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Law
of 6 December 1995
on the Supervision of
Insurance Undertakings
(Insurance Supervision Act; ISA)

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

I. Object, scope and terminology

Article 1

Object

This Act circumscribes the organization and content of insurance supervision and in particular aims to protect insured persons and confidence in the Liechtenstein insurance and financial system.

Article 2

Scope; principle

1) Undertakings that provide direct insurance or reinsurance in the Principality of Liechtenstein or from the Principality of Liechtenstein (insurance undertakings) shall be subject to insurance supervision in accordance with this Act.¹

¹ Article 2, paragraph 1 amended by Liechtenstein Law Gazette LGBl. 2002 No. 157.

2) The supervisory authority shall have the authority to exempt individual undertakings from supervision in whole or in part, as long as no need for supervision exists in the individual case and the interests of the insured persons are not endangered by this exemption.

3) This Act shall be subject to special rules provided for in international treaties.

Article 3

Non-life insurance

1) Liability insurance and insurance against damage to property and assets shall be divided into separate classes; a list of these classes is contained in Annex 1.

2) The applicable special enactments shall apply to compulsory building insurance.

3) This Act shall be subject to special laws and ordinances applicable to compulsory motor vehicle liability insurance.

Article 4

Life insurance

1) Life insurance shall in particular encompass insurance on survival, insurance on death, mixed insurance policies, and insurance policies supplementary to life insurance.

2) An ordinance shall govern the delineation between life insurance and in particular the business activities that may not be provided in the form of life insurance.

3) The division of classes of insurance is included in Annex 2.

Article 5

Reinsurance

Insurance undertakings whose head office is situated in a foreign country and that only provide reinsurance in the Principality of Liechtenstein shall be exempt from supervision.

Article 6

Self-insurance (captive)

- 1) Self-insurance may be provided as direct insurance or reinsurance.
- 2) Insurance undertakings may simultaneously provide self-insurance and the insurance of third parties.
- 3) In individual cases, self-insurance may be exempted from supervision in accordance with article 2, paragraph 2.

Article 7¹*Insurance undertakings belonging to an insurance group*

- 1) An insurance undertaking shall be subject to supplementary supervision if:
 - a) it maintains a holding in another undertaking, irrespective of the latter's head-office State, that provides direct insurance or reinsurance, or if it directly or indirectly holds at least 20% of the capital or voting rights, or if it has such an undertaking as a subsidiary or exercises a controlling influence over such an undertaking; or
 - b) it is the subsidiary of another undertaking, or another undertaking exercises a controlling influence over it.
- 2) Supplementary supervision shall extend to intra-group business and the own funds of the group, the latter in the case of paragraph 1(b) only if the other undertaking is an insurance holding company, a reinsurance undertaking, or a third-country insurance undertaking. The Government shall regulate the details of supplementary supervision by ordinance.
- 3) The placement of the other undertakings listed in paragraph 1 under supplementary supervision does not entail the placement of such undertakings within the scope of this Act.

¹ Article 7 amended by LGBl. 2002 No. 157.

Article 8

Health insurance

1) With respect to health insurance, the legislation on health insurance shall be observed, the provisions of which necessarily apply to all health insurance contracts.

2) This article shall be subject to the provisions of this Act on the assumption and conduct of business activities by insurance undertakings.

Article 9

Accident insurance

1) Insurance undertakings intending to provide accident insurance (against industrial injuries, non-industrial injuries, occupational diseases) shall also be subject to the legislation on compulsory accident insurance.

2) To the extent that the legislation on compulsory accident insurance contains provisions that deviate from this Act and do not merely apply to voluntary accident insurance, such provisions shall take precedence.

Article 10

Occupational pension provision

1) Occupational old age, disability, and survivors' insurance shall not fall within the scope of this Act; the relevant special legislation shall apply to such insurance.

2) This Act likewise shall not cover the administration of international provision schemes.

Article 11

Terminology

1) "Establishment" shall mean the head office, an agency, or a branch of the insurance undertaking. An office shall be deemed equivalent to an agency or branch that:

- a) is managed by the insurance undertaking's own employees, or.
 - b) is managed as a permanent agency by an independent person mandated by the insurance undertaking.
- 2) "Contracting Party to the EEA Agreement" shall mean a State for which the Agreement on the European Economic Area has entered into force.
- 3) The following shall be deemed the State in which the risk is situated:
- a) in the case of insurance either of buildings or of buildings and the property located in the buildings, as long as such property is covered by the same insurance contract, the State in which the objects are situated;
 - b) in the case of insurance of vehicles of all types, the State in which the vehicle is licensed (licensing State)
 - c) in the case of a contract with a term of at most four months for insurance against travel and vacation risks, the State in which the policyholder concluded the contract (irrespective of the applicable class of insurance);
 - d) in all other cases, the State in which the policyholder usually lives or, if the policyholder is a legal person, the State in which the establishment of this legal person is located to which the contract refers.
- 4) "State of the establishment" shall mean the State in which the insurance undertaking is established that covers the risk.
- 5) "State of the provision of services" shall mean the State in which the risk is situated that is covered by an insurance undertaking established in another State.
- 6) "State of the commitment" shall mean the State in which the policyholder usually lives or, if the policyholder is a legal person, the State in which the establishment of this legal person is located to which the contract refers.
- 7) "Home State" shall mean the State in which the head office of an insurance undertaking is located that covers a risk.
- 8) "Large risks" shall be considered risks enumerated in Annex 3.
- 9) "Qualifying holding" shall mean the direct or indirect holding of at least 10% of the capital or the voting rights of an undertaking or any other

possibility of exercising significant influence on the management of the undertaking in which the holding subsists.

10) "Close link" shall mean a link between at least two natural or legal persons through a control relationship, through direct holding, or through holding by way of a control relationship of at least 20% of the capital or the voting rights of an undertaking. The link between a superordinate undertaking and a subordinate undertaking or an equivalent relationship between a natural or legal person and an undertaking shall be deemed a control relationship; every subordinate undertaking of a subordinate undertaking shall also be considered a subordinate undertaking of the superordinate undertaking at the top of these undertakings. Parent undertakings and undertakings exercising a controlling influence on another undertaking shall be deemed superordinate undertakings; subsidiaries and undertakings on which a controlling influence is exercised shall be deemed subordinate undertakings. A close link between at least two natural or legal persons shall also be considered to exist if these persons are permanently linked with the same person through a control relationship.¹

11) "Insurance holding companies" shall mean undertakings whose main activity consists in the purchase and maintenance of holdings in subsidiaries or other undertakings on which they exercise a controlling influence, provided that the respective subsidiaries or other undertakings are exclusively or predominately undertakings providing direct insurance or reinsurance, irrespective of their head-office State.²

12) "Third-State insurance undertakings" shall mean undertakings providing direct insurance whose head office is not in a Contracting Party to the EEA Agreement.³

13) "Insurance claims" shall mean all claims to which policyholders, insured persons, beneficiaries, or injured third parties with a direct right of action against the insurer are entitled vis-à-vis an insurance undertaking pursuant to an insurance contract. These shall also include claims for repayment of the premium if a contract has not been formed prior to adjudication in bankruptcy.¹

¹ Article 11, paragraph 10 inserted by LGBl. 2002 No. 157.

² Article 11, paragraph 11 inserted by LGBl. 2002 No. 157

³ Article 11, paragraph 12 inserted by LGBl. 2002 No. 157

¹ Article 11, paragraph 13 inserted by LGBl. 2005 No. 14.

14) "Restoration measures" shall mean all measures involving action by an administrative or judicial authority with the goal of securing or restoring the financial situation of an insurance undertaking and encroaching upon existing rights of involved parties other than the insurance undertaking itself. These shall also include measures that permit the suspension of payments, the suspension of execution measures, or the reduction of claims.²

15) "Liquidation procedure" shall mean an overall procedure by which the assets of an insurance undertaking are realized and the proceeds are distributed in an appropriate manner among creditors, shareholders, or members, for which in any event action by an administrative or judicial authority shall be required. This shall also include procedures that are concluded through a bankruptcy protection contract (articles 88 and 89 of the Bankruptcy Code) or a similar measure.³

II. Assumption and preconditions of business activities

Article 12

Licensing requirement

1) Insurance undertakings subject to supervision shall require a license by the supervisory authority for the assumption of business activity in each of their classes of insurance.⁴

2) Insurance undertakings whose head office is situated in another Contracting Party to the EEA Agreement shall not require a license, provided that they fulfill the special conditions under articles 28 to 30; this paragraph shall be subject to special legislation applicable to individual classes of compulsory insurance.⁵

Article 13

License application

1) Insurance undertakings intending to obtain a license for business activities must submit an application to the supervisory authority together with

² Article 11, paragraph 14 inserted by LGBl. 2005 No. 14.

³ Article 11, paragraph 15 inserted by LGBl. 2005 No. 14.

⁴ Article 12, paragraph 1 amended by LGBl. 2005 No. 188.

