

Liechtenstein Law Gazette

Year 2006

No. 125

published on 30 June 2006

Law
of 17 May 2006
on Insurance Mediation
(Insurance Mediation Act; IMA)

I hereby grant my consent to the following Resolution adopted by Parliament:

I. General provisions

Article 1

Object and purpose

1) This Act governs the preconditions for taking up and pursuing insurance mediation activities and, in particular, aims to protect insured parties and confidence in the Liechtenstein financial system.

2) It also serves to implement Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3; EEA Compendium of Laws: Annex IX - 13b.01).

Article 2

Scope

1) Insurance intermediaries and their employees offering insurance mediation in or from Liechtenstein shall be subject to this Act.

2) This Act shall not apply to:

a) insurance undertakings and their employees;

- b) the casual provision of information in connection with another professional activity, the goal of which is not to support the client in concluding or handling an insurance contract;
- c) the professional administration of claims of an insurance undertaking, claims processing, and expert services in connection with claims;
- d) persons who provide insurances part-time and
 1. only knowledge of the offered insurance cover is required for the insurance contract concerned,
 2. the insurance is not a life insurance and does not cover any liability risks,
 3. the insurance is complementary to the product or service supplied and covers either the risk of breakdown, loss of or damage to goods, damage to or loss of baggage, or other risks linked to booked travel, including liability and accident insurance risks, provided that the cover is ancillary to the main cover for the risks linked to that travel,
 4. the amount of the annual premium does not exceed the amount of 500 euros or the equivalent in Swiss francs, and
 5. the total duration of the insurance contract, including any renewals, does not exceed five years.

3) The scope of provisions relating to cross-border insurance mediation within the Contracting Parties to the EEA Agreement may be extended by an international treaty with a third State such that the third State is treated the same as a Contracting Party in relation to the Principality of Liechtenstein, provided that the legal order of the State concerned contains equivalent rules on insurance mediation.

4) Unless otherwise provided by this Act, the provisions on insurance mediation shall also apply to reinsurance mediation.

Article 3

Definitions

- 1) For the purpose of this Act, the following terms shall have the following meanings:
- a) insurance mediation: proposing, offering, concluding and carrying out work preparatory to the conclusion of insurance contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim;

- b) insurance intermediaries: natural or legal persons who, for remuneration, take up or pursue insurance mediation;
- c) agents: insurance intermediaries entrusted with insurance mediation by an insurance undertaking or another agent;
- d) brokers: insurance intermediaries entrusted with insurance mediation by an insurant or another broker.

2) The terms designating persons and functions in this Act shall apply to both female and male genders.

Article 4

Impermissible insurance mediation

Insurance mediation for the benefit of insurance undertakings subject to the Insurance Supervision Act that are not licensed to conduct business in Liechtenstein shall be prohibited.

II. Taking up and terminating mediation activities

A. License

Article 5

Licensing requirement

Subject to article 9, taking up and pursuing activities as an insurance intermediary shall require a license.

Article 6

Granting of license

1) The license to take up and pursue activities as an insurance intermediary shall be granted by the Financial Market Authority (FMA) upon application, if the applicant:

- a) has the required professional qualifications;
- b) has an impeccable reputation; and

- c) has concluded professional indemnity insurance or has rendered an equivalent financial guarantee.
 - 2) The license shall be granted for pursuing insurance mediation activities as an agent and/or a broker.
 - 3) The Government shall provide further details by ordinance, in particular concerning:
 - a) the licensing procedure;
 - b) the required professional qualifications and, with respect to legal persons and insurance intermediaries employing workers, the circle of persons that must meet these preconditions;
 - c) evidence of an impeccable reputation;
 - d) the minimum insurance amount for professional indemnity insurance.

Article 7

Register

- 1) The FMA shall maintain a public register of insurance intermediaries. This register shall contain one division each for agents and for brokers.
- 2) All insurance intermediaries shall be entered in the register *ex officio* who have a license issued by the FMA. In the case of legal persons, the names of the members of the general management shall also be entered who are responsible for insurance mediation.
- 3) The entry shall be deleted if the license expires or is withdrawn by the FMA.
- 4) The FMA shall provide insurance intermediaries with an identity card. This identity card shall be returned to the FMA if the entry is deleted.
- 5) The Government shall provide further details by ordinance, especially the content of the register.

