about them. Unfortunately, insurers rarely inform policyholders of the existence of such dispute resolution system, and the name of the relevant insurance mediator is rarely provided.

In addition, mutual insurers, provident institutions, entities and intermediaries that are not members of the abovementioned industry organisations either have very inadequate dispute resolution systems or do not provide access to any mediation system at all. It is to be hoped that a mediation system along the lines of those described above will soon become available to all these entities.

## 5. Debates and current issues

### 5.1. Regulatory developments

#### a) Transposition of the Third European Anti-Money-Laundering Directive

Act 2008-776 of 4 August 2008 authorised the French government to legislate by virtue of an order to transpose the Third European Anti-Money Laundering Directive of 26 October 2005 into French law.

Order 2009-104 relating to prevention of use of the financial system for money laundering and terrorist financing was adopted at the end of January 2009. It profoundly reforms the existing system and introduces several new concepts.

### THE NEW MEASURES CONTAINED IN THE ORDER OF 30 JANUARY 2009

Order 2009-104 relating to the prevention of use of the financial system for money laundering and terrorist financing introduces new rules:

- ◆ it extends the application scope, previously limited to five types of offence, to all offences punishable by deprivation of liberty of more than one year;
- ◆ it reinforces the system of vigilance by establishing three levels according to the degree of risk: simplified due diligence, standard due diligence and enhanced due diligence;
- ◆ it obliges insurers to inform themselves, prior to writing a contract, as to the identity of the policyholder, their professional activity, their revenues and assets. Any inconsistency between this information and the transactions carried out may give rise to suspicion;
- ◆ it defines the concept of introduction by a third party, which concerns insurance intermediaries. This defines the broker's role and enables the insurer to rely on the broker to perform some of the diligences;
- ◆ it confirms the possibility of exchanging information between companies belonging to a same group, or between companies that do not belong to the same group but which are acting for the same client or are involved in the same transaction;
- ◆ it requires the putting in place of money laundering and terrorist financing risk assessment and management systems (risk mapping).

#### b) 2009 Social Security Financing Act (*Loi de financement de la sécurité sociale pour 2009 -1157*).

Following a parliamentary amendment of Article L. 862-7 of the Social Security Code, ACAM and the CMU fund (fund for universal health cover) are required to supply annual statistics on the supplementary health insurance data contained in the financial statements of insurers, provident institutions and mutual insurers in order to enable the Ministry concerned to prepare a report for submission to the Parliament before 15 September each year.

### 5.2. ACAM's College recommendations

#### a) Recommendation of 15 October 2008 on the valuation of certain financial instruments at fair value

The French national accounting council (*Conseil National de la Comptabilité – CNC*), the financial markets regulator (*Autorité des Marchés Financiers – AMF*), the banking regulator (*Commission Bancaire – CB*) and ACAM issued a joint recommendation relating to the accounting treatment of certain financial instruments whose market price could no longer be considered reliable due to turbulent market conditions.

This recommendation provides necessary clarifications for preparing interim or annual financial statements as from 30 September 2008. It applies to the consolidated financial statements, prepared in accordance with IFRS as adopted by the European Union, of entities holding financial assets valued at fair value whose markets are inactive.

The four bodies built on the joint communication issued by the Securities and Exchange Commission (SEC) and the Financial Accounting Standards Board (FASB) on 30 September 2008, and on the 10 October 2008 FASB communication,

which provided useful clarifications on the valuation at fair value of financial assets whose markets are inactive.

The four above-mentioned authorities also took note of the declarations of the International Accounting Standards Board (IASB) on 2 and 14 October 2008, indicating that the clarifications issued by the SEC and FASB comply with IAS 39 Financial Instruments: recognition and measurement.

The clarifications provided in these various circulars apply under IAS 39 in situations where the market for the financial instrument is inactive and relate notably to:

- ◆ use of assumptions developed by the company in the absence of relevant market data;
- ◆ the role of brokers' price listings in the assessment of available data;
- ◆ the role of forced sales in determining the fair value;
- ◆ the role of trading prices observed in an inactive market.

Lastly, the four bodies took note of the IASB's revision of IAS 39 on 13 October 2008 to enable the reclassification of certain financial instruments.

#### b) Recommendation of 15 December 2008 on investments by insurers

“ In view of the present financial crisis, the CNC and ACAM have issued a joint recommendation reiterating the provisions currently applicable under French accounting regulations. ”

This recommendation provides numerous clarifications for the preparation of insurers' financial statements as at 31 December 2008, in particular relating to:

- ◆ the methods of recording impairment on investments in the company and consolidated or combined financial statements prepared according to French GAAP;
- ◆ the information to be provided on the realisable value in the notes to the company and consolidated financial statements prepared according to French GAAP.

In the said recommendation, the term 'insurers' is understood to mean the insurance entities governed by the Insurance Code, the Mutual Insurance Code and the Social Security Code. The references in the text are to the Insurance Code, which should be transposed by analogy to the Mutual Insurance Code and the Social Security Code.

### 5.3. Consultation launched by the European Commission on the IORP Directive (IORP)

The European Commission held a public consultation on the harmonisation of solvency rules applicable to Institutions for Occupational Retirement Provision (IORPs) covered by Article 17 of the IORP directive (Part A of the consultation) and IORPs operating on a cross-border basis (Part B of the consultation).

The purpose of this consultation was to collect the views of all the parties concerned as to the desirability of a further harmonisation of the solvency regime for IORPs underwriting specific commitments (covered by Article 17 and consequently by Article 4 of the IORP Directive) and IORPs operating on a cross-border basis.

This public consultation took place between 9 September and 28 November 2008. It was in particular addressed to representatives of the insurance industry in the occupational pensions sector, to regulators and to governments of Member States.

While it prepared its response to the European Commission, ACAM invited the professional bodies and government departments concerned to discuss the subject of the consultation.

This initiative was a great success, resulting in numerous constructive discussions, in particular relating to the scope of the consultation and potential distortion of competition.

#### IORPS: SOME GENERAL PRINCIPLES

The consultation was an opportunity for ACAM to underline some basic principles of IORP:

- ◆ as beneficiaries' rights are protected only up to the amount of the obligation borne by the IORP, it is essential that the role of each party, IORP and the employer, be clearly stated and properly explained to the beneficiaries;
- ◆ the solvency rules must enable the IORP to meet its liabilities;
- ◆ differing solvency rules result in regulatory arbitrages. All IORPs assuming the same risks must therefore be subject to the same solvency rules;
- ◆ harmonisation of solvency rules at EU level is therefore desirable in order to provide a sufficiently solid framework that will ensure that liabilities are met, avoid competitive distortions, and provide a high level of protection to the beneficiaries. Transitory rules could be envisaged to ensure the convergence of pension schemes during the transition from one solvency regime to another more secure regime.

### 5.4. International agreements

#### a) Cooperation developed by the IAIS

The IAIS seeks to promote, generalise and formalise cooperation between insurance supervisors. To this end, in February 2007 it drew up a Multilateral Memorandum of Understanding (MMoU) on cooperation and information exchange.

The MMoU covers all issues related to the supervision of insurers: licensing, ongoing supervision and winding-up processes, where necessary (Article 3.3). The main objective is to cooperate and exchange information on the financial security of insurers. The information exchanged is therefore, a priori, 'sensitive' and 'confidential'.

As a principle, participation in the MMoU makes it mandatory for a signatory authority to deliver the information legitimately requested by another signatory (Article 4.2 and Article 5.4).

“ This MMoU, created in 2007, is not yet operational. At the level of the European Economic Area, cooperation between regulators is currently organised by the so-called Sienna and Helsinki Protocols. These last have a prudential purpose and not that of prevention of financial offences. ”

#### b) Accession to the IAIS MMoU: conditions and procedure

An IAIS member wishing to accede to the MMoU must submit an application form proving that it:

- ◆ is an insurance supervisor;
- ◆ has the necessary legal authority to obtain information from insurers and share it with foreign insurance supervisors;
- ◆ can provide an adequate guarantee of confidentiality.