⁵ Article 12, paragraph 2 amended by LGBl. 2002 No. 157.

their business plan. The business plan must contain the following information and evidence in particular:

- a) formation of the undertaking in the legal form of a limited company or cooperative society and evidence that both the statutory domicile and the main administration of the undertaking are in the Principality of Liechtenstein;¹
- b) purpose and organization of the undertaking; the purpose of the company must be limited to insurance activities and directly related activities;
- c) necessary solvency information and submission of an activity plan in accordance with paragraph 2;
- d) articles of association;
- e) balance sheet, annual account statement, or at least opening balance, and evidence of minimum amount for the guarantee fund;
- f) information on the identity and holdings of shareholders and members of the cooperative society with qualifying holdings in the insurance undertaking;
- g) evidence of professional qualification and personal integrity of the general management with respect to management of an insurance undertaking;
- h) information necessary to evaluate the reliability and professional suitability of the responsible actuary for life insurance, who is responsible for actuarial matters;
- i) 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;
- j) contracts or other agreements transferring essential elements of the business activities, namely sales, portfolio administration, processing of benefits, accounting, investment, or asset management, in whole or in part to other undertakings (outsourcing of functions); in this event, the main administration of the insurance undertaking, including accounting, must remain in the Principality of Liechtenstein;¹
- k) 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

¹ Article 13, paragraph 1(a) amended by LGBl. 2002 No. 157.

¹ Article 13, paragraph 1(j) amended by LGBl. 2002 No. 157.

undertaking intends to provide insurance in the class of motor vehicle liability;²

l) submission of all other documents and information requested by the supervisory authority for purposes of proper supervision.

2) The activity plan must contain information and supporting materials on the following points:

- a) planned classes of insurance and type of risks the insurance undertaking intends to cover;
- b) envisaged reinsurance and, for reinsurance undertakings, a retrocession plan;
- c) composition of the minimum guarantee fund;
- d) anticipated costs for establishing the administration and the network of representatives and the requisite available resources (organization fund);
- e) estimates for the first three business years with respect to commission expenses and other administrative costs, anticipated premium and contribution income, anticipated expenditures for insurance claims, and the anticipated liquidity situation;
- f) information concerning the first three business years on financial resources available to cover commitments and the solvency margin.

Article 14

Minimum capital

1) An insurance undertaking whose head office is situated in Liechtenstein must in any event have a minimum paid-up capital of 500,000 francs.

2) On a case-by-case basis, the supervisory authority shall determine the necessary minimum capital, which must be fully paid up and which it determines taking into account in particular the classes of insurance to be provided. It may adjust the minimum amount specified in paragraph 1 to monetary fluctuations.

² Article 13, paragraph 1(k) amended by LGBI. 2003 No. 137.

Article 15

Solvency margin and guarantee fund

1) Insurance undertakings must always maintain own funds free of any foreseeable liabilities at least in the amount of the solvency margin. One third of the solvency margin shall be considered the guarantee fund.¹

2) The Government shall determine the allowable own funds and shall issue requirements concerning the amount and calculation of:

- a) the solvency margin, taking into account the entire business;
- b) the guarantee fund, which shall correspond to a specified fraction of the solvency margin and which may not fall below the minimum guarantee fund;²
- c) the minimum guarantee fund, taking into account the capital needs of the respective class of insurance.

Article 16

Technical provisions

1) Insurance undertakings shall be required to form sufficient technical provisions for their entire business.

2) The Government shall issue requirements concerning the type and amount of the provisions and the associated investments.

Article 17

Organization fund

1) In addition to minimum capital, an insurance undertaking must maintain an organization fund to cover the costs of formation and development or an exceptional expansion of business.

2) The Government shall issue supplemental requirements concerning the amount, the creation, the duration, and the reestablishment of the organization fund.

¹ Article 15, paragraph 1 amended by LGBI. 2002 No. 157.

² Article 15, paragraph 2(b) amended by LGBI. 2002 No. 157.

3) On a case-by-case basis, the supervisory authority shall determine the amount of the organization fund; in exceptional cases, it may grant an exemption to the obligation to create an organization fund.

Article 18

Granting of license

1) The license shall be granted if the insurance undertaking fulfills the legal requirements and if the business plan can be approved.

2) The license shall be granted separately for each class of insurance or jointly for several classes of insurance. For insurance undertakings whose head office is situated in the Principality of Liechtenstein, the license shall cover the territory of the Contracting Parties to the EEA Agreement. The license may be granted with conditions.

3) If a close link exists between an insurance undertaking and another natural or legal person, the license shall only be granted if this close link does not interfere with the proper fulfillment of the supervisory authority's responsibilities.¹

Article 19

Denial of license

A license for business activities may be denied if:

- a) the license application is not complete;
- b) available information shows that the reliability and professional competence of members of the general management of the insurance undertaking cannot be guaranteed;²
- c) the business plan or other documentation indicates that the concerns of the insured persons are not sufficiently safeguarded or the insurance commitments cannot be continuously fulfilled; or³
- d) legal or administrative requirements of a third State to which at least one natural or legal person is subject with which the insurance undertaking has a close link, or difficulties in implementing such provisions, would

¹ Article 18, paragraph 3 inserted by LGBl. 2002 No. 157.

² Article 19(b) amended by LGBl. 2002 No. 157.

³ Article 19(c) amended by LGBl. 2002 No. 157.

interfere with the proper fulfillment of the responsibilities of the supervisory authority.¹

Article 20

Activities alien to insurance

1) Insurance undertakings may only engage in activities in addition to insurance that are directly connected to the insurance business. Activities alien to insurance shall be impermissible.

2) Qualifying holdings by insurance undertakings in undertakings alien to insurance must be reported to the supervisory authority. The Government shall regulate the details by ordinance.²

Article 21

Separation of classes

1) Insurance undertakings providing direct life insurance may not provide other classes of insurance, except for supplementary insurance for accidental death, sickness, and disability, and health and disability insurance.

2) An insurance undertaking providing legal expenses insurance along with other classes of insurance must transfer the processing of benefits relating to legal expenses insurance to another undertaking (claims management undertaking). The transfer shall be deemed an outsourcing of functions. The claims management undertaking may not offer other classes of insurance in addition to legal expenses insurance and may not perform other processing of benefits in other classes of insurance.

3) Article 19 shall apply *mutatis mutandis* to the general management of the claims management undertaking referred to in paragraph 2. Its members may not simultaneously work for an insurance undertaking that offers classes of insurance other than legal expenses insurance.

¹ Article 19(d) inserted by LGBI. 2002 No. 157.

² Article 20, paragraph 2 amended by LGBI. 2002 No. 157.

Article 21a¹*Company name*

The terms "insurance", "insurer", and "assurance", alone or in combination with other words, as well as equivalent foreign-language terms may be used in the company name, for designation of the purpose of the business, or for advertising purposes only in the case of undertakings that have received a license for operating direct insurance or reinsurance. Insurance brokers may only use such terms if they are used in conjunction with terms clearly indicating insurance mediation activities.

Article 22

Insurance mediation activities

Mediation for insurance undertakings subject to insurance supervision and not licensed to operate in the Principality of Liechtenstein shall be prohibited.

Article 23

Board of directors and general management

1) At least one member of the board of the directors and of the general management must be residents of the Principality of Liechtenstein and have sufficient powers to represent the insurance undertaking vis-à-vis administrative authorities or courts.

2) In the case of a branch or an agency of a third-State insurance undertaking pursuant to article 31, paragraph 1, it shall be sufficient if the general agent is a resident of Liechtenstein and has the powers required by paragraph 1.²

¹ Article 21a inserted by LGBl. 2002 No. 157.

² Article 23, paragraph 2 amended by LGBl. 2002 No. 157.

III. Foreign activities of domestic insurance undertakings

A. Insurance activities in Contracting Parties to the EEA Agreement¹

Article 24

Assumption of business activities

1) Insurance undertakings whose head office is situated in the Principality of Liechtenstein may offer direct insurance in another Contracting Party to the EEA Agreement by way of an establishment or cross-border provision of services in accordance with the following provisions.

2) The insurance company must notify the supervisory authority of the intended formation of an establishment, indicating the respective Contracting Party to the EEA Agreement.

3) The notice pursuant to paragraph 2 must include:

- a) information on which classes of insurance are to be offered and which risks of a class of insurance 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, anticipated premium and contribution income, anticipated expenditures for insurance claims, and the anticipated liquidity situation;
- c) information for the first three business years concerning the financial resources available to cover commitments 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) name of the general agent to whom sufficient powers have been delegated;
- g) name and address of the establishment;

¹ Title preceding article 24 inserted by LGBI. 2002 No. 157.

- h) submission of a declaration according to which the undertaking has obtained membership in the national insurance bureau and the national guarantee fund of the other State, if it intends to offer the insurance class of motor vehicle liability.

Article 25

Procedure for formation of an establishment

1) Within three months of receipt of the information referred to in article 24, the 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 specified in article 13, paragraph 1(g) concerning the general agent and the general management responsible for the establishment.

