

Information About Mandatory Provisions in Liechtenstein Law

This document includes national legislation for the protection of the general good, to which the performance of insurance and reinsurance distribution by insurance and reinsurance undertakings (in the following: insurance undertakings) as well as insurance, reinsurance, and ancillary insurance intermediaries (distributors) (in the following: insurance intermediaries) in Liechtenstein are subject. This document also includes information on the extent to which Liechtenstein has decided to apply stricter rules than the minimum requirements pursuant to art. 11 para. 3 of Directive (EU) 2016/97 (IDD). In accordance with the legal transparency obligation under art. 66 of the Insurance Distribution Act, these provisions are highlighted with a grey background and are printed entirely or are explained. Liechtenstein did not exercise the option under art. 29 para. 3 IDD.

This document also includes those mandatory provisions for the protection of the general good, which are applicable to the performance of insurance business in Liechtenstein, including general provisions beyond the scope of the IDD and Directive 2009/138/EC (Solvency II) and which have to be complied with by insurance undertakings operating in Liechtenstein under the freedom to provide services or the freedom of establishment. In relation to these general provisions, the content of this document is not exhaustive and subject to laws and regulation applicable from time to time.

1. Supervisory provisions

The Law of 12 June 2015 on the Supervision of Insurance Undertakings (Insurance Supervision Act, ISA; Liechtenstein Law Gazette [LLG] 2015 No. 231) and the Ordinance of 25 August 2015 on the Supervision of Insurance Undertakings (Insurance Supervision Ordinance, ISO; LLG 2015 No. 239) set out the legal preconditions of insurance supervision for assuming business activities in Liechtenstein.

The Insurance Distribution Act of 5 December 2017 (IDA; LLG 2018 No. 9) and the Insurance Distribution Ordinance of 10 April 2018 (VersVertV; LLG 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 Law of 16 May 2001 on Insurance Contracts (Insurance Contract Act, ICA; LLG 2001 No. 128) supplemented by the provisions of the General Civil Code (ABGB) shall be observed. Moreover, the Law of 23 October 2002 on the Protection of Consumers (Consumer Protection Act, CPA; LLG 2002 No. 164) shall be taken into account.

The Law of 19 September 1996 on Private International Law (IPRG; LLG 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 para. 3 of the Law of 10 December 1912 on the Exercise of Jurisdiction and Competence of the Courts in Civil Matters; Court Jurisdiction Act; LLG 1912 No. 9/2).

3. Establishment of branches of foreign insurance undertakings and intermediaries

Insurance undertakings whose head office is abroad and which maintain an establishment in Liechtenstein as defined in art. 10 para. 1 no. 33 ISA must have that establishment entered in the Public Registry in accordance with art. 240 of the Law on Persons and Companies (PGR; LLG 1926 No. 4).

Insurance intermediaries whose head office is abroad and which maintain a branch in Liechtenstein must have such branches registered in the Commercial Register in accordance with art. 240 of the Law on Persons and Companies (PGR; LLG 1926 No. 4).

4. Overview of compulsory insurances

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

If an insurance undertaking or insurance intermediary whose head office is in a Contracting Party to the EEA Agreement wishes 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 following provisions apply: the Law of 26 November 2004 on the Insurance Protection of Buildings against Fire and Elemental Damage (Building Insurance Act; GVersG; LLG 2005 No. 20) and the related ordinance of 25 January 2005 (Building Insurance Ordinance; GVersV; LLG 2005 No. 21).

Buildings located in Liechtenstein must be insured against damage arising from fire and natural forces. The scope of coverage and the premium rates for insurance against natural forces are uniform and binding for insurance undertakings (art. 8 para. 2 BIA). Through the conclusion of a contract with the insurance undertakings offering compulsory buildings insurance in Liechtenstein, the Government is responsible for execution of compulsory building insurance. Insurance undertakings offering compulsory buildings insurance in Liechtenstein are required to sign this contract. The premium fees are approved by the Financial Market Authority (FMA) Liechtenstein and must be communicated to policyholders separately and numerically in the insurance policy (art. 8 para. 2 BIA in conjunction with art. 9 para. 3 BIO).

b) Compulsory motor vehicle liability insurance

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

If an insurance undertaking whose head office is in a Contracting Party to the EEA Agreement intends to offer motor vehicle liability insurance by way of an establishment or by cross border provision of services, it must submit a declaration that it has become a member of the National Bureau of Insurance and the National Guarantee Fund (art. 28 and 115 ISA; art. 55 ISO). In the latter case, it must also appoint a representative located in Liechtenstein responsible for processing claims (art. 115 para. 1 lit. a ISA).

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; LLG 1971 No. 50, and the Ordinance of 14 March 2000 on the Health Insurance Act; KVV; LLG 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 limited to health insurance schemes recognised by the Liechtenstein 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; LLG 1990 No. 46, and the Ordinance of 4 September 1990 on Compulsory Accident Insurance; UVersV; LLG 1990 No. 70).