B. Free movement of services and freedom of establishment

Article 8

Activities of Liechtenstein insurance intermediaries in other Contracting Parties to the EEA Agreement

1) Insurance intermediaries licensed in Liechtenstein who want to become active for the first time by virtue of free movement of services or freedom of establishment in another Contracting Party to the EEA Agreement shall be required to notify the FMA. Subject to paragraph 2, they may take up activities in such States as soon as they have met the notification requirement.

2) If the host Member State so demands, the FMA shall inform the competent authority of the host Member State within a month after receipt of the notification under paragraph 1 of the intention of the insurance intermediary. At the same time, the insurance intermediaries shall be informed of the notification by the FMA to the authority of the host Member State. Upon expiry of one month after receipt of this notification by the FMA concerning the information provided to the foreign authority, the insurance intermediary may take up activities in the State concerned.

3) The FMA shall publish a list of the States requiring notification in advance of the competent authority under paragraph 2.

4) If the insurance intermediary permanently ceases to pursue notified activities in another Contracting Party to the EEA Agreement, it shall notify the FMA accordingly.

Article 9

Activities of foreign insurance intermediaries in Liechtenstein

1) Insurance intermediaries whose residence or registered office is in another Contracting Party to the EEA Agreement may take up and pursue insurance mediation activities by virtue of free movement of services and freedom of establishment in Liechtenstein, if they have been entered in a State register or a register recognized by the State for insurance intermediaries in the home Member State and if they have notified the competent supervisory authority of their intention to pursue cross-border activities as insurance intermediaries in Liechtenstein.

2) Paragraph 1 shall also apply to insurance intermediaries whose residence or registered office is in a third State, provided that such insur-

ance intermediaries are deemed equivalent pursuant to an international agreement and the legal order of the State concerned contains equivalent rules on insurance mediation.

C. Expiration and withdrawal of license

Article 10

Expiration of license

The license shall expire if:

- a) the license holder discontinues his activities as an insurance intermediary; or
- b) the license holder dies or bankruptcy proceedings are initiated against him.

Article 11

Withdrawal of license

1) The FMA shall withdraw the license if:

- a) the preconditions for granting the license are not longer met; or
- b) the license holder gravely violates legal or contractual obligations.

2) In the case under paragraph 1(a), the FMA shall determine a reasonable deadline before withdrawing the license to restore the lawful state of affairs, provided that justified prospects for remedying the defects exist.

III. Information and consultation requirements; ensuring payment

Article 12

Scope

Articles 13 to 16 shall not be applicable to:

- a) the provision of insurances for large risks as set out in Annex 3 of the Insurance Supervision Act; and
- b) reinsurance mediation.

Article 13

Information requirements

1) Prior to the conclusion of any initial insurance contract, the insurance intermediary shall provide the insurant with at least the following information:

- a) his identity and address;
- b) the designation of the register in which he has been included and the means of verifying register entries free of charge on the Internet or for a fee by means of a register extract compiled by the FMA;
- c) whether he will work as a broker or as an agent;
- d) the methods for registering complaints concerning insurance mediation; and
- e) any economic links with insurance undertakings.

2) Upon amendment or renewal of the insurance contract or upon conclusion of additional insurance contracts, the information under paragraph 1 shall only be provided again if its content has changed in the meantime.

Article 14

Consultation requirements

1) The insurance intermediary shall be required to advise the insurant before concluding an insurance contract and to disclose on which basis this consultation is carried out.

2) Prior to the conclusion of any specific contract, the insurance intermediary shall at least specify, in particular on the basis of information provided by the insurant, the demands and the needs of that insurant as well as the underlying reasons for any advice given to the insurant on a given insurance product. These details shall be modulated according to the complexity of the insurance contract being proposed.

3) In addition, the insurance intermediary shall inform the insurant whether he:

- a) gives advice based on the obligation in paragraph 5 to provide a fair analysis; or
- b) is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, he shall, at the insurant's request, also provide the names of those insurance undertakings; or
- c) is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice based on the obligation in paragraph 5 to provide a fair analysis. In that case, he shall, at the insurant's request, provide the names of the insurance undertakings with which he may and does conduct business.

