

Instructions

Formation of an insurance undertaking

These Instructions contain an overview of the procedure applicable to the formation of an insurance undertaking in the Principality of Liechtenstein and of the application materials to be submitted. Individual cases are governed solely by the legal provisions and the orders of the FMA in its function as supervisory authority. The FMA is happy to answer any questions you may have.

1. General provisions

- Undertakings that provide direct insurance or reinsurance in the Principality of Liechtenstein or from the Principality of Liechtenstein (insurance undertakings) are subject to insurance supervision. Direct insurance is deemed provided in the Principality of Liechtenstein if risks situated in Liechtenstein are covered or if risks situated in another State are covered from Liechtenstein (article 2 of the Insurance Supervision Act (ISA) in conjunction with article 1 of the Insurance Supervision Ordinance (ISO)).
- Insurance undertakings subject to supervision require a license by the supervisory authority for the assumption of business activity in each of their classes of insurance (article 12 ISA).
- Activities alien to insurance are impermissible (article 20, paragraph 1 ISA).
- The principle of separation of classes applies, i.e., insurance undertakings providing direct life insurance may not provide other classes of insurance, except supplementary insurance for accidental death, sickness, and disability, and health and disability insurance (article 21, paragraph 1 ISA).
- The licensing conditions set out in articles 13 et seqq. ISA must be met continuously. According to article 36, paragraph 1 ISA, the FMA monitors compliance with the approved business plan. Changes require prior approval by the FMA (article 36, paragraph 2 in conjunction with article 43 ISA). In such cases, entry into the Public Registry is only permissible after approval by the FMA.
- Supervision of insurance undertakings is the responsibility of the FMA (article 60 ISA).
- Engaging in insurance activities without a license is prohibited (article 64, paragraph 1, subparagraph b ISA).

- Insurance undertakings belonging to a corporate group or financial conglomerate are, under certain conditions, subject to supplementary supervision (article 7 ISA; article 2 of the Financial Conglomerates Act (FCA)).
- Insurance undertakings with registered offices in Liechtenstein may, if the appropriate conditions are met, engage in direct insurance business in the Contracting Parties of the EEA Agreement (articles 24 et seqq. ISA), in third countries (article 27a ISA), and in Switzerland (Agreement between the Principality of Liechtenstein and the Swiss Confederation on Direct Insurance, LGBl. 1998 No. 129).
- Insurance undertakings with registered offices in Liechtenstein offering direct life insurance may engage in occupational pension business as set out in the Pension Funds Act (PFA, article 4).
- According to article 3, paragraph 1, subparagraph d of the Due Diligence Act (DDA), life insurance undertakings are subject to the personal scope of application of the DDA.
- The business name of the undertaking is subject to approval by the Office of Land and Public Registration (see articles 1011 et seqq. of the Law on Persons and Companies, PGR). The availability of the name must be verified by that Office (www.gboera.llv.li). Article 21a ISA provides special protection for the names of insurance undertakings.

2. Licensing procedure

- During the licensing procedure, the FMA comprehensively reviews the legal and financial circumstances of the applicant. In particular, the applicant's reliability, qualifications, and ability to permanently meet its obligations to policyholders are determined.
- First, a draft license application (application for preliminary review) must be submitted to the FMA without original documentation. The application for preliminary review must in general be structured the same way and must contain the same information and documentation as the final license application (on the structure, see the comments below under point 3). Explanations must be given on each topic, and the applicable enclosures must be referenced. The enclosures must be set out and enumerated in a separate index of enclosures. The submitted documentation is comprehensively reviewed with respect to form and content. The applicant receives a written comment from the FMA with respect to the conclusiveness, form, and completeness of the content of the application for preliminary review. The FMA also provides information on any ambiguities and necessary corrections.
- Once the application for preliminary review has been amended, the applicant may submit the final license application. The license application contains an application letter including all information on the business plan, as well as an index of enclosures referring

to the relevant documents. The application package must be submitted in writing to the Financial Market Authority (FMA) Liechtenstein, Insurance and Pension Funds Supervision, Heiligkreuz 8, P.O. Box 684, 9490 Vaduz, Liechtenstein.