Applications are examined by validation teams established by the Signatories Working Group. Any objections raised are notified to the applicant in writing. If the issues raised cannot be resolved immediately, the applicant may ask that the application be suspended for up to six months, which can be extended on request.

At the date of this report, 49 supervisory authorities had indicated their intention to adhere and 15, including ACAM, had filed an application.

#### JOINING THE MMoU IS OPTIONAL

Although the IAIS recommends that its members sign the MMoU, accession nonetheless remains optional.

MMoU's main aim is to improve the prudential supervision of insurers; it is not to fight financial delinquency. As a consequence, not joining the MMoU does not mean that the member is uncooperative with regard to financial delinquency, but rather that it does not believe (as yet) that joining the MMoU will add to the protection of policyholders.

#### FOR INFORMATION

*The IAIS (International Association of Insurance Supervisors) was created in 1994. It drafts international standards for supervision of insurers and reinsurers – and accessorially for insurance intermediaries – in the interests of the policyholders and beneficiaries. The 28 Insurance Core Principles (ICP) constitute the foundation for these standards and in principle cover all areas of insurance supervision.*



## FOR INFORMATION

Created in 2007 and chaired by the Minister of Economy and Finance, the Haut Comité de Place (Paris Financial Services High-Level Committee) is composed of representatives of financial and insurance professions, Paris municipal and Île-de-France regional authorities and the supervisory authorities. Its purpose is to draw up an action plan designed to enhance the attractiveness of the Paris financial market.

### 5.5. The continuing work of the Haut Comité de Place

The various supervisors each presented the committee with a "best regulation" plan, designed to guarantee the drafting and efficient implementation of regulations in the best interest of professionals, investors and savers.

ACAM proposed five work areas:

- ◆ the Supervision Charter;
- ◆ 'soft regulation' through recommendations;
- ◆ enhanced external communication;
- ◆ electronic transmission of annual reporting documents;
- ◆ quarterly meetings with industry representatives.

#### a) The Supervision Charter

Published in June 2008, this Charter forms part of the ACAM's role to inform and prevent.

It is above all addressed to the supervised entities with the aim of informing them of their rights and obligations during inspections and explaining the supervisory context: issues, methodology and possible outcome. It explains that the purpose of supervision is to anticipate potential problems and that ACAM's role is not merely to sanction.

The Charter was drawn up in conjunction with the industry associations representing the supervised entities.

#### b) Soft regulation via recommendations

The aim is to issue recommendations or good practice guidelines after in-depth discussion with professional bodies, as had already been done in 2005 with regard to the content of solvency reports and prevention of money laundering, in November 2007 with regard to governance, and in February 2008 with regard to 'finite' reinsurance.

ACAM has undertaken to continue this approach on other issues of interest to the industry and to generalise consultation before final adoption of a recommendation.

#### c) Enhanced external communication

ACAM regularly enriches its external communication through numerous tools and communication media.

The ACAM quarterly newsletter (*La Lettre de l'Acam*) provides the industry with information, discussions, official commentaries and explanations of methodology.

"*Analyses et synthèses*", a publication launched at the end of 2007, examines current technical issues in greater detail.

Since the beginning of 2009, ACAM has a new website with new functionalities. The new website is more modern, interactive and informative. The goal is to inform a broader public about ACAM and provide targeted responses to the needs of large categories of users: insurers, intermediaries, policyholders and the press.

The Supervision Conferences provide other excellent forums for exchange with industry players.

During 2008, ACAM also developed smaller working seminars designed to develop work methods with regulated entities based on practical cases. In the context of preparing the French market for Solvency II, the seminar of 23 September 2008 was dedicated to internal models.

“ At this seminar, the supervised entities were strongly encouraged to contact their supervisors and involve the ACAM from as early a stage as possible in designing an internal model. ACAM stresses that an internal model must be fully integrated into an overall risk management system; in no circumstances should it be considered simply as a “mechanism for calculating Solvency Capital Requirements (SCR)”. ”

Lastly, several actuarial research reports published by ACAM supervisors received acclaim. Flor Gabriel and Philippe Sourlas, winners of the SCOR award the previous year, published an article on hedging options in a turbulent market in the last issue of the French actuarial bulletin *Bulletin Français d'Actuariat*. In the same bulletin, André Bernay published an article on investing in shares with a long-term horizon. Lastly, on 4 December 2008, Louis Margueritte received the SCOR award for the report published with Jean-Baptiste Nessi on the valuation of commodity derivatives.



“ The quality of the actuarial works published by ACAM supervisors highlights the top-level qualifications of many of these supervisors, who are at the cutting edge in the area of financial modelling and contribute to the progress of actuarial techniques. It also highlights ACAM's capacity to respond, alongside the market, to the challenges of Solvency II. ”

### THE SUPERVISION CONFERENCE OF 15 APRIL 2008

This conference focused on two main subjects: changes in the mutual insurance sector, and the launch of the Fourth Quantitative Impact Study (QIS4) by the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS).

At this conference, ACAM drew attention to the trend towards concentration in the sector – which is expected to continue – to changes in the legislative and regulatory environment and to the improvement in the quality of the annual reporting packages received.

ACAM also drew attention to certain procedures (appointment of independent auditors, revaluation of property assets, etc.) and ACAM's College recommendations relating to governance. ACAM described some of the pitfalls, drawing on the observations formulated after on-site inspections.

Emphasis was also placed on the general framework and the various technical aspects of the fourth Quantitative Impact Study (QIS4) of the French market. With regard to this study, the key issue is to improve representativeness, in particular by encouraging small and medium sized entities to participate in it.

### CONFERENCE OF 6 OCTOBER 2008

This conference was dedicated to the results of QIS4.

With 1,412 participating entities (of which 234 French entities), this fourth quantitative impact study was representative of the French as well as the European insurance sectors. The participation of groups (111 including 28 French groups) was also satisfactory. Simplification and clarification of technical specifications resulted in an increase in the participation of small entities – up by 58% compared with QIS3.

The results showed that the majority of participants considered the structure of the standard formula tested in QIS4 to be appropriate, despite the criticism relating to the calibration or formulation of some modules. However, the efforts to simplify must be continued.

Also, for the first time, the questionnaire on internal models gathered information on insurers' choice of models, as some insurers are planning to develop risk management models and then submit them to ACAM for approval of these models for determining capital requirements.

Lastly, barring a few exceptions that need to be analysed in detail, this fourth study showed that, based on the 2007 financial statements, the sector would not need refunding in the event of application of the draft directive.

### d) Electronic transmission of annual reporting packages

The project to develop the electronic transmission of documents to be submitted to ACAM was initiated by the *Haut Comité de Place*. As a consequence, at the beginning of 2008 ACAM launched a project to modernise data exchange with insurers by putting in place electronic data transmission channels.

The project was developed in conjunction with professional bodies and the active involvement of a selection of companies that was representative of the diversity of individual situations.

Electronic transmission is available through a secure site protected by passwords which were sent to all legal representatives of each entity at the beginning of January 2009. It is very easy to use: the user only needs to connect to <https://teletransmission.acam-france.fr>, identify himself using the password provided, and then select the type of document to be transmitted. An electronic transmission user procedure is available from:

<http://www.acam-france.fr/dossierannuel>



#### FOR INFORMATION

*Electronic transmission offers numerous benefits: fewer paper documents sent, faster transmission of documents to ACAM through a single transmission channel, and reduced storage of paper at ACAM.*

Regular discussion have been organised with industry associations with the aim of further improving this service. The goal is to use electronic transmission for quarterly reports, annual reporting packages, questionnaires and surveys.

