

## Liechtenstein Law Gazette

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### Agreement between the Principality of Liechtenstein and the Swiss Confederation concerning Direct Insurance

Concluded in Berne on 19 December 1996  
Approval by Liechtenstein Parliament: 18 December 1997  
Entry into force: 9 July 1998

His Serene Highness the Reigning Prince of Liechtenstein  
and  
the Swiss Federal Council,

mindful of the close and friendly neighborly relations between Liechtenstein and Switzerland,

desirous to strengthen the existing economic relations between the two contracting parties in the area of insurance and to promote the harmonious development of these relations while protecting fair conditions of competition and safeguarding the protection of the insured parties;

in view of the fact that Liechtenstein has participated in the Agreement on the European Economic Area (EEA) since 1 May 1995 and has put its Insurance Supervision Act (ISA) into force on 1 January 1996,

in view of the existing equivalence of supervision law with respect to direct insurance in Liechtenstein and Switzerland, taking into account the provisions of this Agreement,

determined to remove the obstacles to initiating and conducting direct insurance business on the territories of Liechtenstein and Switzerland on the basis of reciprocity and non-discrimination, and thereby to create freedom of establishment and freedom of services between the two States and limited to the territories of both,

have agreed, in pursuing these objectives, to conclude the following Agreement, and for this purpose have authorized as their Plenipotentiaries:

His Serene Highness the Reigning Prince of Liechtenstein:

*Minister Dr. Michael Ritter*

The Swiss Federal Council:

*Federal President Jean-Pascal Delamuraz*

who, upon presenting their credentials found to be in good order, have agreed upon the following:

## **A. Basic provisions**

### Article 1

#### *Objective of the Agreement*

On the basis of reciprocity, the Agreement aims to govern the conditions that are necessary and sufficient to enable insurance undertakings whose head office is in the territory of a Contracting Party to benefit from the freedom of establishment and services with respect to direct insurance in the territory of the other Contracting Party.

### Article 2

#### *Material scope of application*

This Agreement shall apply to insurance undertakings engaging in direct insurance whose head office is in the territory of the Contracting Parties and that are subject to supervision of private insurance undertakings (insurance supervision) in accordance with their respective domestic law.

## Article 3

*Territorial scope of application*

This Agreement shall apply to the territory of Liechtenstein and Switzerland.

**B. Licensing and operating conditions**

## Article 4

*Determination of equivalence*

1) The Contracting Parties hereby declare in agreement that their legal systems contain equivalent rules with respect to the following aspects of insurance supervision law, taking into account the provisions of this Agreement:

- a) the protection of insured parties;
- b) the licensing and business operations of direct insurance undertakings;
- c) the monitoring of business activities of private insurance undertakings by the insurance supervision authority;
- d) the legally provided measures in the case of insolvency, violations of legal norms and administrative orders, and any other irregularities in the business activities of private insurance undertakings.

2) This determination applies as of the time of signature of this Agreement. It shall be reviewed in accordance with the procedure set out in article 11 upon any change to domestic law.

## Article 5

*Principle of the head-office State*

1) Insurance undertakings whose head office is situated in the territory of a Contracting Party may engage in insurance business in the territory of the other Contracting Party by means of an establishment or cross-border provision of services.

2) The conditions necessary for supplementing domestic law are specified in the Annex.

## Article 6

*Application of domestic law*

The domestic law of the Contracting Parties shall be applied to situations not falling within the scope of this Agreement and to questions related to situations falling within the scope of this Agreement, unless they are governed by this Agreement.

**C. Enforcement of the Agreement**

## Article 7

*Cooperation between the supervisory authorities*

- 1) The insurance supervision authorities of the Contracting parties shall work together in enforcing insurance supervision by way of direct contacts.
- 2) They shall transmit to each other all documents and information that are useful for purposes of supervision, and they shall commit to using the exchanged information solely for purposes of fulfillment of their supervisory duties.
- 3) The supervisory authorities shall not be required to transmit information that would lay open the business secrecy of the affected insurance undertaking or the transmission of which would contravene public order.