2) If there is no cause for concern, the supervisory authority shall forward the following to the supervisory authority of the other State and simultaneously notify the insurance undertaking:

- a) these materials;
- b) certification that the insurance undertaking has own funds in the amount of the solvency margin.

3) The insurance undertaking must notify the supervisory authority of changes to the information provided in accordance with article 24, paragraph 3, at the latest one month before the intended implementation of the changes.

Article 26

Cross-border provision of services by domestic insurance undertakings

1) If an insurance undertaking intends to engage in cross-border provision of services, it must notify the supervisory authority with a designation of the respective Contracting Party to the EEA Agreement. At the same time, it must communicate which classes of insurance it intends to offer abroad and which risks it intends to cover.

2) If the undertaking intends to offer health insurance, it must additionally provide information according to article 28, paragraph 3.

3) Cross-border provision of services shall fall within the scope of this Act if an insurance undertaking whose head office is situated in the Principality of Liechtenstein or another Contracting Party to the EEA

Agreement covers direct insurance risks from its head office or its establishment in a Contracting Party to the EEA Agreement, these risks are situated in another Contracting Party to the EEA Agreement, and the undertaking does not make use of an establishment in that Contracting Party.

Article 27

Procedure for assuming cross-border provision of services

1) Within one month of receipt of the information specified in article 26, the supervisory authority shall review the lawfulness of the intended assumption of cross-border provision of services.

2) If there is no cause for concern, the supervisory authority shall forward the following to the supervisory authority of the other State and simultaneously notify the insurance undertaking:

- a) the requisite materials;
- b) certification that the insurance undertaking maintains the necessary solvency margin for all of its activities and that it may operate in the respective State;
- c) certification of the classes of insurance the undertaking may offer and which risks it may cover.

A. Insurance activities outside Contracting Parties of the EEA Agreement¹

Article 27a²

Business activities in third States

If an insurance undertaking whose head office is situated in the Principality of Liechtenstein intends to assume or expand business activities outside the Contracting Parties to the EEA Agreement, it must demonstrate to the supervisory authority that it has the necessary license to engage in insurance activities in the respective country; it must also identify which classes of insurance it intends to offer. Article 59 shall apply *mutatis mutandis*.

¹ Title preceding article 27a inserted by LGBl. 2002 No. 157.

² Article 27a inserted by LGBl. 2002 No. 157.

IV. Domestic activities of foreign insurance undertakings

A. Insurance undertakings whose head office is situated in a Contracting Party to the EEA Agreement

Article 28

Assumption of business activities

1) Insurance undertakings whose head office is situated in another Contracting Party to the EEA Agreement (home State) may engage in direct insurance business in Liechtenstein through an establishment or cross-border provision of services in accordance with the following provisions.

2) Assumption of business activities by way of an establishment shall only be permissible if the supervisory authority of the home State provides the following information and confirmations to the domestic supervisory authority:

- a) that the insurance undertaking is licensed to engage in insurance business in the home State and that its legal form is permissible in the head-office State;
- b) that the undertaking is authorized to form an establishment in the Principality of Liechtenstein;
- c) submission of an activity plan, in which in particular the planned business activities and the organization of the establishment are specified;
- d) name and address of the establishment;
- e) name of the general agent of the establishment to whom sufficient powers have been delegated; in the case of Lloyd's, demonstration of the authorization of the general agent to be sued and to enter into obligations in this capacity on behalf of the participating individual insurers;
- f) that the insurance undertaking maintains the necessary resources pursuant to article 15;
- g) submission of a declaration that the insurance undertaking has become a member of the National Bureau of Insurance and the National Guarantee Fund, if it intends to engage in the insurance class of motor vehicle liability.¹

¹ Article 28, paragraph 2(g) amended by LGBI. 2003 No. 137.

3) If health insurance or compulsory insurance is to be offered, the supervisory authority must also be furnished with the general and special insurance conditions prior to their use.

Article 29

Procedure

1) If the competent authority of the home State does not raise any objections to the intended establishment of the insurance undertaking, it shall communicate the information required by article 28, paragraph 2 to the supervisory authority within three months of submission of the application by the insurance undertaking. The supervisory authority shall then be allocated an additional two months after receipt of this communication to announce any additional conditions to the competent authority of the home State and the insurance undertaking that must be fulfilled prior to assumption of business activities by the establishment.

2) The branch may assume business activities in Liechtenstein as soon as the deadlines specified by paragraph 1 have expired and the supervisory authority has not imposed any additional conditions.

3) Changes to the information required by article 28, paragraph 2 must be communicated in writing to the supervisory authority and to the competent authority of the home State at least one month prior to their implementation.

Article 30

Cross-border provision of services by foreign insurance undertakings

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

- a) certification that the insurance undertaking maintains the necessary solvency margin for all of its activities and that it may operate outside the head-office State/State of the establishment;

- 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 Liechtenstein.

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

3) If health insurance or compulsory insurance is to be offered, the supervisory authority must also be furnished with the general and special insurance conditions prior to their use.

A. Insurance undertakings whose head office is situated outside the Contracting Parties to the EEA Agreement

Article 31

Licensing requirement

1) Third-State insurance undertakings shall require a license pursuant to articles 12 and 13 for the assumption of insurance activities in Liechtenstein.¹

2) In addition, the special provisions under articles 32 to 34 shall apply to such insurance undertakings, complemented by the remaining provisions of this Act *mutatis mutandis*.

¹ Article 31, paragraph 1 amended by LGBl. 2002 No. 157.

Article 32

Special preconditions

1) A third-State insurance undertaking may only be licensed to engage in insurance activities in Liechtenstein if it fulfills the following additional preconditions:¹

- a) it must be authorized to engage in insurance activities according to the law of its head-office State;²
- b) it must form an agency or branch in the Principality of Liechtenstein and appoint a general agent to manage it, whose appointment shall require approval by the supervisory authority;
- c) it must commit itself to keep separate books on business activities in Liechtenstein at the place of business of the agency or branch, and to keep all relevant business documents available;
- d) it must maintain minimum capital at its head office as specified in article 14 and demonstrate a solvency margin in accordance with article 15, calculated according to the scope of business activities in the Principality of Liechtenstein;
- e) it must maintain an organization fund in the Principality of Liechtenstein pursuant to article 17 and have corresponding assets available;
- f) it must have assets available in the Principality of Liechtenstein in the amount of at least half of the minimum guarantee fund;
- g) it must deposit one quarter of the amount calculated according to subparagraph (f) as a surety.

2) If health insurance or compulsory insurance is to be offered, the supervisory authority must also be furnished with the general and special insurance conditions prior to their use.

¹ Article 32, paragraph 1, introductory sentence amended by LGBl. 2002 No. 157.

² Article 32, paragraph 1(a) amended by LGBl. 2002 No. 157.

Article 33¹*Granting and denial of license*

The license shall be granted if the third-State insurance undertaking fulfills the legal requirements; articles 18 and 19 shall apply *mutatis mutandis*, the license valid only for Liechtenstein.

Article 34

License in several Contracting Parties to the EEA Agreement

1) Third-State insurance undertakings that have applied for or received a license for insurance activities in several Contracting Parties to the EEA Agreement may request that the following advantages be granted; these may only be granted jointly:²

- a) calculation of the solvency margin on the basis of the entire business activity in the territory of the Contracting Parties to the EEA Agreement, taking only the business of the agencies and branches into account that are located in this territory;
- b) deposit of the surety pursuant to article 32, paragraph 1(g) only in one Contracting Party to the EEA Agreement;
- c) location of the assets forming the object of the guarantee fund in any one of the Contracting Parties to the EEA Agreement in which insurance activities are conducted.

2) The request for granting of the advantages specified in paragraph 1 must be submitted to all the competent authorities of Contracting Parties to the EEA Agreement in which a license has been applied for or received. These authorities shall agree on the ultimately responsible authority, once this authority has declared itself willing to monitor solvency for the entire business activity of the agencies and branches located in the Contracting Parties to the EEA Agreement.

3) Upon the request of one or more of the affected States, the advantages granted in accordance with this article shall be simultaneously rescinded by all of these States.

¹ Article 33 amended by LGBl. 2002 No. 157.

² Article 34, paragraph 1, introductory sentence amended by LGBl. 2002 No. 157.

V. Supervision of the business activities of insurance undertakings

A. Ongoing supervision in general

Article 35

Principle

1) The supervisory authority shall supervise the entire business activity of the insurance undertaking.

2) It shall ensure that legislation is complied with, the solvency of insurance undertakings is maintained, necessary provisions are formed, and the concerns of the insured persons are safeguarded sufficiently.

3) It shall also monitor the proper execution of claims adjustment, which is governed by the provisions of the Road Traffic Act concerning motor vehicle liability.¹

Article 36

Compliance with the business plan

1) The supervisory authority shall monitor compliance with the approved business plan.

2) Amended parts of the business plan may only be used by the insurance undertakings once the supervisory authority has agreed to them.