One of the next steps will be to integrate an electronic signature for the annual reporting packages. Only this legally recognised certification system can completely replace signed paper documents.

### e) Quarterly meetings with industry players

“ Once a quarter, ACAM hosts a working group that comprises several members of its College, the Secretariat General, the professional bodies (FFSA, GEMA, CETIP, FNMF and FNIM) and representatives of the Treasury and Economic Policy Directorate and the Social Security Department. ”





## II - Regulatory developments at European level

### 1. Solvency II

#### 1.1. General background

The Solvency II Directive agreed upon by the European Parliament and European Council codifies 14 EC directives relating to insurance and reinsurance activities and sets the basis for the new solvency rules (known as 'Solvency II'). Adopted according to the Lamfalussy process, the directive provides for the drafting of Level 2 implementing measures by the European

Commission, drawing in particular on advice received from CEIOPS, and for the adoption of said measures 12 months before the directive comes into force on 31 October 2012.

The Quantitative Impact Studies (QIS) are designed to identify the impact the new system will have on market players.

#### a) A reform of the organisation of financial supervision

##### WHAT IS THE LAMFALUSSY PROCESS?

The Lamfalussy process makes a distinction between four levels of legislation. Levels 1 and 2 are directives or regulations<sup>15</sup>. More precisely, Level 1 consists of directives adopted by the European Council and Parliament that establish the principles that will be detailed in the Level 2 measures adopted by the European Commission, under the supervision of the European Council and Parliament. Level 3 consists of recommendations.

For the insurance sector, the Level 3 committee is the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), of which ACAM is an active member. CEIOPS advises the European Commission on the technical aspects of Levels 1 and 2 legislation. CEIOPS drafts level 3 recommendations<sup>16</sup> designed to hasten the convergence of prudential practices and encourage cooperation between supervisory authorities.

To ensure a coherent whole, Level 4 relates to the European Commission's oversight of compliance and enforcement. This point is often ignored.

The aim of the Lamfalussy process is to ensure permanent and transparent dialogue between legislators and industry players, notably through public consultation at each stage of the procedure.

The impact of the financial crisis has prompted Member States and the European Commission to examine the need to reform the general organisation of financial supervision in Europe. With this in mind, in October 2008 the President of the European Commission, José Manuel Barroso, put in place a senior financial supervision working group. This working group, composed of eight people and chaired by the former governor of the Bank of France, Jacques de Larosière, presented its report on the organisation of supervision in Europe on 25 February 2009.

The report found that the internal market remained highly fragmented. It recommended moving in three phases towards a system of supervision with three sector supervisory authorities. In the longer term, it envisages two European supervisory authorities: one for the banking and insurance sector and the other for markets conduct. It also recommends that macro-prudential supervision of the entire European financial system be entrusted to a European Systemic Risk Council (ESRC), attached to the European Central Bank (ECB). This Council would be directed by the ECB with the participation of the presidents of the Committee of European Banking Supervisors (CEBS), CEIOPS and the Committee of European Securities Regulators (CESR). It would be responsible for gathering and analysing all the relevant information concerning financial stability. The European Commission is not bound by the proposals formulated in this report; however, it took up most of the de Larosière report proposals in its 4 March and 27 May 2009 recommendations.

#### b) Revision of bank capital adequacy requirements

The financial crisis has led the European Commission to propose the revision of bank capital adequacy requirements (amendments to capital adequacy directives 2006/48/EC and 2006/49/EC).

##### FOR INFORMATION

*European regulations seek to create a genuine internal market in the area of finance by harmonising national legislations. Since 2003 regulation has been developed using the Lamfalussy process approach.*

15. Note that while Directives need to be transposed into national law for application, regulations are directly applicable in national law.

16. These recommendations are not legally binding unless integrated into national law. Such integration is decided by the individual Member State.



At the same time the Commission announced that it would shortly carry out an in-depth review, with the assistance of the Basel committee. In parallel it proposes to introduce regulations for independent rating agencies, raise the minimum bank deposits guarantee and review the regulations relating to investment funds. It also wishes to modify certain accounting regulations, together with the rules relating to financial conglomerates, and take new initiatives relating to the remuneration of senior management and to derivative products.

The European Commission had already adopted on 23 January 2009 three decisions that replace the decisions of 5 November 2003 creating the three level 3 committees (CEIOPS, CESR and CEBS).

The Commission is also proposing the establishment of a Community programme, providing direct funding (€36 million from 1 January 2010 to 31 December 2013) from the Community budget for the three EU Committees of Supervisors (CESR, CEBS and CEIOPS) and for key international and European bodies involved in the standard-setting process for financial reporting and audit (IASCF, *International Accounting Standards Committee Foundation*; EFRAG, *European Financial Reporting Advisory Group*; PIOB, *Public Interest Oversight Body*).

The European Commission is now focusing on a review of the prudential rules applicable to insurance. The last of the 42 measures of the Financial Services Action Plan (FSAP) has yet to be adopted<sup>17</sup>.

“ The Financial Services Action Plan adopted by the European Commission in 1999 was designed to construct an integrated single market in banking, insurance and securities. In this context, the draft Solvency II directive will radically change the prudential rules applicable to insurers. ”

#### CEIOPS ROLE IS SET TO CHANGE

The European Commission's decisions of 23 January 2009 mean a change in the role of CEIOPS. In particular it proposes to:

- ◆ reinforce its action in the area of macro-economic surveillance and the detection of weaknesses that could represent a threat to financial stability;
- ◆ introduce the possibility of voting by a qualified majority, although its decisions would continued to have no legal force;
- ◆ transform the joint CEIOPS and CEBS interim committee for the surveillance of financial conglomerates into a permanent mixed committee for financial conglomerates;
- ◆ establish a non-exhaustive list of tasks to be performed with a view to achieving the convergence of prudential practices.

#### 1.2. Solvency II: update

“ The Solvency II directive was adopted by the European Parliament (approved on 22 April 2009) and European Council under a co-decision procedure, within the framework of the Lamfalussy process. ”

Solvency II was the subject of intense discussion in the European Parliament and European Council.

##### a) The debate focused on two main issues:

- ◆ group support;
- ◆ the linking of capital requirements for equities to the duration of liabilities.

With a view to reaching an agreement within the Council, the Member States agreed to abandon the provisions relating to group support contained in the European Commission's original draft directive. The group support regime consists in a legally binding undertaking from the parent company to transfer funds to a subsidiary if the need arises. This declaration of support would enable the subsidiary to cover all or part of the gap between the minimum capital requirement (MCR) and the solvency capital requirement (SCR). The Parliament, on the other hand, was strongly in favour of the group support regime. The text agreed upon by the Parliament and the Council does not include the provisions relating to group support but contains a review clause (Article 246, point 2) providing for the possible introduction of the group

support provisions three years after the directive comes into force.

The Council's version introduced an explicit link between the capital requirement for equities and the duration of liabilities, which the Parliament had not wanted.

The compromise reached was to accept duration-based equity risk but within a very strict framework (Article 305b): only occupational retirement products and tax-advantaged products have access to this regime, under very restrictive conditions (in particular ring-fencing of the corresponding assets and liabilities and an average duration of the liabilities of more than 12 years).

##### b) CEIOPS' technical advice

Without waiting for adoption of the Level 1 framework directive, the European Commission requested CEIOPS to issue technical recommendations for the future implementing measures (Level 2 measures).

In response to this request, CEIOPS set up four working groups:

- ◆ the Financial Requirements Expert Group (FREG) focuses on aspects related to Pillar 1 (financial requirements) and is chaired by Pauline de Chatillon (FR, ACAM). The group's work focuses in particular on:
  - pillar 1, which covers the assessment of technical reserves, the definition and calibration of standard formulas (SCR and MCR) and equity requirements;
  - achieving a balance between a company's real risk profile and a standardised approach without unnecessary complexity.
  - paying particular attention to the treatment of health risk and the recognition of future premiums;

<sup>17</sup> This plan sets out all the action required to make the most of the euro and ensure the stability and competitiveness of the EU's financial markets.