## Article 8

*Joint Commission*

- 1) A Joint Commission shall be appointed consisting of representatives of the Contracting Parties that shall be mandated to enforce the Agreement and take the decisions in cases envisaged by the Agreement. The Commission shall act by consensus.
- 2) For purposes of smooth enforcement of the Agreement, the Contracting Parties shall exchange information and shall, upon request of a Contracting Party, conduct consultations in the Joint Commission.
- 3) The Joint Commission shall adopt its own rules of procedure.

4) The Joint Commission shall be chaired alternately by each Contracting Party in accordance with the rules of procedure. The chairperson shall convene the Joint Commission on request of a Contracting Party and in accordance with its rules of procedure as often as necessary.

5) The Joint Commission may appoint working groups that support it in the fulfillment of its duties.

## Article 9

### *Dispute resolution*

1) If a dispute should arise between the Contracting Parties concerning interpretation or enforcement of this Agreement, and if this dispute cannot be resolved either through the cooperation between the supervisory authorities envisaged in article 7 or through the Joint Commission according to article 8, then the Contracting Parties shall consult through diplomatic channels.

2) If the dispute cannot be resolved through these channels, then, upon application of one or the other Contracting Party, it shall be brought before an arbitration panel consisting of one to three members. This arbitration panel may be invoked at the earliest six months after first consideration by the Joint Commission referred to in article 8, unless the Contracting Parties jointly agree to bring their dispute before the aforementioned arbitration panel prior to expiry of this period. Each Contracting Parties shall appoint an arbiter. The two appointed arbiters shall elect a chairperson who may neither be a citizen of Liechtenstein nor Switzerland.

3) If one of the Contracting Parties does not appoint an arbiter and if it does not respond to a demand by the other Party to make this appointment within two months, then the arbiter shall be appointed by the President of the International Court of Justice upon application of the latter Party.

4) If the two arbiters are unable to agree on the election of a chairperson within two months of their appointment, then the chairperson shall be appointed by the President of the International Court of Justice upon application of one of the Parties.

5) If the President of the International Court of Justice is unavailable in the cases envisaged in paragraphs 3 and 4, or if he is a citizen of Liechtenstein or Switzerland, then the appointments shall be made by the Vice-President. If the Vice-President is unavailable, or if he is a citizen of Liechtenstein or Switzerland, then the appointments shall be made by the oldest member of the Court who is not a citizen of Switzerland or Liechtenstein.

6) Unless the Contracting Parties agree otherwise, then the arbitration panel shall adopt its own rules of procedure. It shall take its decisions by a majority vote.

7) These decisions by the arbitration panel shall be binding on the Contracting Parties.

## **D. Final clauses**

### Article 10

#### *Relations with third States*

This Agreement shall have no effect on the relationship between insurance undertakings whose head office is in the territory of the Contracting Parties and the countries of the European Union or the European Economic Area and other States and vice-versa.

### Article 11

#### *Development of the domestic legal system*

1) This Agreement shall not affect the right of the Contracting Parties, taking into account the principle of non-discrimination and after informing the other Contracting Party, to change their domestic legal provisions in the areas falling within the scope of this Agreement.

2) Each Contracting Party shall inform the other Contracting Party by way of the Joint Commission as soon as possible, but at the latest two months prior to entry into force, of intended changes to the domestic legal provisions in the areas falling within the scope of this Agreement.

3) The Joint Commission shall examine the effects of such changes on the smooth functioning of this Agreement. The Joint Commission shall recommend any amendments to the Agreement and shall, where necessary, decide on amendments to the Annex of this Agreement. The decisions must be confirmed through the exchange of diplomatic notes.

## Article 12

*Revision of the Agreement*

If a Contracting Party wishes to revise this Agreement, then it shall transmit an application to the other Contracting Party to open negotiations in this regard. This application shall be transmitted through diplomatic channels.

## Article 13

*Cancellation of the Agreement*

Each Contracting Party may cancel the Agreement at any time through notification to the other Contracting Party. This Agreement shall become inoperative twelve months after the date of notification.

## Article 14

*Annex*

The Annex to this Agreement shall be considered part of the Agreement.

## Article 15

*Entry into force*

1) This Agreement shall be subject to ratification. The instruments of ratification shall be exchanged in Berne.

2) This Agreement shall enter into force on the day the instruments of ratification are exchanged.

In witness whereof, the Plenipotentiaries have affixed their signatures to this Agreement.

Done at Berne, in duplicate in the German language, on 19 December 1996.