4) In those cases where the information is to be provided solely at the insurant's request, the insurant shall be informed that he has the right to request such information.

5) When the insurance intermediary informs the insurant that he gives his advice on the basis of a fair analysis, he is obliged to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable him to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the insurant's needs.

Article 15

Form of the information

1) The insurance intermediary shall provide the information under articles 13 and 14 to the insurant:

- a) on paper in writing or on any other durable medium available and accessible to the insurant;
- b) in clear and accurate language and presentation, comprehensible to the insurant; and
- c) in German or in another language agreed with the insurant.

2) The information may be provided orally if the insurant requests it, or where and to the extent that the insurance mediation refers to a contract for provisional cover. In those cases, the information shall be provided to the customer in writing immediately after the conclusion of the insurance contact.

3) In the case of telephone selling, the information provided to the insurant before conclusion of the contract shall comply with the provisions of the Distance Financial Services Act. The information shall be provided in writing immediately after the conclusion of the insurance contract.

Article 16

Compensation for damages

The insurance intermediary shall be liable for compensation for damages incurred by the insurant due to culpable violation of the information and consultation requirements.

Article 17

Ensuring payment for the benefit of the insurant

1) The insurance intermediary shall be required to ensure by appropriate measures that he is always able to forward payments made to him by a party to the insurance contract for the benefit of the other contracting party to such contracting party.

2) Appropriate measures for purposes of paragraph 1 shall be:

- a) a contractual agreement pursuant to which satisfaction of a demand of the insurance undertaking is made through payment by the insurant to the insurance intermediary with debt-releasing effect and satisfaction of a demand of the insurant is made through payment by the insurance undertaking to the insurance intermediary without debt-releasing effect;
- b) evidence of sufficient financial capacity. Such capacity exists if the insurance intermediary has, on a permanent basis, financial means amounting to 4% of the sum of annual premiums received, subject to a minimum of 15,000 euros or the equivalent in Swiss francs; or
- c) payment transactions conducted via strictly segregated client accounts, provided that such accounts are shielded from access by creditors in the event of bankruptcy.

IV. Supervision

Article 18

Supervisory authority

1) The FMA shall be responsible for the supervision of insurance intermediaries and their employees. By means of regular inspections, it shall ensure that the licensing conditions are met on a permanent basis and it shall protect insured parties from abuses.

2) In particular, the FMA shall be responsible for:

- a) granting and withdrawing licenses;
- b) maintaining the register of insurance intermediaries;
- c) cooperation with foreign authorities;
- d) receiving complaints from insureds.

3) The FMA may take the measures necessary to fulfill its supervision responsibilities that are suited to prevent or remove grievances.

4) With respect to insurance intermediaries whose registered office or residence is in another Contracting Party to the EEA Agreement and who are entered in a State register or a register recognized by the State for insurance intermediaries in their home State, the FMA may take measures suited to prevent or punish violations of Liechtenstein provisions enacted in the public interest. In particular, the FMA may prohibit an insurance intermediary from pursuing further activities in Liechtenstein.

Article 19

Information and notification requirements

1) Insurance intermediaries shall provide the FMA with all information necessary for it to perform its responsibilities. Third parties shall be required to provide information to the FMA to the extent necessary for its supervisory activities.

2) Insurance intermediaries shall immediately notify the FMA of any changes to information contained in the license application.

Article 20

Supervision taxes and fees

Supervision taxes and fees shall be levied in accordance with the financial market supervision legislation.

Article 21

Insurance secrecy

1) Insurance intermediaries, the members of their organs, their employees, and any other persons working on behalf of an insurance intermediary shall be obliged to maintain the secrecy of facts that are not publicly known and that have been entrusted or made available to them pursuant to their business relationships with clients. The obligation to maintain secrecy shall not be limited in time.

2) If any representatives of authorities learn of facts subject to insurance secrecy in the course of their official duties, they shall be obliged to maintain insurance secrecy as official secrecy.

3) These provisions are without prejudice to the legal provisions concerning the duty to give information or evidence to court authorities.