- ◆ Internal Model Expert Group (IMEG) is dedicated to internal models and is chaired by Mr Paul Sharma (UK, FSA). It focuses in particular on the conditions for approval of internal models by supervisory authorities;
- ◆ Internal Governance, Supervisory Review and Reporting Expert Group (IGSRR) deal with issues relating to Pillars II and III (governance, prudential control, regulatory and public disclosure, assessment of the prudential balance sheet). It is chaired by Gabriel Bernardino (PT, ISP). This group, which published several issues papers in 2008 on ORSA (Own Risk and Solvency Assessment), supervisors' inspection procedures and the principles of good governance, focuses on additional capital requirements (capital add-on) that could be requested by the supervisor if the entity's real risk profile is too far removed from the assumptions used to calculate capital requirements. It is also drafting an EU format for prudential reporting;
- ◆ Insurance Groups Supervision Committee (IGSC) focuses on the supervision of insurance groups and is chaired by Petra Faber-Graw (DE, BaFin). This group notably examines the treatment of shareholdings in financial institutions, the functioning of Colleges of Supervisors, the calculation of capital requirements at group level and the treatment of entities in other countries.

CEIOPS has also scheduled impact studies of the proposed measures, including in particular a QIS5 in 2010.



#### THE STAGES FOR IMPLEMENTING SOLVENCY II

When the Markets in Financial Instruments Directive<sup>18</sup> (MiFID) was adopted, the Member States considered it difficult to transpose a Level 1 framework directive containing solely principles. The European Commission therefore undertook, with respect to Solvency II, to publish the Level 2 measures at least 18 months before the directive comes into force.

With regard to the points not defined in the Level 1 and 2 measures, the Commission has also asked CEIOPS to issue recommendations (Level 3) for implementation of Solvency II.

For the Commission to have the time it needs to adopt the Level 2 measures, CEIOPS must issue its opinion before the end of 2009. Level 2 and Level 3 measures, essential to implementation of Solvency II, should be adopted in 2011 and come into force on 31 October 2012.

### 1.3. Internal models

#### a) Assessing and validating an internal model

“ Unlike a standard formula, which will always give an imperfect picture of an entity's risk profile, an internal model can be developed that is adapted to the entity's organisation and the specific characteristics of its business. ”

The Solvency II framework directive introduces the possibility for insurers to assess their Solvency Capital Requirements (SCR) using an internal model. It sets forth the conditions in which the supervisory authorities can approve the models used.

Internal models are not supposed to be simply mathematical models: they must be integrated into the entity's risk management system. Actuarial models are steering tools and decision aids for management. Recent events have highlighted the importance of risk management systems.

According to the framework directive, an internal model may be used for regulatory purposes only if the entity can prove that it uses it extensively for other purposes, at strategic level and at the level of services, and that the various quality standards are complied with.

Models shall be assessed based on numerous criteria:

- ◆ accuracy of the mathematical tools;
- ◆ data quality;
- ◆ documentation;
- ◆ governance;
- ◆ internal control.

One of the difficulties of modelling is to successfully quantify and justify the calculation of losses that could arise in very unfavourable situations, despite the limited experience data for this type of event.

In this respect, 2008 demonstrated the weaknesses of certain assumptions that were considered valid in normal conditions. One response to these sources of uncertainty could be to develop and take into account sensitivity tests and checks of the assumptions used in order to measure the possible impact of modelling errors.

#### b) Guaranteeing an efficient validation process by ACAM

The entities must fully understand modelling as they must validate their internal model before presenting it for validation by ACAM.

The development of a model that must be validated by ACAM is a significant and potentially expensive enterprise. It is up to insurers to analyse the costs and the benefits provided by the model.

In particular, using an internal model can result in lower capital requirements. This is only the case, however, when the risk exposure is lower than that which would have been indicated by the standard formula, and when it reflects more efficient risk management.

#### FOR INFORMATION

*The introduction of the concept of a "partial internal model" enables a specialised entity to take into account its risk management system in its area of expertise. It can concern entities that wish to obtain approval for the modelling of certain risks, while continuing to set up a full internal model.*

18. Directive dite MiFID en anglais, pour Markets in Financial Instruments Directive.

In the context of the obligation to have a risk management system, ACAM's departments have already begun discussions on internal models with insurers. The discussion process intensifies as each entity progresses in modelling, and is now an essential phase for ensuring an efficient validation process as soon as Solvency II comes into force.

The directive also reinforces the supervision of groups, while at the same time emphasising that supervision should be proportionate to the nature and complexity of the risks borne.

Solvency II should be implemented as from 2012.

“ Insurers that obtain regulatory validation of their internal models are likely to be those that benefit the most in terms of enhancing their risk management system. ”

## 2. Quantitative impact studies

### 2.1. QIS4: realisation, analysis and results

#### NEW EUROPEAN UNION PRUDENTIAL RULES

The Solvency II regime will reform the prudential regulations applicable to European insurers.

The Solvency II directive, in particular, provides for adapting capital requirements to the levels of risk borne by the insurer, and aims to improve risk measurement and management.

“ To measure the impact of the new regulations on the prudential assessment of balance sheet items and the calculation of capital requirements, the European Commission requested CEIOPS to carry out quantitative impact studies (QIS). ”

Each successive QIS has covered an increasingly wide field. While QIS1 was limited to the assessment of technical provisions, QIS2 included a first approach method for determining capital requirements and analysing the items eligible for covering these requirements. QIS3 included a first approach of the issues relating to insurance groups.

#### a) The objectives of QIS4

QIS4 was a comprehensive test with the aim of:

- ◆ providing detailed information on the impact of Solvency II on insurers' balance sheets;
- ◆ checking the consistency of the technical specifications developed by CEIOPS with the principles and objectives of the framework directive;
- ◆ gathering quantitative and qualitative data on the different options that will be examined in the impact assessment of future implementation measures.

In addition, QIS are also a means of measuring the degree to which the process is understood by the insurers. It encourages the industry to prepare for Solvency II and identifies the areas and internal procedures that could be improved.

#### b) The main result of QIS4 for the French and EU/EEA markets<sup>19</sup>

With 1,412 participants, of which 234 entities (17% of the total) were French, QIS4 more than achieved its target in terms of representativeness of the French and European markets. Simplification and the numerous explanations provided for the technical specifications encouraged a larger number of companies, and more particularly small companies, to participate.

European groups (111), including 28 French groups, also participated. The French market's active participation was, however, tempered by the low number of responses relating to internal models (10).

The supplementary national guidelines published by ACAM have reduced the variety of methods used, in particular for the treatment of future profit sharing and the assessment of technical provisions in life insurance. However, not all the difficulties have been smoothed out (accounting

for future premiums, deferred tax, etc.), which continues to limit the comparability of results.

The problems of reliability and quality of results encountered at solo level were amplified at group level. The impact of group diversification masks significant differences depending on each group's risk profile. The questions relating to the consolidation scope, the treatment of intra-group shareholdings, the fungibility of capital and the transferability of assets call for more in-depth examination.

Fifty-four participants (out of 1,412) measured their capital requirements using an internal model. Given the low level of response to the quantitative questionnaire and the variety of the models used, the comparability of the results obtained with internal models and those obtained with standard formulas is very limited.

In France, on the basis of the 2007 financial statements, QIS4 did not reveal any need for recapitalisation, with the exception of some participants who had raised the question of proper allocation of equity between group entities.



19. [www.acam-france.fr/QIS](http://www.acam-france.fr/QIS). EEA : European Economic Area.