- If any facts relevant to the license change during the licensing procedure, updated application materials must be resubmitted immediately.
- All information provided by the applicant is treated confidentially and is subject to official secrecy, within the framework of article 44, paragraph 2 ISA.
- The licensing procedure is subject to a fee. See point 5 of these Instructions.
- The duration of the licensing procedure depends primarily on the conclusiveness and completeness of the information and documentation provided in the application for preliminary review.
- Under article 82, paragraph 2 of the National Administration Act (NAA), the applicant has the option of waiving the right to a formal decree when receiving a license for taking up business. This has the advantage that the procedure can be concluded more quickly. In this case, the FMA informs the applicant of its decision on the application by way of a simple written notice without a justification. If the FMA does not approve the application, the applicant in any event receives a formal decree with a justification. The declaration of waiver of a formal decree may also be revoked within four weeks of receipt of the simple notice. The application materials should indicate whether the right to a formal decree is waived in order to accelerate the licensing procedure.

3. License application

As a rule, the license application and the accompanying materials must be submitted in German. The FMA may grant exceptions.

The license application must contain the following minimum information and evidence (cf. article 13 ISA):

- Application with authorization:

The license application must be submitted in the name of and on behalf of company X (in the course of formation), with an appropriate authorization if the application is not submitted by the company itself. The application must state:

"Application for grant of a license to company X (in the course of formation) for operating non-life/life insurance in insurance classes Y as referred to in Annex 1/2 ISA (in the case of captives: as a captive of the XY group and its subsidiaries and holdings)."

In the case of reinsurance undertakings, a license for all insurance classes must be applied for.

- Application letter, including information on the business plan

The application letter must contain the following information and evidence:

- Background: Information concerning the applicant itself (e.g. organizational structure, areas of activity, ownership structure, business figures, etc.) must be provided and illustrated with appropriate charts.
- Motives and business idea: The introduction should include a discussion of the motives and reasons for the applicant to form an insurance undertaking in Liechtenstein. The applicant must also explain the business model and/or the business idea (information on planned insurance classes and types of risks to be covered, target markets and/or countries of activity, distribution and marketing of products, any risks, etc.).

In the case of captives, the existing insurance solution or risk coverage (actual situation) should be juxtaposed with the envisaged future insurance solution.

- Draft articles of association (see Instructions on articles of association of insurance undertakings at www.fma-li.li).

The undertaking must be established in the legal form of a company limited by shares, a European Company, a cooperative society, or a European Cooperative Society. In the case of companies limited by shares, only registered shares are permissible. A register of shareholders must be kept and, in the case of registered cooperative societies, a list of members.

- Information on the purpose and organization of the undertaking, and evidence that both the registered office and the main administrative office of the undertaking are situated in Liechtenstein.

The provisions on the impermissibility of activities alien to insurance must be complied with (article 13, paragraph 1, subparagraph b ISA; article 20, paragraph 1 ISA; article 6, paragraph 2 ISO).

With respect to the organization of the undertaking, materials must be submitted showing where the main administrative office is situated and which administrative functions are carried out at the registered office of the undertaking in Liechtenstein. It must be apparent who is responsible for which functions and where.

- Organization and geographical area of activity of the undertakings, where applicable also of the insurance group or financial conglomerate that the undertaking belongs to.

- Annual financial statement of the last three business years (in the case of an undertaking already in existence) or the opening balance sheet and, where applicable, the consolidated business report.
- Information on financial resources, especially information concerning the first three business years on financial resources available to cover commitments and the solvency margin. Solvency calculation for the first three business years. Evidence of the minimum amount for the guarantee fund (article 13, paragraph 1, subparagraph e ISA and article 15, paragraph 2, subparagraph b ISA in conjunction with article 17 ISO). The information on the solvency of the undertaking must in particular take into account the requirements and conditions set out in articles 12 to 28 ISO (article 13, paragraph 1, subparagraph c ISA and article 6, paragraph 3 ISO).