For the  
Principality of Liechtenstein:  
signed *Dr. Michael Ritter*  
Minister

For the  
Swiss Confederation:  
signed *Jean-Pascal Delamuraz*  
Federal President

## **Supervision according to the principle of the head-office State**

### **I. General provisions**

#### Article 1

##### *License*

The licenses granted by one Contracting party for insurance activities shall apply to the territory of both Contracting Parties, provided that the following conditions are fulfilled.

#### Article 2

##### *Definitions*

1) For purposes of this Agreement, "head-office State" shall mean the Contracting Party in whose territory an insurance undertaking maintains its head office.

2) For purposes of this Agreement, "State of business" shall mean the Contracting Party in whose territory an insurance undertaking operates through cross-border provision of services or an establishment, without maintaining its head office in this State.

3) For purposes of this Agreement, "establishment" shall mean an agency, a branch, or an office managed by the insurance undertaking's own employees or as a permanent agency by an independent person mandated by the insurance undertaking.

4) For purposes of this Agreement, it shall be deemed cross-border provision of services when an insurance undertaking covers risks from its head-office State that are situated in the territory of the other Contracting Party and the undertaking does not make use of an establishment located in that territory.

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<sup>1</sup> Annex amended by LGBl. 2002 No. 12 and LGBl. 2004 No. 60.

5) For purposes of the Agreement, insurance undertakings whose head office is situated in Liechtenstein shall be deemed Liechtenstein insurance undertakings.

6) For purposes of the Agreement, insurance undertakings whose head office is situated in Switzerland shall be deemed Swiss insurance undertakings.

### Article 3

#### *Competence of supervisory authorities*

1) Financial supervision of an insurance undertaking, including the activities that it engages in through establishments and cross-border provision of services, shall be subject to the sole competence of the supervisory authority of the head-office State.

2) With respect to the entire business activities of the insurance undertaking, financial supervision shall encompass in particular the review of its solvency and the review of its formation of actuarial reserves and the assets for covering it.

3) Money-laundering supervision shall be conducted in accordance with Section IV.

### Article 4

#### *On-site inspections*

1) If an insurance undertaking engages in business through an establishment, then the supervisory authority of the head-office State – after prior communication to the supervisory authority of the State of business – may conduct on-site inspections itself or through a mandatary, provided that such inspections are necessary for the exercise of its financial supervision of the undertakings subject to it.

2) The supervisory authority of the State of business may participate in these inspections.

## Article 5

*Technical provisions*

Each insurance undertaking must form sufficient technical provisions for its business activities in the territories of the Contracting Parties and must cover these with assets.

## Article 6

*Protection measures*

The protection measures provided in the supervision law of a Contracting Party shall also apply when insured persons of the other Contracting Party are affected.

## Article 7

*Transfer of portfolios*

1) If an insurance undertaking transfers in whole or in part a portfolio of insurance contracts that it has concluded through an establishment or cross-border provision of services in the State of business to an insurance undertaking in the State of business, then the approval of only the supervisory authority of the head-office State shall be required.

2) Approval shall be granted if a certification by the supervisory authority of the State of business proves that the transferring insurance undertaking possesses own funds in the amount of the solvency margin after the transfer and if the interests of the insured persons are safeguarded.

## Article 8

*Violation of the legal provisions of the State of business*

1) If an insurance undertaking fails to comply with the legal provisions of the State of business, then, upon request by the supervisory authority of the State of business, the supervisory authority of the head-office State shall call upon the insurance undertaking with all appropriate measures to cease the irregularities.

2) If the violations continue, then the supervisory authority of the State of business may, after informing the supervisory authority of the head-office

State, prohibit the insurance undertaking from engaging in further business activities in the State of business and order all necessary measures.

#### Article 9

##### *Reporting*

Every insurance undertaking must report to the supervisory authority of the head-office State on the business conducted in the State of business by class of insurance. The business conducted through cross-border provision of services must moreover be accounted for separately from the business conducted through establishments. The supervisory authority of the head-office State shall communicate this information to the supervisory authority of the State of business each year by the end of September at the latest.

## **II. Business activities of Swiss insurance undertakings in Liechtenstein**

### **A. Principle**

#### Article 10

Swiss insurance undertakings may engage in insurance business in Liechtenstein through an establishment or cross-border provision of services in accordance with the following provisions without an additional license. They shall be subject to the same provisions in Liechtenstein as insurance undertakings whose head office is situated in an EEA State.