“ French insurers, in order to gain a full understanding of the process, must as from now study the impact on the various balance sheet items, using the valuation methods provided for by the directive. They must also prepare to meet the quantitative and qualitative requirements (governance, internal control, compliance, etc.). ”

#### THE NEW QIS4 FORMULA: ROOM FOR IMPROVEMENT

Although largely inspired by the standard formula used for QIS3, QIS4 introduces some major changes. In particular it authorises participants to test the modulation of the equity load factor using a 'dampener'. However, many EU supervisors are opposed to this possibility.

Some modules are felt to be excessively complex or ill-adapted, particularly counterparty default risk and non-life underwriting risk modules.

For the Minimum Capital Requirement (MCR), a combined formula (calculating capital requirements on technical provisions and/or premiums with a floor, capped according to a percentage of the SCR) tested for QIS4 has received the support of most EU supervisors. However, the scale of the reduction in capital requirements resulting from risk mitigation mechanisms in life insurance has resulted in a large number of entities obtaining an MCR with little connection to their risk profiles.

\* Cf. lexique

#### 2.2. QIS5 is being prepared

The timetable for adoption and implementation of the Solvency II directive provides for the development of Level 2 application measures. The CEIOPS is scheduled to present its formal report to European Commission by December 2009. Before then, various draft recommendations will be published for public consultation.

Unless the European Commission modifies the general timetable, European insurers and reinsurers will be invited to participate in QIS5 in the spring of 2010 to test the latest progress in drafting Level 2 measures.

This next impact assessment will be particularly important, as it will provide all players with:

- ◆ another opportunity to measure their familiarity with the process as a whole;
- ◆ an assessment of the quantitative impact of Solvency II on insurers' balance sheets, and in particular of the impact of the future Level 2 measures;
- ◆ information on how to make the final adjustments in terms of calibrating the 'standard formula'.

### 3. Accounting harmonisation

#### 3.1. Principle and functioning

Since 1 January 2005, publicly traded European companies are obliged to prepare their consolidated financial statements according to IFRS (International Financial Reporting Standards). The Solvency II directive is expected to draw strongly on the principles underlying these standards for determining the new European prudential regulations.

IFRS undergo frequent amendments and each amendment gives rise to a public consultation. As a member of several working groups (CEIOPS and IAIS), ACAM is involved in reviewing these changes.

In 2008, the measurement of employee benefit liabilities, simpler information on financial instruments, and the frontier between debt and equity were discussed. The working groups are very attentively following the creation of a new IFRS for insurance contracts (IFRS 4 phase 2).

#### 3.2. Difficulties in applying accounting standards

In the area of accounting standards, the year was dominated by the financial crisis and by difficulties in applying some of these standards.

In effect, under IFRS, when the number of transactions in a financial instrument is too small to provide a reliable price, the assets should be valued based on valuation models. This rule encounters several application difficulties linked to:

- ◆ the capacity to determine whether market transactions are representative or not;
- ◆ the capacity to measure, using a model, the market value of these financial assets.

Given these difficulties, ACAM, CNC, CB and AMF issued a joint recommendation relating to the fair value measurement of certain financial instruments.

At the European Union level, several papers have been published, in particular:

- ◆ CEIOPS report on issues regarding the valuation of structured credit products;
- ◆ Joint statement from CESR, CEBS and CEIOPS regarding the latest developments in accounting addressed to insurance, banking and financial market regulators.



# Part 3

## Financial data





## 1. Legal framework for the preparation of ACAM's financial statements

- ◆ The legal framework governing the preparation of ACAM's financial statements is set forth in Articles R. 310-12-4 and R. 310-12-5 of the French Insurance Code.
  - ◆ ACAM's financial statements are prepared in accordance with the rules laid down in the French General Chart of Accounts.
  - ◆ The financial statements are prepared by the Chief Accountant and submitted to the College by the Secretary General. They are approved by the College and transmitted to the Cour des Comptes (French Audit Office) by the Secretary General.
- The accounts are kept in compliance with the general principles of prudence, continuity, sincerity and true and faithful image of ACAM's financial situation.

## Presentation of the 2008 financial statements of ACAM (Autorité de contrôle des assurances et des mutuelles)

+ 15%  
Number of mandates  
issued

## 2. Presentation of the financial statements

➔ ACAM was created in 2004 by the merger of two independent administrative bodies, CCA and CCMIP, which had no assets and did not draw up a budget.

The 2008 financial statements prepared by ACAM's Chief Accountant were approved by the College at its meeting on 8 April 2009.

## 3. 2008 financial year

➔ The 2008 financial statements reflect ACAM's ongoing development in line with its objectives.

Staff recruitment continued in 2008, bringing the total number of staff to 204 people at 31 December 2008 compared with 193 at the end of 2007.

The number of mandates issued increased by 15% to 2,745 compared with 2,391 in 2007.



## A. Income statement

### ■ Operating income

Operating income came to **€28,540 thousand** in 2008 compared with **€28,868 thousand** in 2007.

It was composed of ordinary income (generated by contributions to supervision expenses and by cash placements made) amounting to **€28,463 thousand** and of non-recurrent income amounting to **€77.6 thousand**.

#### a) Contributions income

Income from contributions amounted to **€27,262 thousand** and broke down as follows:

- ◆ **€23,920 thousand** in contributions from insurance entities versus **€24,164 thousand** in 2007, corresponding to a drop of 1%.
- ◆ **€3,342 thousand** in revenues from mutual insurers and provident institutions received by ACOSS, up by 9% in 2008 compared with **€3,066 thousand** in 2007.

#### b) Income from cash placements

Investment income generated by cash placements in variable capital investment companies (SICAV) increased by 12% to **€1,200 thousand** versus **€1,073 thousand** in 2007.

#### c) Non-recurrent income

Non-recurrent income amounted to **€77.6 thousand** and corresponded mainly to the adjustment of expenses.

### ■ Operating expenses

Total operating expenses for the period came to **€27,359 thousand**, up by 3% compared with **€26,492 thousand** at 31 December 2007.

Expenses essentially concerned ordinary operating and management costs.

#### GENERAL OPERATING EXPENSES (€9,957 THOUSAND)

These expenses consist of property management expenses amounting to **€6,723 thousand**, IT expenses amounting to **€778 thousand**, assignment expenses amounting to **€526 thousand** and other expenses amounting to **€1,930 thousand**, relating to miscellaneous services, fees, communication expenses and supplies.

#### PERSONNEL COSTS (€16,202 THOUSAND)

Personnel costs increased by 5% in 2008 to **€16,203 thousand** compared with **€15,411 thousand** at 31 December 2007.

As at 31 December 2008 ACAM employed 204 people compared with 193 at the end of 2007.

Recruitment continued in 2008 and the inspection teams were significantly strengthened with the appointments of ten new supervisors as well as the hiring of temporary supervisors.

#### ALLOWANCE FOR AMORTISATION, DEPRECIATION AND PROVISIONS (€1,200 THOUSAND)

This allowance relates to purchases of software, office equipment and computer hardware.

### ■ Net income

Net income came to **€1,181 thousand** in 2008 versus **€2,376 thousand** in 2007.

In accordance with Article R. 310-12-2 of the French Insurance Code, ACAM's College, meeting on 8 April 2009, approved the financial statements and decided to take the surplus for the year of **€1,181 thousand** to reserves and to authorise the allocation of the net income of **€1,181 thousand** for the year to retained earnings.