Minimum capital (article 14 ISA):

In the case of life insurance undertakings, the FMA requires fully paid-up minimum share capital in the amount of CHF 5 million (minimum guarantee fund: CHF 4.8 million, pursuant to article 27, paragraph 2 ISO).

In the case of non-life insurance, the minimum share capital is determined in accordance with the insurance classes in which the insurance undertaking intends to operate. However, the minimum share capital must be at least as high as the minimum guarantee fund (CHF 3.2 million, and CHF 4.8 million for classes 10 to 15 as referred to in Annex 1 of the ISA, in accordance with article 17, paragraph 2 ISO).

In the case of reinsurance undertakings, the minimum share capital must be CHF 5 to 10 million. A reinsurance captive must have fully paid-up minimum capital of CHF 1 million (corresponds to minimum guarantee fund).

- Information on the identity and the holdings of the direct and indirect shareholders, members of the cooperative society, or members of the company who, as natural or legal persons, have qualifying holdings in the undertaking or are otherwise beneficial owners thereof (article 13, paragraph 1, subparagraph f ISA); holdings of 10% or more are considered qualifying holdings (article 11, paragraph 9 ISA).

Materials to be submitted for natural persons:

- signed, current curriculum vitae, original;
minimum content: personal data, especially citizenship, residence, and date of birth; general and professional basic and continuing education and training; enumeration and short description of professional experience; any mandates;
- current extract from the criminal register, original;
- current extract from the collections and executions register, original;

- statement concerning pending criminal, administrative criminal, bankruptcy, estate, or execution proceedings (the form is available for download at www.fma-li.li);
- copy of passport or other identification papers;
- information on financial power and on origin/generation of the assets to be contributed;
- proof of funds with respect to envisaged equity capital (paid-up share or cooperative capital and organization fund).

Where a current extract is required, the extract may not be more than three months old.

Materials to be submitted for legal persons:

- current extract from the commercial register;
 - documentation of formation (depending on the jurisdiction of the company's registered office)
 - current business report (if possible, of the past three business years);
 - proof of funds with respect to the envisaged equity capital (paid-up share or cooperative capital and organization fund).
- Designation by name of the persons entrusted with overall supervision (board of directors, board of supervision) and general management of the undertakings as well as all other governing bodies, including the persons responsible for supervision and inspection, with short description of professional experience with respect to evidence of professional qualification and personal integrity for purposes of managing an insurance undertaking (article 13, paragraph 1, subparagraph g ISA).

The prerequisites set out in article 7 ISO (sufficient theoretical and practical knowledge of insurance matters as well as management experience of three years in an insurance undertaking of comparable size and type of business) must, in accordance with FMA practice, be met as a whole by both the board of directors and the general management.

At least one member of the board of directors and one member of the general management must be a Liechtenstein citizen, a citizen of a Contracting Party to the EEA Agreement, or a citizen of Switzerland, or must be deemed equivalent to such persons pursuant to international agreements. With respect to the member of the general management, the FMA may grant exceptions in special cases. These persons must have sufficient authorization to represent the insurance undertaking before administrative authorities or courts.

In light of their place of residence, the members of the board of directors and of the general management must be able to fulfill their function and duties effectively and without reproach.

Materials to be submitted:

- signed, current curricula vitae, original;
minimum content: personal data, especially citizenship, residence, and date of birth; general and professional basic and continuing education and training; enumeration and short description of professional experience; any mandates;
- current extract from the criminal register, original;
- current extract from the collections and executions register, original;
- statement concerning pending criminal, administrative criminal, bankruptcy, estate, or execution proceedings (the form is available for download at www.fma-li.li);
- copy of passport or other identification papers;
- signed declaration of acceptance, copy.