4) The FMA may waive insurance secrecy if a demonstrated interest exists, in particular for the fulfillment of legal information requirements or for gathering and verifying insurance risks. In such a case, the FMA shall consult with the Data Protection Commissioner.

Article 22

Cooperation with other authorities

1) The FMA shall work together with other domestic and foreign authorities, in particular to ensure proper supervision of cross-border activities of insurance intermediaries.

2) The FMA shall inform the competent authorities of other Contracting Parties to the EEA Agreement if:

- a) an insurance intermediary notifies the FMA under article 8, paragraph 4 that it is permanently refraining from activities in a State that must be informed in accordance with article 8, paragraph 2;

- b) a domestic insurance intermediary operating in the State concerned has been punished pursuant to article 26 or if measures pursuant to article 18, paragraph 3 have been ordered against him; or
- c) the FMA has ordered measures pursuant to article 18, paragraph 4 against an insurance intermediary whose residence or registered office is in the State concerned.

3) The FMA may exchange information with the competent authorities of other Contracting Parties to the EEA Agreement to the extent necessary for its supervisory activities.

Article 23

Processing of personal data

The organs entrusted with execution and monitoring or supervision of execution of this Act shall be authorized to process or arrange for the processing of personal data, including data particularly worthy of protection concerning administrative or criminal prosecutions and penalties and personality profiles, that it requires to fulfill the responsibilities assigned to them under this Act, in particular in order to:

- a) maintain the register provided for in article 7;
- b) carry out supervision of execution of this Act;
- c) keep statistics.

V. Legal remedies

Article 24

Complaints concerning insurance intermediaries

1) The FMA shall receive complaints by insurants and other affected parties, in particular consumer protection organizations, concerning insurance intermediaries.

2) Such complaints shall in all cases be dealt with and answered. If possible, mediation shall be effected.

Article 25

Legal remedies and procedures

1) Decisions and orders of the FMA subject to complaint may be contested within 14 days of service before the FMA Complaints Commission.

2) Decisions and orders of the FMA Complaints Commission may be appealed within 14 days of service to the Administrative Court.

3) To the extent this Act does not specify otherwise, the Law on the National Public Administration shall apply.

VI. Penal provisions

Article 26

Misdemeanors and administrative offenses

1) The Court of Justice shall punish with imprisonment of up to six months or with a fine of up to 360 daily rates for committing a misdemeanor anyone who:

- a) violates insurance secrecy or induces or attempts to induce such a violation;
- b) pursues insurance mediation activities within the scope of this Act without a license.

2) The FMA shall punish with a fine of up to 50,000 francs for committing an administrative offense anyone who:

- a) carries out insurance mediation for the benefit of insurance undertakings subject to the Insurance Supervision Act that are not licensed to conduct business in Liechtenstein;
- b) contravenes his obligation to ensure by means of a measure referred to in article 17, paragraph 2 that he is always able to forward payments to the entitled party that have been made to him by a party to the insurance contract for the benefit of the other contracting party;
- c) fails to submit a notification to the FMA required by this Act;
- d) fails to comply with a demand to restore the lawful state of affairs or any other decree of the FMA issued in the course of execution of this Act.

3) If the violations are committed in the business operations of a legal person, a general partnership, a limited partnership, or a sole proprietorship, then the penal provisions shall apply to the persons that acted or should have acted on their behalf, but with joint and several liability of the legal person, the partnership, or the sole proprietorship for the monetary penalties and costs.

VII. Transitional and final provisions

Article 27

Implementing ordinances

The Government shall issue the ordinances necessary to implement this Act.

Article 28

Transitional provision

1) Persons pursuing insurance mediation activities at the time of entry into force of this Act may continue to pursue such activities in accordance with paragraphs 2 and 3.

2) At the latest one year after entry into force of this Act, such persons shall meet all licensing conditions (article 6) and submit a license application to the FMA.

3) The other obligations under this Act shall remain unaffected.

Article 29

Entry into force

This Act shall enter into force on 1 July 2006.

On behalf of the Reigning Prince:
signed *Alois*
Hereditary Prince

signed *Otmar Hasler*
Prime Minister