#### INCOME (IN EURO)

HEADING	2008	2007
<b>INCOME FROM CONTRIBUTIONS</b>	<b>27,262,179.48</b>	<b>27,231,059.33</b>
of which:		
Insurers	23,920,480.48	24,164,509.33
Mutual insurers, Provident institutions	3,341,699.00	3,066,550.00
<b>INVESTMENT INCOME</b>	<b>1,199,929.66</b>	<b>1,073,224.50</b>
<b>NON-RECURRENT INCOME</b>	<b>77,665.75</b>	<b>563,316.54</b>
from:		
Management transactions	77,665.40	52,115.53
Reversals of provisions		507,000.00
Sales of assets and other income	0.35	4,201.01
<b>TOTAL</b>	<b>28,539,774.89</b>	<b>28,867,600.37</b>

#### EXPENSE (IN EURO)

HEADING	2008	2007
<b>EXTERNAL EXPENSES</b>	<b>9,725,210.51</b>	<b>9,051,278.22</b>
of which:		
Rent	5,523,380.67	5,315,482.58
Rental expenses	782,228.48	686,214.56
Maintenance and repairs	299,126.57	248,398.38
Documentation, studies and research	292,015.24	277,043.80
Advertising, information, publications	138,142.22	186,619.80
Fees and compensation paid to intermediaries	285,398.87	291,324.33
Temporary staff	259,242.02	188,759.79
Travel, representation and entertainment	660,145.08	622,321.24
Transport	22,223.65	12,226.84
Insurance premiums and bank charges	12,355.45	8,969.32
Other external expenses	1,450,952.26	1,213,917.58
<b>TAXES AND OTHER DUTIES</b>	<b>1,699,161.59</b>	<b>1,639,287.23</b>
<b>PERSONNEL COSTS</b>	<b>14,266,559.82</b>	<b>13,723,714.89</b>
<b>DEPRECIATION AND PROVISIONS</b>	<b>1,199,519.82</b>	<b>1,121,625.15</b>
<b>OTHER EXPENSES</b>	<b>408,872.48</b>	<b>295,131.81</b>
<b>NON-RECURRENT EXPENSES</b>	<b>59,454.03</b>	<b>660,495.00</b>
<b>INCOME FOR THE YEAR</b>	<b>1,180,996.64</b>	<b>2,376,068.07</b>
<b>TOTAL</b>	<b>28,539,774.89</b>	<b>28,867,600.37</b>

## B. Balance sheet

### ■ Assets

#### a) Non-current assets (€5,408 thousand)

The net value of non-current assets came to €5,408 thousand at end 2008 compared with €6,109 thousand at the end of 2007.

Information technology investments accounted for €358 thousand and other investments came to €143 thousand, including non-current financial assets amounting to €63 thousand.

At 31 December 2008 the non-current financial assets, corresponding to the guarantee paid to the lessor of the new premises amounted to **€1,309 thousand**.

#### b) Investment securities (€32,739 thousand)

ACAM's surplus cash is carefully managed. It is invested in short-term securities and was up by 4% relative to the end of 2007 (€31,465 thousand).

HEADING	2008			2007
	GROSS	DEPRECIATION AND PROVISIONS	NET	NET
<b>ASSETS (in euro)</b>				
Intangible non-current assets (Patents, licences and software)	1,031,959.12	398,763.12	633,196.00	596,036.59
Property, plant and equipment (Furnishings, computer hardware, etc.)	5,868,166.20	2,401,839.19	3,466,327.01	4,266,989.10
Long-term financial assets (Loans and guarantees)	1,308,969.08		1,308,969.08	1,246,350.07
<b>TOTAL NON-CURRENT ASSETS</b>	<b>8,209,094.40</b>	<b>2,800,602.31</b>	<b>5,408,492.09</b>	<b>6,109,375.76</b>
Operating receivables				12,895.00
Other receivables	9,472.24		9,472.24	34,727.98
Investment securities	32,738,670.72		32,738,670.72	31,465,309.59
Cash	16,618.13		16,618.13	4,732.23
<b>TOTAL CURRENT ASSETS</b>	<b>32,764,761.09</b>		<b>32,764,761.09</b>	<b>31,517,664.80</b>
<b>PREPAID EXPENSES</b>	<b>64,298.14</b>		<b>64,298.14</b>	<b>75,909.69</b>
<b>TOTAL ASSETS</b>	<b>41,038,153.63</b>	<b>2,800,602.31</b>	<b>38,237,551.32</b>	<b>37,702,950.25</b>

### ■ Liabilities

#### a) Capital and reserves (€36,727 thousand)

ACAM continued to strengthen its equity and ensure its financial solidity. The weight of equity in the balance sheet total improved relative to 2007 at 96%.

Reserves amounted to **€11,377 thousand** at 31 December 2008 and retained earnings came to **€24,169 thousand** for net income for the year of **€1,181 thousand**.

#### b) Operating liabilities (€1,510 thousand)

Operating liabilities relate mainly to amounts due to suppliers for **€1,309 thousand** and to tax and social security liabilities for **€188 thousand**.

LIABILITIES (in euro)	2008	2007
Reserves	11,377,505.31	9,001,437.24
Retained earnings	24,168,924.40	24,168,924.40
Income for the year	1,180,996.64	2,376,068.07
<b>TOTAL EQUITY</b>	<b>36,727,426.35</b>	<b>35,546,429.71</b>
<b>PROVISIONS FOR RISKS AND CHARGES</b>		
Due to suppliers	1,309,640.18	374,098.91
Tax and social security liabilities	188,547.01	1,637,665.63
Other operating liabilities (Staff compensation and expenses due)	11,937.78	144,756.00
<b>TOTAL OPERATING LIABILITIES</b>	<b>1,510,124.97</b>	<b>2,156,520.54</b>
Cash liabilities		
<b>TOTAL LIABILITIES</b>	<b>38,237,551.32</b>	<b>37,702,950.25</b>





#### ■ NOTES TO THE FINANCIAL STATEMENTS

##### Note 1

The financial year starts on 1 January and ends on 31 December of each year.

##### Note 2

Non-current assets are amortised using the straight line method as follows:

- ◆ IT equipment:
  - Minor equipment: 3 years;
  - Network workstations and mini-servers: 3 years;
  - Large systems: 5 years.
- Patents, licenses and software: 5 years;

- Technical installations: 8 years;
- Office equipment and vehicles: 5 years;
- Office furniture and fittings: 8 years;
- Office buildings: 50 years.

The allowance for amortisation and depreciation came to €2,800,602.31.

##### Note 3

Investment securities are valued at their market value as at 31 December 2008.



**3L3**

3L3 refers to the three Level 3 Committees, consisting of CEIOPS (Committee of European Insurance and Occupational Pension Supervisors), CESR (Committee of European Securities Regulators), and CEBS (Committee of European Banking Supervisors), which have been engaged in cross-sector co-operation since 2005.

**Actuary**

A specialist in the analysis and processing of the financial impact of risk. Actuaries use statistics to set premium rates (in motor insurance, for example, based on statistics of the cost and frequency of accidents, the place of residence of the policyholder and his or her age and gender) and to draw up mortality tables. The maximum age in the mortality tables is currently 120 years.

**AERAS agreement**

The AERAS (s'Assurer et emprunter avec un risque aggravé de santé) agreement is designed to facilitate access to insurance and credit for people who have or have had serious health problems.

**Capitalisation reserve**

The capitalisation reserve is a reserve constituted solely of the gains realised on the sale of bonds and drawn upon solely in the case of unrealised losses on this type of asset. This smoothes the gains or losses generated on bonds sold before term, in the event of interest rate movements. Insurance entities are therefore not tempted to sell high-yield bonds (in the case of interest rate movements) to generate short-term profits and replace these with other bonds generating lower yields. This specific reserve, considered a reserve covering commitments, is taken into account for calculating the solvency margin.

**CEBS**

Committee of European Banking Supervisors.