3) The supervisory authority may demand that a business plan be amended prior to the conclusion of new insurance contracts. If it appears necessary in the interest of the insured persons, the supervisory authority may amend or cancel a business plan with effect for existing or not yet concluded insurance relationships.

¹ Article 35, paragraph 3 inserted by LGBl. 2003 No. 137.

Article 37¹*Monitoring of own funds*

1) If the allowable own funds of an insurance undertaking are in danger of falling below the solvency margin or if they are lower than the solvency margin, then, upon request of the supervisory authority, the undertaking must submit a plan for restoring healthy financial circumstances (solvency plan) for approval by the supervisory authority.

2) If the allowable own funds of an insurance undertaking are lower than the solvency margin, then, upon request of the supervisory authority, the undertaking must submit a plan for the short-term procurement of the requisite own funds (finance scheme) for approval by the supervisory authority.

3) If the financial circumstances are in danger of deteriorating further, then the supervisory authority may, without prejudice to its other powers, limit or disallow free disposal of the assets of the undertaking. The same shall apply *mutatis mutandis* if an insurance undertaking does not form sufficient technical provisions or covers its provisions insufficiently or in another way fails to comply with the legal and administrative requirements concerning capital resources and investment. Orders concerning the free disposal of assets of an insurance undertaking may also be issued vis-à-vis third parties.

4) If an insurance undertaking is subject to supplementary supervision pursuant to article 7, then the results of this supervision shall be taken into account in assessing the conditions for application of paragraphs 1 to 3.

Article 38

Supervision of holdings

If an insurance undertaking whose head office is situated in the Principality of Liechtenstein participates in another undertaking that is not subject to insurance supervision, and if the type and scope of the holding could pose a danger to the insurance undertaking, then the supervisory authority may prohibit the insurance undertaking from continuing the holding or may subject the holding to specific conditions.

¹ Article 37 amended by LGBl. 2002 No. 157.

Article 39

*Accounting and reporting*¹

1) Insurance undertakings whose head office is situated in the Principality of Liechtenstein must compile their business report (annual account statement and annual report) and, if applicable, their consolidated business report (consolidated annual account statement and annual report) each year as of the 31 December. In addition, they must annually submit a report on the completed business year, together with the aforementioned materials, to the supervisory authority by 30 April. The business report, the consolidated business report, and the report to the supervisory authority must comply with the requirements and guidelines issued by the supervisory authority.²

2) In addition to the report specified in paragraph 1, the supervisory authority may order the submission of a quarterly report. Paragraph 1, third sentence shall apply *mutatis mutandis* to this report.³

3) For third-State insurance undertakings required to keep separate books pursuant to article 32, paragraph 1(c), paragraphs 1 and 2 shall apply *mutatis mutandis*.⁴

4) In the case of insurance undertakings exclusively offering reinsurance, the submission deadline specified in paragraph 1 may be extended until 30 June upon application.⁵

5) The annual account statement, the consolidated annual account statement, and the audit report must be disclosed by the insurance undertaking. The Government shall regulate the details by ordinance.⁶

Article 40

External audit requirement

1) Insurance undertakings must have their business activity audited each year by an audit office independent of the insurance undertaking and recognized by the supervisory authority. They must provide the audit office with all information necessary for a proper audit.¹

¹ Article 39, title amended by LGBl. 2002 No. 157.

² Article 39, paragraph 1 amended by LGBl. 2004 No. 188.

³ Article 39, paragraph 2 amended by LGBl. 2002 No. 157.

⁴ Article 39, paragraph 3 amended by LGBl. 2002 No. 157.

⁵ Article 39, paragraph 4 amended by LGBl. 2002 No. 157.

⁶ Article 39, paragraph 5 amended by LGBl. 2002 No. 157.

¹ Article 40, paragraph 1 amended by LGBl. 2004 No. 188.

2) In particular, the obligations of the insurance undertaking vis-à-vis the audit office shall include:

- a) keeping materials available that are necessary for determining and assessing assets and liabilities;
- b) granting access to their books, receipts, business correspondence, and the minutes of the board of directors and the general management;
- c) submitting the reports of the internal audit.

3) In the case of third-State insurance undertakings with an agency or branch in the Principality of Liechtenstein, the audit at the place of business of the main establishment shall be recognized if it meets the requirements contained in this Act and if the audit also covers the agency or branch in Liechtenstein. This paragraph shall be subject to article 41, paragraph 2.²

4) The Government shall specify details concerning the recognition of audit offices by ordinance.

Article 41³

Responsibilities of the audit offices

1) The audit offices shall review whether:

- a) the business activities of the insurance undertaking comply with the legal requirements and the articles of association;
- b) the preconditions for licensing, including the actuarial requirements, are fulfilled on a continuous basis;
- c) the business report and the reporting to the supervisory authority comply with the legal requirements;
- d) the consolidated business report complies with these requirements.

2) The audit report shall be submitted simultaneously to the board of directors of the insurance undertaking, the audit office pursuant to the provisions of the Law on Persons and Companies, and the supervisory authority.

3) The audit offices shall be required to notify the supervisory authority immediately of all facts and decisions by the undertaking of which they learn in the course of fulfillment of their responsibilities and which:

² Article 40, paragraph 3 amended by LGBl. 2002 No. 157.

³ Article 41 amended by LGBl. 2002 No. 157.

- a) could constitute a violation of legal or administrative requirements governing the assumption and exercise of business activities by insurance undertakings;
- b) could interfere with the continuation of the business activities of an insurance undertaking; or
- c) could entail rejection of confirmation of proper accounting or could entail reservations in this regard.

At the same time, the board of directors and the audit office pursuant to the provisions of the Law on Persons and Companies shall be informed. The notification requirement shall also apply to persons gaining knowledge of such circumstances when performing audits of undertakings with a close link to the audited insurance undertaking.

4) Whoever submits notifications pursuant to paragraph 3 in good faith shall be released from associated liability.

5) The Government shall regulate further details by ordinance.

Article 42

Information requirement and audit powers

1) The insurance undertakings must provide the supervisory authority with all required information and with access to account books and business documents.

2) At any time, the supervisory authority may review the business conduct and financial situation of an insurance undertaking with respect to whether the business reports, the consolidated business reports, and reports to the supervisory authority correspond to the facts and whether own funds and provisions reach the prescribed amounts and are invested and managed in accordance with regulations.¹

3) Third parties are required to submit information to the supervisory authority to the extent necessary for the supervisory activities of the authority.

¹ Article 42, paragraph 2 amended by LGBl. 2002 No. 157.

Article 43

Notification and submission requirement

1) Insurance undertakings must notify the supervisory authority without delay of changes to the activity plan, the share capital, the general management, the audit office, and with respect to qualifying holdings. This notification must be made prior to any public announcement.

2) Amendments to the articles of association affecting the scope of business, the share capital, or the organization, as well as changes to the audit office shall also require approval by the supervisory authority. Corresponding entries into the Public Registry shall only be permissible after such approval.

3) Upon request, an insurance undertaking must submit its general and special insurance conditions, rates, forms, and other documents used to the supervisory authority.

4) If health insurance or compulsory insurance is offered, the general and special insurance conditions must be submitted to the supervisory authority prior to their use.

5) The supervisory authority may demand that notifications and information concerning business activities in the Principality of Liechtenstein be submitted in German.

Article 44

Insurance secrecy

1) The members of the organs of insurance undertakings and their employees, as well as other persons working on behalf of such companies, shall be required to maintain secrecy with respect to facts that are not publicly known and that have been entrusted to them or made accessible to them on the basis of business connections with clients. The secrecy requirement shall not be limited in time.

2) If, in the course of their official duties, representatives of authorities gain knowledge of facts that are subject to insurance secrecy, then they must maintain insurance secrecy as official secrecy.

3) Insurance secrecy shall be subject to the legal provisions concerning obligations to testify and to provide information vis-à-vis judicial authorities.¹

4) The supervisory authority may grant an exemption to insurance secrecy if a justified interest exists, in particular for purposes of fulfilling legal information requirements or identifying and reviewing insurance risks. In such an event, the supervisory authority shall consult with the Data Protection Commissioner.²

Article 45

Information requirements vis-à-vis policyholders

Prior to conclusion and during the term of insurance contracts, specific information shall be communicated to policyholders for purposes of information and protection. The content and scope of these information requirements are governed by Annex 4.

Article 46³

Supervision taxes and fees

Supervision taxes and fees shall be governed by legislation pertaining to financial market supervision.

Article 47

Measures

1) For purposes of fulfilling its inspection and monitoring responsibilities, the supervisory authority may enact the necessary measures.

2) In particular, the supervisory authority may take measures that are suitable and necessary to prevent or remedy grievances.

3) Unless the concerns of the insured persons can be safeguarded in another manner, the supervisory authority may transfer powers in whole or in part that are vested in the organs of an undertaking by law or by the articles of association to a special mandatary suited to exercise these powers.

¹ Article 44, paragraph 3 amended by LGBl. 2002 No. 157.