Where a current extract is required, the extract may not be more than three months old.

- Designation by name of the responsible actuary of an insurance undertaking, including information on the responsible actuary that is necessary to evaluate reliability and professional suitability (article 13, paragraph 1, subparagraph h ISA).

Professional suitability requires knowledge of actuarial mathematics and professional experience; professional experience is regularly assumed if at least three years of activity as an actuarial mathematician can be demonstrated (article 8 ISO).

Materials to be submitted:

- signed, current curriculum vitae, original;
minimum content: personal data, especially citizenship, residence, and date of birth; general and professional basic and continuing education and training; enumeration and short description of professional experience; any mandates;
- current extract from the criminal register, original;
- current extract from the collections and executions register, original;
- statement concerning pending criminal, administrative criminal, bankruptcy, estate, or execution proceedings (the form is available for download at www.fma-li.li);

- copy of passport or other identification papers;
- copies of diplomas and educational records;
- evidence of membership in actuarial association.

Where a current extract is required, the extract may not be more than three months old.

Outsourcing (see below) is also permissible with respect to actuarial functions.

- Designation by name of the external auditing office, the persons responsible for the mandate, and – where the undertaking belongs to an insurance group or financial conglomerate – the organization of the mandate of the external audit office of the insurance group or financial conglomerate. A declaration of acceptance by the audit company recognized under insurance supervision law must be submitted.

The list of audit offices recognized under insurance supervision law is available at www.fma-li.li.

- Contracts or other agreements transferring business activities or essential elements thereof to third parties (outsourcing). The main administration of the insurance undertaking, including accounting, must remain in the Principality of Liechtenstein. See also the Instructions on outsourcing at www.fma-li.li (article 13, paragraph 1, subparagraph j ISA). Outsourcing contracts must contain the minimum content set out in the Instructions..

Outsourcing of functions is only permissible if the following conditions are met:

- the provisions concerning bookkeeping, secrecy, and data protection are complied with;
- the books are kept in Liechtenstein; and
- audits as well as the right to information and the audit powers of the FMA are in no way hampered or curtailed.

Materials to be submitted:

- all outsourcing contracts;
 - any agreements intended to transfer essential elements of business management.
- For life insurance undertakings: Information on the organization and the internal control and monitoring measures with respect to fulfillment of due diligence obligations under the DDA. If due diligence obligations are delegated, the draft agreement (delegation contract) pursuant to article 4, paragraph 4 DDO must be submitted. Persons and expert bodies responsible for internal functions in accordance with article 22 DDA must also be designated.

- Planned insurance classes and types of risks to be covered by the insurance undertaking (see Annexes 1 and 2 of the ISA as well as article 11 and Annex 1 of the ISO).
- Envisaged reinsurance and, in the case of reinsurance undertakings, the type of reinsurance contracts that the undertaking intends to conclude with ceding companies, as well as basic features of the retrocession (retrocession plan).

Materials to be submitted: reinsurance contract and reinsurance concept, or retrocession plan for reinsurance undertakings. The reinsurance concept or retrocession plan must be illustrated with charts. In particular, the maximum exposures to be assumed by the undertaking must be presented.

- Information concerning risk management (envisaged organization and procedure for capturing, limiting, and monitoring risks) as well as concerning the internal control mechanisms.

Through risk management and an internal control procedure appropriate to their business activities, insurance undertakings must ensure that risks are recognized in a timely matter and that measures to alleviate or eliminate them are taken.

- Estimated balance sheets and estimated income statements for the first three business years, especially estimates with respect to commission expenses, anticipated premium or contribution income, anticipated expenditures for insurance claims, and anticipated liquidity situation (with information on the accounting standard to be used and the first statement of accounts).
- Anticipated costs for establishing the insurance undertaking.