### **B. Establishment**

#### Article 11

##### *Preconditions for business activities in Liechtenstein*

1) The insurance undertaking must notify the Swiss supervisory authority of its intention to form an establishment in Liechtenstein.

- 2) This notification must contain:
- a) information on which classes of insurance are to be offered and which risks are to be covered, with designation of the insurance coverage;
  - b) estimates for the first three business years with respect to commission expenses and other administrative costs, premium income, expenditures for insurance claims, and the liquidity situation;
  - c) information for the first three business years concerning the financial resources available to cover obligations and the solvency margin;
  - d) anticipated costs for the development of the administration and the insurance agent network, as well as the resources available for these purposes (organization fund);
  - e) information on the organizational structure of the establishment;
  - f) names of the general agent. The general agent must have been delegated sufficient powers, demonstrate personal integrity, and be able to manage the establishment in fact and with expertise;
  - g) name and address of the establishment;
  - h) submission of a declaration according to which the undertaking has obtained membership in the National Bureau of Insurance and the National Guarantee Fund in Liechtenstein, if it intends to offer motor vehicle liability insurance.

## Article 12

### *Procedure*

1) Within three months of receipt of the information referred to in article 11, the Swiss supervisory authority shall review the lawfulness of the intended formation, the appropriateness of the administrative structures, the financial situation of the undertaking, and fulfillment of the preconditions concerning the general agent and the general management responsible for the establishment.

2) If there is no cause for concern, the Swiss supervisory authority shall forward the same information and confirmations to the Liechtenstein supervisory authority as the supervisory authorities of EEA States and under the same conditions.

## Article 13

*Changes to information*

The insurance undertaking must notify the Swiss supervisory authority of changes to the information provided in accordance with article 11 at the latest one month prior to their implementation. The Swiss supervisory authority shall communicate this to the Liechtenstein supervisory authority without delay.

**C. Cross-border provision of services**

## Article 14

*Preconditions and procedure*

1) If an insurance undertaking intends to engage in cross-border provision of services, then it must notify this to the Swiss supervisory authority. At the same time, it must communicate which classes of insurance it intends to offer in Liechtenstein and which risks it intends to cover.

2) Within one month of receipt of the required information, the Swiss supervisory authority shall review the lawfulness of the intended cross-border provision of services.

3) If there is no cause for concern, the Swiss supervisory authority shall forward the same information and confirmations to the Liechtenstein supervisory authority as the supervisory authorities of EEA States and under the same conditions.

## Article 15

*Changes to information*

The insurance undertaking must notify the Swiss supervisory authority of changes to the information provided in accordance with article 14 at the latest one month prior to their implementation. The Swiss supervisory authority shall communicate this to the Liechtenstein supervisory authority without delay.

### **III. Business activities of Liechtenstein insurance undertakings in Switzerland**

#### **A. General provisions**

##### Article 16

###### *Principle*

Liechtenstein insurance undertakings may engage in insurance business in Switzerland through an establishment or cross-border provision of services without an additional license, provided that the following conditions are fulfilled.

##### Article 17

###### *Information provided to clients*

Liechtenstein insurance undertakings shall be subject to the same information requirements in Switzerland as in Liechtenstein.

##### Article 18

###### *Withdrawal of license*

An insurance undertaking must notify the Swiss supervisory authority without delay if Liechtenstein has withdrawn its license to engage in business activities.

#### **B. Establishment**

##### Article 19

###### *Preconditions for business activities in Switzerland*

An insurance undertaking may only take up business activities in Switzerland by means of an establishment if the Liechtenstein supervisory authority provides the Swiss supervisory authority with the following information and confirmations:

- a) that the insurance undertaking is licensed to engage in insurance activities in Liechtenstein and has a legal form permissible in Liechtenstein;
- b) that the insurance undertaking is authorized to form an establishment in Switzerland;
- c) presentation of an activity plan in which in particular the planned business activities and the organization of the establishment are indicated;
- d) name and address of the establishment;
- e) name of the general agent. The general agent must have been delegated sufficient powers, demonstrate personal integrity, and be able to manage the establishment in fact and with expertise;
- f) that the insurance undertaking has the necessary own funds to cover the solvency margin;
- g) presentation of a declaration that the insurance undertaking
  - is a member of the National Bureau of Insurance and the National Guarantee Fund in Switzerland,
  - levies the accident prevention contribution from the policyholder pursuant to article 1, paragraph 3 of the Accident Prevention Contribution Act of 25 June 1976 and transfers it to the Swiss Fund for Accident Prevention in Road Traffic,provided that it intends to engage in motor vehicle liability insurance.