² Article 44, paragraph 3 amended by LGBl. 2002 No. 157

³ Article 46 emended by LGBl. 2004 No. 188.

B. Special provisions governing cross-border provision of services

Article 48

Additional preconditions for motor vehicle liability insurance

1) If an insurance undertaking intends to offer motor vehicle liability insurance in the Principality of Liechtenstein by way of cross-border provision of services, it must:

- a) appoint a representative located in Liechtenstein responsible for processing claims;
- b) join the National Bureau of Insurance and the National Guarantee Fund and contribute to the funding of these institutions.¹

2) The Government shall enact the requisite implementing ordinances and shall in particular regulate the status, rights, and obligations of the representative referred to in paragraph 1.

Article 49

Information requirements vis-à-vis policyholders

Specific information shall be communicated to policyholders when engaging in cross-border provision of services; the content and scope of these information requirements are governed by Annex 4.

Article 50

Information requirements vis-à-vis the supervisory authorities

Changes with respect to the cross-border provision of services must be communicated to the competent authorities. In this regard, the procedures specified in articles 27 and 30 shall be observed.

¹ Article 48, paragraph 1(b) amended by LGBI. 2003 No. 137.

VI. Termination of business activities

Article 51

Principle

Supervision shall extend to the liquidation of an undertaking and the processing of existing insurance policies if the business activities of the undertaking are prohibited or voluntarily discontinued or if the license for business operations is revoked.

Article 52

Voluntary transfer of the insurance portfolio

1) Every contract by which the insurance portfolio of an undertaking is to be transferred in whole or in part, along with the associated rights and duties, to another insurance undertaking subject to supervision shall require approval by the supervisory authorities responsible for the involved undertakings.

2) The receiving insurance undertaking must demonstrate that it possesses own funds in the amount of the solvency margin after the transfer. Article 19 shall apply *mutatis mutandis*. Approval shall be denied if the interests of the insured persons are not safeguarded.

3) Approval of the transfer of the portfolio shall be published at the expense of the involved undertakings.

Article 53

Rights of policyholders

1) After every transfer of a portfolio, policyholders shall have the right to cancel the insurance contract within three months of the transfer.

2) In the event of transfers of portfolios arising from the merger of undertakings and among insurance undertakings with close links, the supervisory authority may, upon application, exclude the right of cancellation.¹

¹ Article 53, paragraph 2 amended by LGBl. 2002 No. 157.

3) The receiving insurance undertaking shall be required to inform the transferred policyholders individually of the completed transfer of the portfolio.¹

Article 54

Insurance contracts concluded through a foreign establishment or cross-border provision of services

If an insurance undertaking whose head office is situated in the Principality of Liechtenstein transfers in whole or in part a portfolio of insurance contracts that it has concluded in a Contracting Party to the EEA Agreement by way of an establishment or cross-border provision of services to an undertaking whose head office is situated in such a State, then only the approval of the domestic supervisory authority shall be required. Unless grounds for denial pursuant to article 52 exist, this approval shall be granted if:

- a) proof is given by means of a certification issued by the supervisory authority of the head-office State that the receiving undertaking possesses own funds in the amount of the solvency margin after the transfer,²
- b) the supervisory authorities of the Contracting Parties in which the risks of the insurance portfolio are situated agree, and
- c) in the case of transfer of the insurance portfolio of an establishment, the supervisory authority of this State has been consulted.

Article 55

Withdrawal of license

1) The supervisory authority may revoke the license for engaging in individual classes of insurance or for all business activities if³

- a) an insurance undertaking no longer fulfills the preconditions for granting of the license,
- b) the undertaking gravely violates obligations arising from supervisory regulations or its business plan,

¹ Article 53, paragraph 3 inserted by LGBl. 2002 No. 157.

² Article 54(a) amended by LGBl. 2002 No. 157.

³ Article 55, paragraph 1, introductory sentence amended by LGBl. 2004 No. 188.

- c) such serious grievances arise that a continuation of business activities endangers the interests of the insured persons, or
- d) the insurance undertaking does not use the license for business activities within 12 months, expressly renounces the license, or has ceased business activities for more than six months;
- e) bankruptcy has been opened with respect to the assets of the insurance undertaking.¹

2) The supervisory authority may revoke the license for all business activities if the undertaking is unable to implement the measures provided in the solvency plan pursuant to article 37, paragraph 1 or the finance scheme pursuant to article 37, paragraph 2 within the fixed deadline.²

3) If the license is revoked, the supervisory authority shall take all measures suited to safeguard the concerns of the insured persons. In particular, it may limit or prohibit free disposal of the assets of the undertaking and it may transfer management of the assets to suitable persons. The supervisory authority shall also inform the competent authorities of the other Contracting Parties to the EEA Agreement.

4) If the supervisory authority gains knowledge of facts that would justify revocation of the license, it may instead demand the dismissal of executive officers to whom the facts relate and it may also prohibit these executive officers from engaging in their business activities.

Article 56

Measures vis-à-vis insurance undertakings whose head office is situated in a Contracting Party to the EEA Agreement

1) If it is determined that an insurance undertaking from a Contracting Party to the EEA Agreement maintaining a branch or engaging in cross-border provision of services in the Principality of Liechtenstein is not complying with domestic legal requirements, then the supervisory authority shall call upon the undertaking to discontinue the irregularities.

¹ Article 55, paragraph 1(e) inserted by LGBl. 2005 No. 14.

² Article 55, paragraph 2 amended by LGBl. 2002 No. 157 and LGBl. 2004 No. 188.

2) If the insurance undertaking does not take the necessary measures, then the competent authorities of the home State shall be informed and requested to take measures against the undertaking.¹

3) If violations of domestic supervision legislation continue, the supervisory authority may prohibit the insurance undertaking from further business activities in Liechtenstein and may take all necessary measures.

Article 57

Renunciation of license

1) If an insurance undertaking renounces its license, the supervisory authority shall release it from supervision. Sureties paid shall be reimbursed as soon as all obligations arising from supervision law have been fulfilled.²

2) If an insurance undertaking renouncing its license no longer fulfills the legal requirements, the supervisory authority may demand that the undertaking restore a lawful state of affairs despite the renunciation.

Article 58

Publication

If the license of an insurance undertaking is withdrawn, if the undertaking renounces its license, or if it fails to restore a lawful state of affairs in the event of a renunciation, then the insured persons shall be informed by means of publication.

Article 59³

Information requirement of foreign insurance undertakings

Insurance undertakings whose head office is situated abroad operating in the Principality of Liechtenstein must notify the supervisory authority without delay if another State has withdrawn their license to engage in insurance activities.

¹ Article 56, paragraph 2 amended by LGBl. 2002 No. 157.

² Article 57, paragraph 1 amended by LGBl. 2004 No. 188.

³ Article 59 amended by LGBl. 2002 No. 157.

Vla. Restoration and liquidation¹

A. Special provisions governing bankruptcy²

Article 59a³

Satisfaction of insurance claims

1) The assets covering technical provisions shall constitute a separate bankruptcy estate in accordance with article 45 of the Bankruptcy Code to satisfy insurance claims. The court shall order that the listing of assets dedicated to the separate estate be concluded immediately and submitted to the supervisory authority. The supervisory authority shall determine the separate estate for the time that bankruptcy is opened. Reflows and income from the assets dedicated to the separate estate and premiums for the insurance contracts included in the separate estate that are received after bankruptcy has been opened shall fall into this separate estate.

2) The list submitted pursuant to paragraph 1 may no longer be changed once bankruptcy has been opened. The estate trustee may make technical corrections to the listed asset values with the approval of the bankruptcy court.

3) If the proceeds from the conversion of the assets are lower than their valuation in the list submitted pursuant to paragraph 1, then the estate trustee must communicate this to the bankruptcy court and justify the deviation.

4) To the extent that insurance claims from the separate estate are not fully satisfied, they shall belong to the first category of bankruptcy claims (article 48 of the Bankruptcy Code).

5) The insurance claims to be found in the account books of the insurance undertaking shall be deemed filed. The right of the creditor to file these claims as well shall not be affected. The filing of claims need not include an indication of ranking.

¹ Title preceding article 59a inserted by LGBl. 2005 No. 14.

² Title preceding article 59a inserted by LGBl. 2005 No. 14.

³ Article 59a inserted by LGBl. 2005 No. 14.

B. Cross-border insolvency proceedings¹

1. General provisions²

Article 59b³

Scope of application

1) Articles 59c through 59x shall be applied to insurance undertakings to which a license has been granted in a Contracting Party to the EEA Agreement.

2) The provisions shall only be applied to insurance undertakings whose head office is outside the European Economic Area if they have at least one branch within the EEA.

Article 59c⁴

International competence

The supervisory authority shall only have the competence to monitor own funds in accordance with article 37, paragraph 3, and the Court of Justice shall only have jurisdiction over bankruptcy protection and opening of bankruptcy if the insurance undertaking or third-State insurance undertaking has been granted a license in Liechtenstein for the assumption of business activities.

