

General good provisions for insurance distribution in the Principality of Liechtenstein under the freedom to provide services and/or the freedom of establishment

Information document for insurance distributors with registered offices in a Contracting Party to the Agreement on the European Economic Area (EEA Agreement)

1. Supervisory provisions

The Insurance Distribution Act of 5 December 2017 (VersVertG; LGBl. 2018 No. 9) and the Insurance Distribution Ordinance of 10 April 2018 (VersVertV; LGBl. 2018 No. 69) lay down the legal requirements for taking up insurance distribution activities in Liechtenstein.

2. Provisions under contract law and the law of procedure

The provisions of the General Civil Code of 1 June 1811 (ABGB; LGBl. 1003 No. 1) must be observed. Furthermore, the Law of 23 October 2002 on the Protection of Consumers (Consumer Protection Act; KSchG; LGBl. 2002 No. 164) must be taken into account.

The Law of 19 September 1996 on Private International Law (IPRG; LGBl. 1996 No. 194) shall apply for purposes of private international law.

For cases arising from insurance contracts, any arrangement of a foreign court shall be null and void if the policyholder lives in Liechtenstein or if the insured interest is situated in Liechtenstein. The place of jurisdiction for such cases is Vaduz. This means there is exclusive competence which cannot be changed even by an agreement of the parties (§ 53a(3) of the Law of 10 December 1912 on the Exercise of Jurisdiction and Competence of the Courts in Civil Matters; Court Jurisdiction Act; LGBl. 1912 No. 9/2)..

3. Branches of foreign insurance intermediaries

Insurance intermediaries with registered offices abroad which maintain a branch in Liechtenstein must have such branches registered in the Commercial Register in accordance with Article 240 of the Law on Persons and Companies (PGR; LGBl. 1926 No. 4).

4. Overview of compulsory insurances

The most important compulsory insurances in Liechtenstein are building insurance, motor vehicle liability insurance, health insurance, accident insurance, and occupational pension insurance.

If insurance distributors with registered offices in a Contracting State to the EEA Agreement wish to sell compulsory insurance in Liechtenstein under the freedom to provide services and/or the freedom of establishment, the following special rules must be observed:

a) Compulsory building insurance

With regard to compulsory building insurance, the relevant special enactments apply: the Law of 26 November 2004 on the Insurance Protection of Buildings against Fire and Elemental Damage

(Building Insurance Act; GVersG; LGBl. 2005 No. 20) and the corresponding ordinance of 25 January 2005 (Building Insurance Ordinance; GVersV; LGBl. 2005 No. 21).

b) Compulsory motor vehicle liability insurance

With regard to compulsory motor vehicle liability insurance, the special laws and ordinances, in particular the Road Traffic Act of 30 June 1978 (SVG; LGBl. 1978 No. 18) and the Road Traffic Insurance Ordinance of 1 August 1978 (VVV; LGBl. 1978 No. 21) must be observed.

c) Health insurance legislation

For health insurance, the legislation on health insurance must be observed, the provisions of which are compulsory for all health insurance contracts (see the Law of 24 November 1971 on Health Insurance; KVG; LGBl. 1971 No. 50, and the Ordinance of 14 March 2000 on the Health Insurance Act; KVV; LGBl. 2000 No. 74).

The KVG makes a distinction between compulsory insurance (medical care, sickness allowances) and voluntary insurance (benefits in excess of compulsory insurance). The implementation of compulsory health insurance under the KVG (medical care and sickness allowances) is reserved for the health insurance schemes recognised by the Government.

d) Legislation on accident insurance

For accident insurance, the legislation on compulsory accident insurance must be observed, the provisions of which are compulsory for all accident insurance contracts (see the Law of 28 November 1989 on Compulsory Accident Insurance; UVersG; LGBl. 1990 No. 46, and the Ordinance of 4 September 1990 on Compulsory Accident Insurance; UVersV; LGBl. 1990 No. 70).

e) Occupational pension insurance

With regard to occupational pension insurance, the Law of 20 October 1987 on Occupational Pensions (BPVG; LGBl. 1988 No. 12) and the Ordinance of 20 December 2005 on the Occupational Pensions Act (BPVV; LGBl. 2005 No. 288) must be observed.

5. Information requirements and code of conduct

Insurance distributors wishing to operate in Liechtenstein must comply with the provisions on information requirements and the code of conduct in accordance with Chapters V and VI of the Insurance Distribution Act in regard to their customers. The information referred to in subparagraphs (b) to (f) below need not be provided if the insurance distributor carries out distribution activities with regard to insurance for large risks (Article 46 VersVertG).

a) Principles

Insurance distributors must ensure that they observe the principles of conduct and information in their activities (Article 36 VersVertG).

b) General information from insurance intermediaries and undertakings

Insurance intermediaries and undertakings are obliged to provide their customers with the information required by law (Article 37 VersVertG). Ancillary insurance intermediaries have a limited duty to provide information (Article 40 VersVertG).

c) Transparency provisions

Insurance intermediaries and undertakings must comply with the transparency provisions with regard to contracts and/or remuneration (Articles 38 and 39 VersVertG). Ancillary insurance intermediaries have a limited duty to provide information (Article 40 VersVertG).

d) Needs assessment

The insurance distributor is obliged to assess the needs and wishes of the customer (Article 41 VersVertG). The principle of proportionality must be observed, which states that the assessment of needs must be guided by the complexity of the insurance product offered and the customer category (Article 45 Insurance Contract Act).

e) Information requirements

Insurance distributors are obliged to provide information to ensure that the customer receives the relevant information about the insurance product (Article 42 and 43 VersVertG). The information must be provided to the customer in proportion to the complexity of the insurance product offered and the customer category (Article 45 VersVertG).