**CEIOPS (Committee of European Insurance and Occupational Pension Supervisors).**

For many years collaboration between EU insurance supervisory bodies was structured within the Conference of Insurance Supervisors of the Member States of the European Union. By European Commission decision 2004/6/EC of 5 November 2003 this became the Committee of European Insurance and Occupational Pension Supervisors. CEIOPS is the Level 3 Committee for the insurance and occupational pensions sectors under the so-called Lamfalussy process. ACAM represents France on the committee. The authorities of three European Economic Area Member States (Norway, Iceland and Liechtenstein) and the European Commission participate in CEIOPS' activities as observers. The Committee is very active in the preparation of Solvency II and is in particular responsible for replying to calls for advice from the European Commission. CEIOPS' Secretariat is located in Frankfurt, Germany.

**CESR**

Committee of European Securities Regulators.

**CfA (Call for advice)**

The Call for Advice or CfA procedure is the procedure used by the European Commission to request technical advice from CEIOPS.

**CIMA**

The Inter-African Conference for the Insurance. Markets (Conférence Interafricaine des Marchés d'Assurance - CIMA), introducing a single supervisory system for its 14 member countries, which are all Sub-Saharan African countries in the CFA zone.

**CMU fund**

The fund that finances France's universal healthcare cover scheme's supplementary healthcare cover.

**CNC**

*Conseil National de la Comptabilité* (CNC) is the French accounting standards setting board.

**DDAC act**

Act 2005-811 of 20/07/2005, bringing aspects of French financial legislation into line with European Community law, in particular in the area of insurance.

**DGTPE**

France's Treasury and Economic Policy Directorate.

**Directive**

A legislative act of the European Union establishing the regulations the Member States must transpose into their national legislations.

**Diversification reserve (Life insurance)**

This is an underwriting reserve designed to smooth fluctuations in the value of the assets of 'diversified' contracts.

**DRASS (Directions régionales des affaires sanitaires et sociales).**

French Regional social security authorities

**DROC (Date réglementaire d'ouverture du chantier)**

Official construction work starting date.

**Duration**

Duration can be taken to mean the average length of time over which a product will produce cash flows weighted by its present value.

**EFRAG**

The European Financial Reporting Advisory Group (EFRAG) was set up to assist the European Commission in the endorsement of International Financial Reporting Standards for application in Europe.

**EIOPC**

The European Insurance and Occupational Pensions Committee (EIOPC) was established to replace the former Insurance Committee by decision 2004/9/EC of 5 November 2003 for its advisory functions and by Directive 2005/1/EC of 9 March 2005 for its regulatory functions. It is chaired by the European Commission, which also acts as Secretary. Its members comprise the insurance supervisory and regulatory authorities of the 27 Member States (France is represented by the Treasury and Economic Policy Directorate), representatives of the three EEA member States and the Chairman of CEIOPS. This committee was created as part of the Lamfalussy process as applied to the insurance sector. EIOPC is a Level 2 committee and advises the European Commission, on request, on policy issues relating to insurance, reinsurance and occupational pensions and issues proposals in this area.

**Equalisation reserve**

The equalisation reserve is constituted to cover changes in the loss experience. It is used in the case of catastrophe risk and death benefits.

**Equity**

An insurer's equity is the difference between the carrying amount of its assets and the carrying amount of its liabilities.

**Equity dampener**

An alternative approach (known as the dampener approach) enabling entities to modulate the capital charge in respect of equities according to the position in the stock-market cycle and the duration of the holdings.

**ESRC**

European systemic risk council.

**European Community**

The European Economic Community (EEC) was established in 1957 by the Treaty of Rome with the objective of creating a single market with no internal borders. The establishment of the European Union in 1992 did not result in the disappearance of the European Economic Community which continues to be a component of European Union under the name of the European Community. The EC's task is to promote throughout the Community: 1) a harmonious and balanced development of economic activities; 2) a high level of employment and of social protection; 3) sustainable non-inflationary growth; 4) a high degree of competitiveness and convergence of economic performance; 5) a high level of environmental protection and the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States. To this end, the European Community draws up common policies, in particular dealing with transport, competition, fishing and agriculture, political asylum and immigration, energy and the environment. These policies are put in place according to the decision procedures provided for in the founding treaty, in particular the co-decision procedure.

**European Economic Area**

The European Economic Area was established by an agreement signed in 1992 between the EU Member States and Iceland, Norway, and Liechtenstein. It extends the fundamental pillars of the internal market, the four freedoms, i.e. freedom of movement of goods, persons, services and capital to these three countries, which in return adopt EU policies.

**European Union**

The European Union, created by the 1992 Maastricht Treaty, comprises 27 Member States and has the powers that the Member States have chosen to confer with a view to maintaining peace, seeking political unity and taking joint action to promote economic and social progress. The European Union has a flag (12 stars against a blue background), an anthem (Beethoven's Ode to Joy), a motto (united in diversity) and a currency (the euro, adopted in 13 Member States).

**FASB**

Financial Accounting Standards Board, the US accounting standards setter.

**FATF**

The Financial Action Task Force (FATF) is an inter-governmental body set up at the Paris G-7 Summit in 1989 to develop coordinated action against money laundering at international level.

**Financial risk provision (life insurance)**

This provision is designed to compensate for any decrease in the return on assets representing the insurer's liabilities under policies other than unit-linked contracts.

Insurers whose portfolios contain contracts with high guaranteed rates of returns may generate a return on the portfolio that only just covers or falls below the returns guaranteed to their policyholders. The difference would be inadequate, no longer covering the insurer's ordinary operating expenses. Insurers therefore set aside reserves to cover the differences between commitments discounted using a prudent interest rate, the revenues generated by their assets and the commitments calculated above.

**FoE and FoS**

The Freedom of Establishment (FoE) is the possibility for an operator established in a Member State of the European Economic Area to set up a permanent establishment in another Member State, via a branch or an agency for example. Freedom of Services (FoS) is the possibility for an operator established in one Member States to offer its services directly in another Member States without the need to have any establishment there.

**FREG**

Financial requirements expert group.

**FSAP (Financial Services Action Plan)**

The Financial Services Action Plan is a long-term programme established by the European Commission to modernise and liberalise financial services. Adopted in 1999, it comprises 42 measures designed to harmonise the regulations governing securities, banking, insurance, mortgage lending and other financial services throughout the European Union. Initially drawn up to cover the period from 1999 to 2005, it was subsequently assessed by the European Commission. Following the actions taken under the FSAP, the European Commission drafted a white paper for the European Union's financial services policy for the period from 2005 to 2010.

**IAIS**

The main purpose of the International Association of Insurance Supervisors (IAIS) is to promote cooperation between its members, which are for the most part insurance supervisors and regulators, and also to foster collaboration with the supervisory authorities of other financial sectors (banks, financial markets, etc.). Such cooperation is becoming increasingly necessary given the internationalisation of insurance groups and their diversification into banking and asset management activities.

**IASB**

The International Accounting Standards Board (IASB) drafts the international accounting standards (adopted by the European Union) applicable to the consolidated financial statements.

**IASCF**

International Accounting Standards Committee Foundation.

**ICP**

Insurance Core Principles.

**IFRS**

International Financial Reporting Standards.

**IGRS (Institutions de Gestion de Retraite Supplémentaire)**

Supplementary occupational pensions management institutions.

**IGSC**

Insurance Groups Supervision Committee.

**IGSRR**

Internal governance, supervisory review and reporting expert group.

**IMEG**

Internal model expert group.

**Intermediary**

Insurance intermediaries are natural persons or legal entities that, in exchange for a fee, advise or assist clients to take out insurance or reinsurance contracts. Activities that consist exclusively of handling, estimating or settling claims are not considered intermediation activities.

**IOPS**

The International Organisation of Pension Supervisors (IOPS) is an independent international body composed of representatives from around fifty countries at every level of economic development. Its aim is to set international standards, promote good practice in the area of private pension supervision (non-state pension schemes), encourage international cooperation and constitute a forum for exchange of information. IOPS works closely with other international bodies involved in pension issues: IAIS, IMF and the World Bank. The OECD provides the secretariat.