#### Article 20

##### *Public interest*

Within two months of receipt of the abovementioned communication, the Swiss supervisory authority shall notify the Liechtenstein supervisory authority and the insurance undertaking of the conditions that apply to the exercise of these activities in Switzerland for purposes of the public interest.

## Article 21

### *Assumption of business activities*

The establishment may assume its business activities in Switzerland as soon as it has been notified of the conditions for engaging in business that arise from the public interest, at the latest upon expiry of the aforementioned period of two months.

## Article 22

### *Changes to information*

The insurance undertaking must notify the Liechtenstein supervisory authority of changes to the information referred to in article 19 at the latest one month prior to their implementation. The Liechtenstein supervisory authority shall communicate this to the Swiss supervisory authority without delay.

## **C. Cross-border provision of services**

## Article 23

### *Preconditions and procedure*

1) If an insurance undertaking intends to conclude insurance policies in Switzerland through cross-border provision of services, then the assumption and exercise of such activities shall only be permissible if the Liechtenstein supervisory authority provides the following information and confirmations to the Swiss supervisory authority:

- a) certification that the insurance undertaking maintains the necessary solvency margin for all of its activities and that it may operate outside Liechtenstein;
- b) certification of the classes of insurance the undertaking may offer;
- c) an enumeration of the type and nature of the risks the undertaking intends to cover in Switzerland.

2) The insurance undertaking may assume business activities in Switzerland from the point in time at which the Swiss supervisory authority is in possession of the documentation specified in paragraph 1.

## Article 24

*Motor vehicle liability insurance*

If an insurance undertaking intends to offer motor vehicle liability insurance, then it must also

- a) appoint a representative located in Switzerland responsible for processing claims;
- b) join the National Bureau of Insurance and the National Guarantee Fund in Switzerland and contribute to the funding of these institutions;
- c) levy the accident prevention contribution from the policyholder pursuant to article 1, paragraph 3 of the Accident Prevention Contribution Act of 25 June 1976 and transfer it to the Swiss Fund for Accident Prevention in Road Traffic.

## Article 25

*Responsibilities of the representative for processing claims*

The representative referred to in article 24 shall be responsible for the following:

- a) collecting all necessary information concerning claims;
- b) representing the insurance undertaking vis-à-vis claimants; in this regard, the representative must be granted the necessary competences, including the power to pay corresponding amounts of money;
- c) representing the insurance undertaking, including the right of substitution, before Swiss courts and authorities with respect to the claims of claimants;
- d) representing the insurance undertaking, including the right of substitution, before Swiss courts and authorities with respect to the existence and validity of an insurance policy for motor vehicle liability.

## Article 26

*Changes to information*

The insurance undertaking must notify the Liechtenstein supervisory authority of changes to the information referred to in articles 23 and 24 at the latest one month prior to their implementation. The Liechtenstein supervisory authority shall communicate this to the Swiss supervisory authority without delay.

**IV. Money-laundering supervision**

## Article 27

*Competence of supervisory authorities*

1) Supervision of measures for the suppression of money laundering shall be the responsibility of the supervisory authority of the State of business in the case of establishment transactions and the responsibility of the supervisory authority of the head-office State in the case of cross-border service transactions.

2) Insurance contracts concluded through an establishment in the State of business shall be deemed establishment transactions; those concluded from the head-office State shall be considered cross-border service transactions.

## Article 28

*Applicable law*

1) With respect to measures for the suppression of money laundering, establishment transactions shall be subject to the legislation of the State of business, while cross-border service transactions shall be subject to the legislation of the head-office State; this provision shall be subject to paragraph 2.

2) The amounts specified in article 4, paragraph 2(b) of the Liechtenstein Law of 22 May 1996 on Professional Due Diligence in Financial Transactions shall also apply to cross-border service transactions of Swiss insurance undertakings.