Article 59d⁵

Information requirement and publication abroad

1) The Court of Justice shall inform the supervisory authority without delay of a decision on bankruptcy protection or opening of bankruptcy and the specific consequences of these measures. The supervisory authority shall inform the supervisory authorities of the Contracting Parties to the EEA Agreement without delay of this decision and of a decision to monitor own funds in accordance with article 37, paragraph 3 and of their specific consequences.

¹ Title preceding article 59b inserted by LGBI. 2005 No. 14.

² Title preceding article 59b inserted by LGBI. 2005 No. 14.

³ Article 59b inserted by LGBI. 2005 No. 14.

⁴ Article 59c inserted by LGBI. 2005 No. 14.

⁵ Article 59d inserted by LGBI. 2005 No. 14.

2) The Court of Justice shall furthermore issue an edict without delay for publication of the bankruptcy protection or opening of bankruptcy in the Official Journal of the European Union. The publication shall also include the competent administrative or judicial authority and the appointed trustee or estate trustee and shall indicate that Liechtenstein law is applicable. For purposes of the publication, the relevant documentation shall be sent to the EFTA Secretariat in Brussels without delay and by the most appropriate route.

Article 59e¹

Delivery of the decision on bankruptcy protection and opening of bankruptcy

1) A copy of the edict on bankruptcy protection and the opening of bankruptcy shall be sent to the creditors whose habitual abode, residence, or domicile is in another Contracting Party to the EEA Agreement, even if the conditions in article 1, paragraph 5 of the Bankruptcy Code are met. The edict shall be accompanied by instructions under the heading "Call for filing of a claim. Please observe deadlines!" translated into all official languages of the European Economic Area, indicating the court at which the claim must be filed and whether the preferred creditors or secured creditors must file their claims.

2) If the creditor is the holder of a bankruptcy claim, then the instructions must be given in the official language of the Contracting Party to the EEA Agreement that is the creditor's habitual abode, residence, or domicile. The instructions must also include information on the general consequences of the bankruptcy proceedings on the insurance contracts. In particular, the instructions must indicate the point in time after which insurance contracts or transactions no longer have legal effect and enumerate the rights and duties of the insured person with respect to the contract or transaction in question.

Article 59f¹

¹ Article 59e inserted by LGBl. 2005 No. 14.

Assertion of claims

1) Every creditor whose residence, habitual abode, or domicile is in another Contracting Party to the EEA Agreement shall indicate in the filing the type, time of recognition, and the amount of the claim, and furthermore whether the creditor can assert priority, collateral security, or retention of title and which assets are the object of a security. The creditor shall include a copy of any receipts with the filing.

2) Every creditor whose residence, habitual abode, or domicile is in another Contracting Party to the EEA Agreement may file the claim in the official language of this State. In this event, the filing must be made under the heading "*Anmeldung einer Forderung*" (Filing of a Claim) in German.

3) The priority assigned to the insurance claims pursuant to article 59a and the ranking of this claim need not be indicated.

Article 59g²*Activities abroad*

1) Upon request of the trustee, the appointment certificate shall be issued to the trustee in one or more languages of the Contracting Parties to the EEA Agreement.

2) The trustee may appoint persons who support the trustee's activities abroad.

2. Bankruptcy¹

¹ Article 59f inserted by LGBl. 2005 No. 14.

² Article 59g inserted by LGBl. 2005 No. 14.

¹ Title preceding article 59h inserted by LGBl. 2005 No. 14.

Article 59h²*Bankruptcy estate*

The bankruptcy proceedings shall also extend to the real property of the insurance undertaking located in other Contracting Parties to the EEA Agreement.

Article 59i³*Informing of the creditors and the supervisory authority*

1) The estate trustees shall regularly inform the supervisory authority and the creditors of the course of the bankruptcy proceedings.

2) Upon request, the supervisory authority shall provide information to the supervisory authority of another Contracting Party to the EEA Agreement on the course of the bankruptcy proceedings.

3. Recognition of foreign proceedings⁴Article 59k⁵*Principle*

1) The decision of a Contracting Party to the EEA Agreement on restoration measures and the opening of proceedings for the liquidation of an insurance undertaking shall be recognized in Liechtenstein irrespective of the conditions contained in article 5, paragraph 2 of the Bankruptcy Code. The decision shall be effective in Liechtenstein as soon as the decision becomes effective in the State in which the proceedings are opened. This shall also apply when such a restoration measure is not envisaged in Liechtenstein.

2) The supervisory authority may announce the decision pursuant to paragraph 1 in Liechtenstein.

Article 59l¹

² Article 59h inserted by LGBl. 2005 No. 14.

³ Article 59i inserted by LGBl. 2005 No. 14.

⁴ Title preceding article 59k inserted by LGBl. 2005 No. 14.

⁵ Article 59k inserted by LGBl. 2005 No. 14

¹ Article 59l inserted by LGBl. 2005 No. 14.

Powers of foreign trustees and liquidators

1) Foreign trustees and liquidators may, without any additional formalities, exercise all powers in Liechtenstein that they have been accorded in the territory of the home Member State. The application of coercive measures or the right to adjudicate legal disputes or other conflicts shall be excluded.

2) When exercising their powers in Liechtenstein, the trustees and liquidators shall observe Liechtenstein law, in particular with respect to the way in which assets are realized and employees are informed.

3) The trustees and liquidators and the persons that represent them or otherwise support their work shall be subject to Liechtenstein insurance secrecy (article 44) and the associated penal provisions. Information falling within the scope of insurance secrecy need only be made accessible to the trustees and liquidators if:

- a) the information is connected to the restoration measure or liquidation proceedings and is actually necessary for the realization thereof; and
- b) the trustee or liquidator, any representative and the administrative or judicial authorities responsible for their supervision in the home State are subject to a confidentiality requirement equivalent to Liechtenstein insurance secrecy.

4) The information obtained pursuant to paragraph 3 may only be used for execution of the restoration measure or the liquidation proceedings.

5) The trustee and the liquidator shall provide evidence of their appointment by means of a certified copy of the decision by which they were appointed or by means of another certification issued by the administrative or judicial authority of the home Member State. A translation into German may be demanded.

Article 59m¹

Comments

1) Upon application of the trustee or liquidator or upon request of any administrative or judicial authority of the home Member State, the Court of Justice shall arrange for comments pursuant to article 12 of the Bankruptcy Code.

¹ Article 59m inserted by LGBl. 2005 No. 14.

2) If the insurance undertaking has a branch or assets in Liechtenstein, then the trustee or the otherwise competent authority shall submit an application in accordance with paragraph 1.

Article 59n²

Information

The supervisory authority may demand information on the course of the liquidation proceedings from the supervisory authorities of the home Member State.

4. Branches³

Article 59o⁴

Coordination

If an insurance undertaking whose head office is situated outside the European Economic Area maintains branches in at least two Contracting Parties to the EEA Agreement, then the competent administrative or judicial authorities and the trustees or liquidators should, if possible, coordinate their actions.

5. Applicable law¹

Article 59p²

Principle

1) Unless otherwise provided, the law of the State in which the proceedings are opened shall apply to the monitoring of own funds, bankruptcy protection, and bankruptcy proceedings.

² Article 59n inserted by LGBl. 2005 No. 14.

³ Title preceding article 59o inserted by LGBl. 2005 No. 14.

⁴ Article 59o inserted by LGBl. 2005 No. 14.

¹ Title preceding article 59p inserted by LGBl. 2005 No. 14.

² Article 59p inserted by LGBl. 2005 No. 14.

2) In particular, the following shall be subject to the law of the State in which proceedings are opened:

- a) which assets belong to the estate and how the assets obtained by the insurance undertaking after opening of the proceedings shall be treated;
- b) the respective powers of the insurance undertaking and the trustee or the liquidator;
- c) the preconditions for admissibility of an offset;
- d) how the opening of proceedings affects ongoing contracts of the insurance undertaking;
- e) how the opening of proceedings affects the legal actions of individual creditors, with the exception of the effects on pending proceedings pursuant to article 59x;
- f) which claims must be filed and how claims are to be dealt with in the proceedings arising after the proceedings are opened;
- g) the filing, review, and determination of the claims;
- h) the distribution of the proceeds from the realization of the assets, the ranking of the claims, and the rights of the creditors that have been partially satisfied after the opening of the proceedings on the basis of collateral security or as the consequence of an offset;
- i) the preconditions and consequences of the termination of the proceedings, especially pursuant to bankruptcy protection;
- k) the rights of the creditors after termination of the proceedings;
- l) who must bear the costs of the proceedings, including expenses;
- m) which legal acts are invalid, contestable, or ineffective as between the parties because they disadvantage the body of creditors.

Article 59q¹

Effects on certain contracts and rights

With respect to the effects of monitoring of own funds, bankruptcy protection, and bankruptcy:

- a) only the law of the State applicable to labor contracts shall be applied to a labor contract and an employment relationship;
- b) only the law of the State in which the immovable object in question is located shall apply with respect to a contract granting entitlement to use or purchase an immovable object;

¹ Article 59q inserted by LGBI. 2005 No. 14.