Anticipated costs for establishing the administration and the network of representatives and the requisite available resources (organization fund) in accordance with article 13, paragraph 2, subparagraph d and article 17 ISA (see also the provisions under article 18 ISO with respect to non-life insurance and article 28 ISO with respect to life insurance); the FMA determines the amount of the organization fund on a case-by-case basis (article 17, paragraph 3 ISA).

Upon taking up business activities, the organization fund as a rule amounts to 20% to 50% of the required minimum capital. For captives, the amount of the organization fund is determined on a case-by-case basis.

- Information on resources available to the undertaking for the performance of emergency assistance, if an application for the insurance class of assistance to tourists is being submitted (article 13, paragraph 1, subparagraph i ISA).
- Evidence of accession to the National Bureau of Insurance and the National Guarantee Fund, and notification of the name and address of the claims

representative named in accordance with article 75b of the Road Traffic Act in each of the other States of the European Economic Area, if an insurance undertaking intends to provide insurance in the class of motor vehicle liability (article 13, paragraph 1, subparagraph k ISA). Identical provisions apply with respect to Switzerland (see Annex of the Agreement between the Principality of Liechtenstein and the Swiss Confederation on Direct Insurance).

- Evidence that the minimum capital and the organization fund have been paid in, and evidence of their composition (if already available at this stage).
- Declaration of waiver of issuance of a formal decree if the license application is approved.

4. Issuance of the license

- Once all required information and documents have been received and found to be in order by the FMA, the FMA issues the license for taking up business activities, under the condition that the insurance undertaking is formed and entered in the Public Registry and that evidence is provided that the share or cooperative capital and the organization fund have been paid in.
- After the formation of the insurance undertaking and its entry in the Public Registry, the following documents must be submitted to the FMA:
 - Extract from the Public Registry, notarized;
 - Minutes of the founding meeting, notarized;
 - Articles of association, notarized;
 - Confirmation of payment of the share of cooperative capital and the organization fund.
- According to article 55, paragraph 1, subparagraph (d) ISA, the supervisory authority may revoke the business license if the insurance undertaking does not make use of it within 12 months.

5. Costs

- Licensing fee:

The fee for obtaining a license is CHF 30,000 to CHF 50,000 (article 14, paragraph 1, subparagraph (a) of the FMA Ordinance).

The actual decision fee is generally a one-time amount of CHF 30,000 for non-life, life, and reinsurance undertakings. In the case of captives, a reduced decision fee in the amount of CHF 20,000 is generally charged.

According to article 2, paragraph 1 of the FMA Fee Ordinance, the amount of the decision fee must be paid free of expense and independently of whether the decree is appealed. The FMA invoice specifies the due date.

- Taxes:

General information on issuing commission, the ordinary tax on capital and earnings, the taxation of technical provisions, and the stamp duty (insurance tax) can be obtained from the Liechtenstein Fiscal Authority (www.stv.llv.li).

- Fee for entry in the Public Registry:

The fees for entry in the Public Registry and for public certification are governed by the Ordinance on Land and Public Registry Fees (see www.gboera.llv.li).

6. The most important legal foundations

- Law of 6 December 1995 on the Supervision of Insurance Undertakings (Insurance Supervision Act, ISA; LGBl. 1996 No. 23, as amended);
- Ordinance of 17 December 1996 on the Law on Supervision of Insurance Undertakings (Insurance Supervision Ordinance, ISO, LGBl. 1997 No. 41, as amended);
- Ordinance of 21 December 2004 on the Levy of Supervision Taxes and Fees (FMA Fee Ordinance, LGBl. 2004 No. 288, as amended);
- Law of 20 January 1926 on Persons and Companies (PGR, LGBl. 1926 No. 4, as amended);
- Law of 26 November 2004 on Professional Due Diligence in Financial Transactions (Due Diligence Act, DDA; LGBl. 2005 No. 5, as amended);
- Ordinance of 11 January 2005 on the Due Diligence Act (Due Diligence Ordinance; DDO; LGBl. 2005 No. 6, as amended).

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