**IRP (Institutions de Retraite Professionnelle)**

Occupational Pension Institutions.

**Joint Forum**

The Joint Forum was established by the IAIS and its banking and stock-market equivalents, the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) in 1996, to deal with issues common to the banking, securities and insurance sectors, including the regulation of financial conglomerates.

**Lamfalussy Process**

The Lamfalussy process applies to European legislation for the financial sector. It makes a distinction between four levels of legislation. Levels 1 and 2 are directives or regulations. More precisely, Level 1 consists of directives adopted by the European Council and Parliament that establish the principles that will be detailed in the Level 2 measures adopted by the European Commission, under the supervision of the European Council and Parliament. Level 3 consists of non-mandatory recommendations. Level 4 relates to the European Commission's oversight of compliance and enforcement.

**Mathematical reserves (life insurance)**

Insurers enter into commitments vis-a-vis their policyholders in exchange for payment of a premium. In the case of life insurance the mathematical reserve covers the difference between the present value of the commitment contracted by the insurer and the residual commitment contracted by the policyholder. It is therefore close to the insurer's 'net' commitment to the policyholder.

**MMoU**

Multilateral Memorandum of Understanding on Cooperation and Information Exchange.

**MCR**

The Minimum Capital Requirement under the EU Solvency II regulations. MCR is the minimum amount of capital required, below which an entity's licence to operate is withdrawn. The method of calculating MCR is simpler and less tenuous than that used for the Solvency Capital Requirement (SCR) and it may not be below a set amount in euro.

**Minimum guaranteed rate**

Minimum rate of return on mathematical reserves guaranteed by the insurer.

**OECD**

Organisation for Economic Co-operation and Development.

**ORIAS**

Organisme pour le Registre des Intermédiaires en Assurance, the French Register of Insurance Intermediaries, is the basic tool for supervision of the insurance intermediation sector.

**Participation in profits (life insurance)**

The law, contractual clauses and competitive pressure may oblige insurers to distribute to policyholders a share of the underwriting and financial profits made during the year. This system is known as participation in profits and is mandatory in many branches of insurance. The distribution to the policyholders of this share of profits is at the insurers' discretion, as the policyholders have no individual entitlement. However, contractual obligations may supplement the obligation established by law.

**PCG (Plan Comptable Général)**

The French General Chart of Accounts.

**Provisional administration**

Placing an entity in provisional administration is a procedure that falls outside the scope of ordinary law. Although the provisional administrator is appointed by a public authority, he acts under his own responsibility, like any other company manager. He replaces the board of directors and manages the company.

**Provision for deferred acquisition costs (Life insurance)**

The provision for deferred acquisition costs corresponds to an amount more or less equal to the difference between the amount of the mathematical reserves recorded on the balance sheet and the amount of the mathematical reserves that would be necessary if the acquisition costs were not covered by the premiums paid by policyholders.

**Provision for liquidity risk**

In general terms, this provision must be recognised when the unrealised value of all the assets except bonds fall below their acquisition price (bond assets are not taken into account in the calculation as, barring counterparty default, there should be no capital loss on these assets if they are held to term). Since 2003, the insurers that fulfil all the other prudential requirements (solvency margin, regulated underwriting reserves) can constitute a provision for liquidity risk over a period of three to eight years depending on the duration of the liability. The provision for liquidity risk is recorded net of provisions for impairment, which are calculated on a line by line basis and which correspond to the part of the unrealised losses that the insurer considers likely to be lasting.

**Provision for unexpired risk (Life insurance)**

This provision is designed to cover future expenses not covered elsewhere. The amount is calculated based on projections of costs and income on a homogeneous group of contracts according to the rules set forth in Article A.331-11 of the French Insurance Code. For each homogeneous group of contracts, the amount of the provision is equal to the present value of the future costs minus the present value of future cash flows generated by these contracts.

**PSNEM (Provision pour sinistres non encore manifestés)**

A specific loss reserve required by French insurance regulations.

**QIS (Quantitative Impact Studies)**

CEIOPS has been requested by the European Commission to carry out quantitative impact studies in the framework of Solvency II. These studies are designed to test the assumptions envisaged for putting together the new prudential framework.

**Regulation**

Legislative Act drawn up by European Union regulators and directly applicable in each Member State.

**Reinsurance**

Reinsurance can be defined as a technique under which an insurer transfers to another business all or part of the risk it has underwritten. Directive 2005/68/EC (Article 2.1) defines reinsurance as an activity consisting in accepting risks ceded by an insurance undertaking or another reinsurance undertaking. From an economic point of view, insurers can draw on reinsurance to insure larger risks than allowed by their level of capital. In legal terms, this insurance cover takes the form of a contract, known as a reinsurance treaty. A reinsurer known as the accepting reinsurer undertakes in return for remuneration to reimburse the ceding insurer, in pre-determined conditions, all or part of the sums due or paid by the insurer to its policyholders in respect of claims. However, even when reinsured against the risk it has underwritten, the insurer remains solely liable to the policyholder (Article L.111-3 of the French insurance code).

**Reinsurance captive**

A reinsurance captive is a reinsurance company that is wholly owned by a company not involved in the insurance sector, and which provides cover for the risks of the group to which it belongs. Reinsurance captives are usually used to pool the insurance programmes of major commercial or industrial groups with a view to obtaining better cover and better prices on the international insurance market.

**Reserve for participation in profits (Life insurance)**

Life insurers have the possibility of not distributing immediately to policyholders the share of profits provided for by the law. They have a period of eight years in which to do so. Instead of distributing them immediately, the insurer can therefore allocate them to a reserve for participation in profits.

**SEC**

Securities and Exchange Commission, the US financial markets regulator.

**SGAM**

The *Société de Groupe d'Assurance Mutuelle* (SGAM) are associations of mutual insurers designed to generate synergies and ensure financial solidarity between its members.

**Solvency II**

Initiated by the European Commission in 2002, this project aims to provide a new prudential framework for insurers based on three pillars: Pillar 1: Quantitative requirements relating in particular to capital and technical reserves; Pillar 2: Supervision and qualitative requirements; Pillar 3: Disclosure and reporting requirements. In July 2007, the European Commission presented a draft directive to the European Parliament and Council, with a view to its application in 2012. The Solvency II Directive was adopted by co-decision of the Parliament and Council under the Lamfalussy process on 22 April 2009.

**Solvency margin**

An insurer's assets must exceed its commitments, the difference between the two constitutes a safety margin which must be adequate and must exceed a minimum requirement.

**Solvency margin requirements**

Under the existing regulations, the solvency margin requirement is the minimum capital an insurance company must have. In life insurance it is based on the mathematical reserves covering euro-based and unit-linked contracts and capital at risk. In non-life insurance it is based on premiums and claims. Reinsurance may also be taken into account. Note that the introduction of Solvency II has resulted in terminology changes and the terms now used are capital adequacy requirements or capital requirements.

**Solvency II - Pillars**

The three pillars of Solvency II are: Pillar 1: Quantitative requirements relating in particular to capital and technical provisions; Pillar 2: Supervision and qualitative requirement; Pillar 3: Disclosure and reporting requirements.

**Technical interest rate**

The minimum interest rate guaranteed to the policyholder each year by the insurer. This rate is used to calculate the premium and the amount of mathematical reserves. For prudential reasons it is regulated and cannot exceed a series of ceilings set on a declining scale according to the term over which the interest rate is guaranteed.

**TME**

TME stands for *Taux Moyen des emprunts d'État*, which is the average government borrowing rate in France.

**TRACFIN**

*Traitement du Renseignement et Action contre les Circuits Financiers* (TRACFIN) is the anti-money laundering body set up by the French Ministry of the Economy.