- c) only the law of the State responsible for supervision of the registry in question shall apply to the rights of the insurance undertaking with respect to an immoveable object, a ship, or an aircraft subject to entry in a public registry.

Article 59r²

In rem rights of third parties

1) The *in rem* right of a creditor or a third party with respect to physical or non-physical, moveable or immoveable objects of the insurance undertaking – both with respect to specified objects and with respect to a majority of non-specified objects with a changing composition – that are located in the territory of another Contracting Party to the EEA Agreement at the time the proceedings are opened shall not be affected by the opening of the proceedings.

2) Rights within the meaning of paragraph 1 shall include in particular:

- a) the right to utilize the object or arrange for the utilization of the object and to obtain satisfaction from the proceeds or the utilization of this object, especially pursuant to a lien or mortgage;
- b) the exclusive right to collect a claim, especially pursuant to a lien on a claim or pursuant to assignment of the claim for security;
- c) the right to demand the surrender of the object from someone holding or using the object against the will of the rights-holder;
- d) the *in rem* right to collect the fruits of an object.

3) A right entered into a public registry and effective against everyone to obtain an *in rem* right within the meaning of paragraph 1 shall be equivalent to an *in rem* right.

4) Paragraph 1 shall not stand in the way of the invalidity or contestability of a legal act or the ineffectiveness of a legal act as between the parties pursuant to article 59p, paragraph 2(m).

Article 59s¹

Reservation of ownership

² Article 59r inserted by LGBl. 2005 No. 14.

¹ Article 59s inserted by LGBl. 2005 No. 14.

1) The opening of proceedings concerning the assets of the purchaser of an object shall not affect the rights of the purchaser arising from a reservation of ownership, if, at the time the proceedings are opened, this object is located in the territory of a different Contracting Party to the EEA Agreement than where the proceedings are opened.

2) The opening of proceedings concerning the assets of the seller of an object after delivery of the object shall not justify the dissolution or termination of the purchase contract and shall not stand in the way of the purchase of ownership by the purchaser, if this object is located in the territory of a different Contracting Party to the EEA Agreement than where the proceedings are opened.

3) Paragraphs 1 and 2 shall not stand in the way of the invalidity or contestability of a legal act or the ineffectiveness of a legal act as between the parties pursuant to article 59p, paragraph 2(m).

Article 59t²

Offset

1) The capacity of a creditor to offset a claim by the insurance undertaking with the creditor's claim shall not be affected by the opening of the proceedings, if this offset is permissible according to the law applicable to the claim of the insurance undertaking.

2) Paragraph 1 shall not stand in the way of the invalidity or contestability of a legal act or the ineffectiveness of a legal act as between the parties pursuant to article 59p, paragraph 2(m).

Article 59u¹

Regulated markets

1) Without prejudice to article 59r, only the law of the State applicable to the market in question shall apply to the effects of the opening of proceedings on the rights and duties of the participants in a regulated market within the meaning of article 1(13) of Directive 93/22/EEC.

2) Paragraph 1 shall not stand in the way of the invalidity or contestability of a legal act or the ineffectiveness of a legal act as between the parties pursuant to article 59p, paragraph 2(m).

² Article 59t inserted by LGBl. 2005 No. 14.

¹ Article 59u inserted by LGBl. 2005 No. 14.

Article 59v²*Contesting*

1) Article 59p shall not apply if the person who benefited from a legal act disadvantaging the body of creditors demonstrates that

- a) the law of a different State applies to this act and
- b) in this event, this act can in no way be contested according to this law.

Article 59w³*Protection of third-party purchasers*

If, pursuant to a legal act undertaken after opening of the proceedings and in return for compensation, the insurance undertaking has at its disposal:

- a) an immovable object;
- b) a ship or aircraft subject to entry into a public registry;
- c) transferable securities or other instruments enumerated in Section B of the Annex of Directive 93/22/EEC, the existence or transfer of which requires entry into a legally prescribed registry or account or which are kept in a central depository subject to the law of a Contracting Party to the EEA Agreement;

then the effectiveness of this legal act shall be subject to the law of the State in which this immovable object is located or to the supervision of which the registry, account, or depository is subject.

Article 59x¹*Pending legal disputes*

Only the law of the State in which the legal dispute in question is pending shall apply to the effects of the proceedings on a legal dispute concerning an object or a right pertaining to the estate.

VII. Authorities, procedures and legal remedies

² Article 59v inserted by LGBI. 2005 No. 14.

³ Article 59w inserted by LGBI. 2005 No. 14.

¹ Article 59x inserted by LGBI. 2005 No. 14.

Article 60²*Supervisory authority*

The Financial Market Authority (FMA) shall be responsible for the supervision of insurance undertakings.

Article 61

*Cooperation with other authorities*³

1) The supervisory authority shall cooperate with other domestic authorities to ensure the good functioning of the supervision of insurance undertakings and other financial service undertakings.⁴

2) Where necessary, the supervisory authority may cooperate with the competent foreign authorities, in particular by processing data, information, reports, and documentation or transmitting these abroad itself. For purposes of cooperation, the supervisory authority may also conclude agreements with foreign supervisory authorities.⁵

3) The supervisory authority may provide official information if:¹

- a) the public order and insurance secrecy are not violated thereby;²
- b) the information does not contravene the purpose of this Act;³
- c) it is ensured that the requesting State would grant an equivalent Liechtenstein request;⁴
- d) it is ensured that the received information is only used for the supervision of insurance undertakings and other financial service undertakings;⁵
- e) it is ensured that the staff members of the competent authorities and persons mandated by the competent authorities are subject to official secrecy.⁶

² Article 60 amended by LGBl. 2004 No. 188.

³ Article 61, heading amended by LGBl. 2002 No. 157.

⁴ Article 61 paragraph 1 amended by LGBl. 2004 No. 188.

⁵ Article 61, paragraph 2 amended by LGBl. 2002 No. 157.

¹ Article 61, paragraph 3, introductory sentence amended by LGBl. 2002 No. 157 and LGBl. 2004 No. 188.

² Article 61, paragraph 3(a) amended by LGBl. 2002 No. 157.

³ Article 61, paragraph 3(b) amended by LGBl. 2002 No. 157.

⁴ Article 61, paragraph 3(c) amended by LGBl. 2002 No. 157.

⁵ Article 61, paragraph 3(d) amended by LGBl. 2002 No. 157.

⁶ Article 61, paragraph 3(e) amended by LGBl. 2002 No. 157.

4) The supervisory authority may at any time obtain information on activities of Liechtenstein insurance undertakings abroad and the economic circumstances of foreign insurance undertakings whose activities may have an effect on the Liechtenstein insurance system, if the purpose of this Act so requires.⁷

5) If the supervisory authority of the foreign head-office State of an insurance undertaking has limited or prohibited the free disposal of the assets of the insurance undertaking, then the domestic supervisory authority may, upon application of the foreign supervisory authority, take the same measures vis-à-vis the insurance undertaking with respect to all its activities in Liechtenstein; article 37, paragraph 3, sentence 3 shall apply *mutatis mutandis*.⁸

Article 62¹

Decisions and orders

If violations of provisions of this Act or of the ordinances enacted in conjunction with this Act are found, the supervisory authority shall issue the appropriate decisions and orders.

Article 63

Legal remedies

1) Decisions and orders of the supervisory authority may be appealed within 14 days of service to the FMA Complaints Commission.²

2) Decisions and orders of the FMA Complaints Commission may be appealed within 14 days of service to the Administrative Court.³

⁷ Article 61, paragraph 4 amended by LGBl. 2002 No. 157 and LGBl. 2004 No. 188.

⁸ Article 61, paragraph 5 amended by LGBl. 2002 No. 157.

¹ Article 62 amended by LGBl. 2004 No. 188.

² Article 63, paragraph 1 amended by LGBl. 2004 No. 188.

Article 63a⁴*Information requirement of the courts*

The courts shall transmit a copy of all judgments affecting provisions of insurance contract law to the supervisory authority.

VII. Penal provisions

Article 64

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 such a violation or attempts to induce it;
- b) performs an insurance activity subject to this Act without a license.

Both punishments may be combined.

2) The Court of Justice shall punish with a fine of up to 100,000 francs for committing an administrative offense anyone who:

- a) violates conditions imposed in connection with a license;
- b) violates the provisions concerning capital resources and formation of reserves;
- c) gives false information to the supervisory authority, in particular for purposes of obtaining a license for business activities, approval for cross-border provision of services, approval of amendments to the business plan, or approval of a transfer of the insurance portfolio on behalf of an insurance undertaking;
- d) gives false information to the audit office;
- e) does not keep account books properly or does not retain account books and receipts;

³ Article 63, paragraph 2 amended by LGBl. 2004 No. 33 and LGBl. 2004 No. 188.

⁴ Article 63a inserted by LGBl. 2004 No. 188.