Insurance intermediaries and undertakings distributing insurance-based investment products must fulfil additional requirements for the provision of information to customers regarding insurance-based investment products and remuneration (Article 51 and 52 VersVertG).

f) Advisory requirements

When advising the customer, the insurance distributor is obliged to observe the legal provisions set out in Article 44 VersVertG.

When advising on an insurance-based investment product, insurance intermediaries and undertakings are obliged to assess the suitability and appropriateness of the product for the customer (Article 53 VersVertG). If no advice is given, the facilitations to this provision apply (Article 54 VersVertG).

g) Avoidance of conflicts of interest

If insurance intermediaries or undertakings distribute insurance-based investment products, they must ensure that conflicts of interest are avoided (Article 50 VersVertG). For this purpose, arrangements must be made for insurance intermediaries or undertakings to identify conflicts of interest. Appropriate measures must be taken to prevent conflicts of interest from damaging customer interests. If these measures are not sufficient, the conflicts of interest must be disclosed.

h) Documentation and reporting requirement

Insurance intermediaries or undertakings distributing insurance-based investment products are obliged to keep a record of the agreement between them and the customer (Article 55 VersVertG). In addition, insurance intermediaries or undertakings distributing insurance-based investment products are obliged to report to the customer on the services provided (Article 56 VersVertG).

i) Arrangements for the provision of information

Insurance distributors are obliged to provide the information referred to in Articles 37 to 45 and 51 VersVertG to the customers in the form required by law (Article 47(2) VersVertG in conjunction with Article 13 VersVertV). Where the VersVertG and the VersVertV do not contain any special rules on the provision of information and documentation with regard to information requirements and the code of conduct, insurance distributors are obliged to document their activities appropriately in writing to that extent (Article 14 VersVertV).

j) *Cross-selling*

If the insurance distributor offers an insurance product together with an ancillary product or service which is not insurance, as part of a package or the same agreement ("cross-selling"), the insurance distributor must observe the provisions on cross-selling (Article 48 VersVertG).

k) *Digression: Telephone selling*

In the case of telephone selling, the information given to the customer by the insurance distributor prior to the conclusion of the contract, including the non-life insurance product information document referred to in Article 43 VersVertG, shall be provided in accordance with the provisions of the Law of 15 December 2004 on Distance Marketing of Consumer Financial Services (FernFinG; LGBl. 2005 No 36). Moreover, even if the customer has chosen to obtain information referred to in Article 13(4) VersVertV on a durable medium other than paper, information shall be provided to the customer in accordance with Article 13(1) or (2) immediately after the conclusion of the insurance contract.

6. General terms and conditions

With regard to clauses in pre-formulated terms and conditions, §§ 864a and 879(3) ABGB shall be observed.

The use of unfair terms in pre-formulated terms and conditions of consumer contracts is governed by Article 8 of the Law of 22 October 1992 against Unfair Competition (UWG; LGBl. 1992 No 121) and Article 8 of the Consumer Protection Act (KSchG). Article 8(1) KSchG contains a catalogue of clauses which are always deemed non-binding. The clauses enumerated in Article 8(2) KSchG are non-binding only if the user of the general terms and conditions does not prove that the clauses have been negotiated in detail.

7. Due Diligence Act

Liechtenstein branches of insurance brokers with registered offices in the EEA, which mediate life insurance contracts and other services with an investment purpose in Liechtenstein, are, pursuant to Article 3(2), subject to the scope of application of the Law of 11 December 2008 on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism (Due Diligence Act; SPG; LGBl. 2009 No. 47) and the corresponding Ordinance of 17 February 2009 on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism (Due Diligence Ordinance; SPV; LGBl. 2009 No. 98). According to Article 5(1) SPG, the persons subject to due diligence have in particular the duty to identify and verify the identity of the contracting party, the beneficial owner, and the beneficiary of life insurance policies and other insurances with investment-related objectives, to establish a business profile, and to ensure supervision of business relationships at a level that is commensurate with the risk. There is an obligation to report to the Financial Intelligence Unit (FIU) where money laundering, predicate offences of money laundering, organised crime, or terrorist financing is suspected.

8. Corporate earnings tax, property and income tax

Insurance intermediaries (legal persons) with registered offices in a Contracting Party to the EEA Agreement which have a branch in Liechtenstein are subject to the corporate earnings tax pursuant to Article 44 et seq. of the Law of 23 September 2010 on National and Municipal Taxes (Tax Act, SteG; LGBl. 2010 No. 340).

Insurance intermediaries (natural persons) domiciled in a Contracting Party to the EEA Agreement who have a branch in Liechtenstein are subject to the property and income tax pursuant to Article 6(4) and Article 5(b) SteG in conjunction with Article 9 et seq. SteG.

9. Liechtenstein legislation

All the aforementioned laws can be found at <http://www.gesetze.li>.

Further information is available from:

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10. Data protection

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC) as well as in line with the applicable data protection law.

All information regarding the processing of personal data, including information on the purpose of processing, the data controller, and the rights of data subjects, can be found in the FMA Privacy Policy: <https://www.fma-li.li/en/fma/data-protection/fma-privacy-policy.html>

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