- f) as an auditor, grossly violates his responsibilities, in particular by making untrue statements in the audit report or withholding significant facts, by failing to make required requests to the insurance undertaking, or by failing to submit required reports and notifications;
- g) as a responsible actuary for life insurance or as a special mandatory grossly violates his responsibilities;
- h) as a claims management undertaking, engages in insurance activities other than processing of benefits for legal expenses insurance or processes benefits for other classes of insurance;
- i) does not comply with the approved business plan;
- j) conducts business alien to insurance.

3) The supervisory authority shall punish with a fine of up to 50,000 francs for committing an administrative offense anyone who:¹

- a) fails to compile or publish the annual account statement or the business report as required;

- b) fails to have the regular audit or an audit required by the supervisory authority conducted;
- c) fails to fulfill his responsibilities vis-à-vis the audit office;
- d) fails to submit the required notifications to the supervisory authority or fails to fulfill the submission requirements;
- e) fails to comply with a demand to bring about a lawful state of affairs or with any other order by the supervisory authority;
- f) in direct business for an insurance undertaking subject to insurance supervision but not authorized to conduct business in Liechtenstein, brokers or concludes insurance contracts;
- g) uses terms in an impermissible manner that indicate activities as an insurance undertaking;¹
- h) fails to properly execute claims adjustment for motor vehicle liability insurance pursuant to article 75c, paragraph 1 of the Road Traffic Act.²

4) If the offenses are committed negligently, the maximum penalties shall be reduced by half.

¹ Article 64, paragraph 3, introductory sentence amended by LGBl. 2004 No. 188.

¹ Article 64, paragraph 3(g) inserted by LGBl. 2002 No. 157.

² Article 64, paragraph 3(h) inserted by LGBl. 2003 No. 137.

- 5) The misdemeanors according to paragraph 1 shall be subject to a statute of limitations of two years.
- 6) The general part of the Criminal Code shall apply *mutatis mutandis*.

Article 65³

Information requirement of the Office of the Public Prosecutor

Repealed

IX. Transitional and final provisions

Article 66

Licenses

Licenses for operating an insurance undertaking that do not comply with the requirements of this Act and the ordinances enacted in conjunction with this Act shall be adjusted to the new legal provisions within one year of enactment thereof or, if necessary, be withdrawn or revoked.

³ Article 65 repealed by LGBl. 2004 No. 188.

Article 67

Implementing ordinances

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

Article 68

Entry into force

This Act shall enter into force on 1 January 1996.

signed *Hans-Adam*

signed *Dr. Mario Frick*
Prime Minister

Annex 1**Classification of non-life insurance risks according to classes of insurance pursuant to article 3, paragraph 1**

1. Accident (including industrial injury and occupational diseases)
 - fixed pecuniary benefits
 - benefits in the nature of indemnity
 - combinations of the two
 - injury to passengers
2. Sickness
 - fixed pecuniary benefits
 - benefits in the nature of indemnity
 - combinations of the two
3. Land vehicles (other than railway rolling stock)
All damage to or loss of:
 - land motor vehicles
 - land vehicles other than motor vehicles
4. Railway rolling stock
All damage to or loss of railway rolling stock
5. Aircraft
All damage to or loss of aircraft
6. Ships (sea, lake and river and canal vessels)
All damage to or loss of:
 - river and canal vessels
 - lake vessels
 - sea vessels
7. Goods in transit (including merchandise, baggage, and all other goods)
All damage or loss of goods in transit, irrespective of the form of transport
8. Fire and natural forces
All damage to or loss of property (other than property included in classes 3, 4, 5, 6, or 7) due to:
 - fire
 - explosion

- storm
 - natural forces other than storm
 - nuclear energy
 - land subsidence
9. Other damage to property
All damage to or loss of property (other than property included in classes 3, 4, 5, 6, and 7) due to hail or frost, and any event such as theft, other than those mentioned under 8
10. Motor vehicle liability
All liability arising out of the use of motor vehicles operating on the land (including carrier's liability)
11. Aircraft liability
All liability arising out of the use of aircraft (including carrier's liability)
12. Liability for ships (sea, lake and river and canal vessels)
All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability)
13. General liability
All liability other than those forms mentioned under 10, 11 and 12
14. Credit
- insolvency (general)
 - export credit
 - installment credit
 - mortgages
 - agricultural credit
15. Suretyship
- suretyship (direct)
 - suretyship (indirect)
16. Miscellaneous financial loss
- employment risks
 - insufficiency of income (general)
 - bad weather
 - loss of benefits
 - continuing general expenses

- unforeseen trading expenses
 - loss of market value
 - loss of rent or revenue
 - indirect trading losses other than those mentioned above
 - other financial loss (non-trading)
 - other forms of financial loss
17. Legal expenses
Legal expenses and cost of litigation
18. Assistance to tourists
Emergency assistance benefits for persons encountering difficulties while traveling or while away from their residence or permanent abode

Designation of license granted simultaneously for several classes (collective designations)

Where the license simultaneously covers

- a) classes 1 and 2, then it shall be named "Accident and health insurance";
- b) classes 1 (fourth indent), 3, 7, and 10, then it shall be named "Motor insurance";
- c) classes 1 (fourth indent), 4, 6, 7, and 12, then it shall be named "Marine and transport insurance";
- d) classes 1 (fourth indent), 5, 7, and 11, then it shall be named "Aviation insurance";
- e) classes 8 and 9, then it shall be named "Insurance against fire and other damage to property";
- f) classes 10, 11, 12, and 13, then it shall be named "Liability insurance";
- g) classes 14 and 15, then it shall be named "Credit and suretyship insurance".

Classification of life insurance risks according to classes of insurance pursuant to article 4, paragraph 3

1. Life insurance
 - insurance on survival, insurance on death
 - annuities
 - supplementary insurance for accidental death, disability, and sickness
2. Marriage insurance, birth insurance
3. Unit-linked/fund-linked life insurance
4. Health insurance (including disability insurance)
5. Tontines
6. Capital redemption operations

Large risks pursuant to article 11, paragraph 8**The following shall be deemed large risks:**

- a) the risks classified under classes 4, 5, 6, 7, 11, and 12 in Annex 1;
- b) the risks classified under classes 14 and 15 in Annex 1, if the policyholder works in the industrial or commercial sector or is self-employed and the risk is associated with this work;
- c) the risks classified under classes 3, 8, 9, 10, 13, and 16 in Annex 1, provided that the policyholder exceeds the upper thresholds with respect to at least two of the three following criteria:
 - balance sheet total: 6.2 million euros
 - net profits from sales: 12.8 million euros in the business year
 - average number of employees over the course of the business year: 250.

If the policyholder belongs to an enterprise group for which a consolidated annual account statement is compiled, then the aforementioned criteria shall be applied to the consolidated annual account statement.

¹ Annex 3 amended by LGBl. 2002 No. 157.

Information requirements vis-à-vis policyholders pursuant to articles 45 and 49

Prior to conclusion and during the term of a contract, the insurance undertakings must inform the policyholder, if the policyholder is a natural person, of the facts and rights pertaining to the insurance relationship in accordance with the following provisions. In the case of insurance of large risks, an indication of the applicable law and the competent supervisory authority shall suffice. The information must be in writing.

Section I

1. Information required for all classes of insurance:
 - a) name, address, legal form, and head office of the insurance undertaking and, if applicable, the establishment at which the contract is to be concluded;
 - b) the general insurance conditions applicable to the insurance relationship, including the rate schedule, and indication of the law applicable to the contract;
 - c) information on the type, scope, and maturity of the insurance undertaking benefits, unless no general insurance conditions or rate schedules are used;
 - d) information on the term of the insurance relationship;
 - e) information on the amount of the premiums, with individual specification of the premiums if the insurance relationship is to include several independent insurance contracts, and on the manner of payment of the premiums, as well as information on any additional fees and expenses and on the total amount to be paid;
 - f) information on the amount of time during which the applicant is to be bound by the application;
 - g) instructions concerning the right of cancellation or withdrawal;
 - h) address of the competent supervisory authority to which the policyholder may turn in the case of complaints relating to the insurance undertaking.

2. Additional information required for life insurance policies and accident insurance policies with premium refund:
 - a) information on the calculation principles and measures used for surplus determination and participation in profits;
 - b) indication of the surrender value;
 - c) information on the minimum insurance amount for conversion into a fully paid-up policy and on the benefits from a fully paid-up policy;
 - d) information on the extent to which the benefits according to b) and c) are guaranteed;
 - e) in the case of fund-linked insurance policies, information on the fund to which the policy is linked and the type of assets contained therein;
 - f) general information on tax rules applicable to this type of insurance policy.

Section II

Information to be communicated by the insurance undertaking during the term of the insurance contract:

1. changes to the name, address, legal form, and head office of the insurance undertaking and, if applicable, the establishment at which the contract has been concluded;
2. changes with respect to the information provided pursuant to Section I, no. 1(c) to (e) and no. 2 (a) to (e), provided that they arise from changes to legal requirements;
3. annual communication regarding the level of participation in profits for life insurance and accident insurance with premium refund.