Insurance undertakings intending to provide compulsory accident insurance (against industrial injuries, non-industrial injuries, occupational diseases) are additionally subject to the legislation on compulsory accident insurance (art. 2 para. 4 and 5 ISA; see the Law on Compulsory Accident Insurance, LLG 1990 No. 46, and

the Ordinance on Compulsory Accident Insurance, LLG 1990 No. 70). In particular, these companies must sign the existing contractual agreements between the Principality of Liechtenstein and the insurance undertakings providing compulsory accident insurance.

e) *Occupational pension insurance*

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

5. Requirement to submit general and special insurance conditions

Insurance undertakings whose head office is in a Contracting Party of the EEA Agreement offering health insurance or other compulsory insurance in Liechtenstein by way of an establishment or cross border provision of services are required to submit their general and special insurance conditions prior to use to the Financial Market Authority (FMA) Liechtenstein as the competent insurance supervision authority (art. 181 para. 4 ISA).

Insurance intermediaries 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 IDA in regard to their customers. The information referred to in subpara.s (b) to (f) below need not be provided if the insurance intermediary carries out distribution activities with regard to insurance for large risks (art. 46 IDA).

a) *Principles*

Insurance intermediaries must ensure that they observe the principles of conduct and information in their activities (art. 36 IDA).

b) *General information from insurance intermediaries and undertakings*

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

c) *Transparency provisions*

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

d) *Needs assessment*

The insurance intermediary is obliged to assess the needs and wishes of the customer (art. 41 IDA). 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 (art. 45 ICA).

e) *Information requirements*

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

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 (art. 51 IDA and art. 52 IDA).

f) *Advisory requirements*

When advising the customer, the insurance intermediary is obliged to observe the legal provisions set out in art. 44 IDA.

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 (art. 53 IDA). If no advice is given, the facilitations to this provision apply (art. 54 IDA).

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 (art. 50 IDA). 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 (art. 55 IDA). In addition, insurance intermediaries or undertakings distributing insurance-based investment products are obliged to report to the customer on the services provided (art. 56 IDA).

i) Arrangements for the provision of information

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

j) Cross-selling

If the insurance intermediaries 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 intermediaries must observe the provisions on cross-selling (art. 48 IDA).

k) Telephone selling

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

6. Information requirements and code of conduct

Prior to the conclusion and during the term of insurance contracts, insurance undertakings must communicate specific information to policyholders. The content and scope of these information requirements are governed by Annex 4 of the ISA (art. 106 ISA).

Insurance intermediaries 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 subpara.s (b) to (f) below need not be provided if the insurance intermediary carries out distribution activities with regard to insurance for large risks (art. 46 IDA).

a) Applicability

The information referred to in art. 51 to art. 56 IDA does not need to be disclosed to professional clients (art. 49 IDA).

b) Principles

Insurance intermediaries must ensure that they observe the principles of conduct and information in their activities (art. 36 IDA).

c) General information from insurance intermediaries and undertakings

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

d) Transparency provisions

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

e) Needs assessment

The insurance intermediary is obliged to assess the needs and wishes of the customer (art. 41 IDA). 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 (art. 45 Insurance Contract Act).

f) Information requirements

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

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 (art. 51 IDA and 52 IDA).

g) Advisory requirements

When advising the customer, the insurance intermediary is obliged to observe the legal provisions set out in art. 44 IDA.

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 (art. 53 IDA). If no advice is given, the facilitations to this provision apply (art. 54 IDA).

h) Avoidance of conflicts of interest

If insurance intermediaries or undertakings distribute insurance-based investment products, they must ensure that conflicts of interest are avoided (art. 50 IDA). 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.

i) 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 (art. 55 IDA). In addition, insurance intermediaries or undertakings distributing insurance-based investment products are obliged to report to the customer on the services provided (art. 56 IDA).

j) Arrangements for the provision of information

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

k) Cross-selling

If the insurance intermediaries 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 intermediaries must observe the provisions on cross-selling (art. 48 IDA).

l) Digression: Telephone selling

In the case of telephone selling, the information given to the customer by the insurance intermediaries prior to the conclusion of the contract, including the non-life insurance product information document referred to in art. 43 IDA, shall be provided in accordance with the provisions of the FernFinG. Moreover, even if the customer has chosen to obtain information referred to in art. 13 para. 4 IDA on a durable medium other than paper, information shall be provided to the customer in accordance with art. 13 para. 1 or 2 immediately after the conclusion of the insurance contract.

7. General terms and conditions

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

The use of unfair terms in pre-formulated terms and conditions of consumer contracts is governed by art. 8 of the Law of 22 October 1992 against Unfair Competition (UWG; LLG 1992 No 121) and art. 8 KSchG. Art. 8 para. 1 KSchG contains a catalogue of clauses which are always deemed non-binding. The clauses enumerated in art. 8 para. 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.

8. Occupational retirement provision

Insurance undertakings offering collective occupational retirement provision or reinsuring institutions for occupational retirement provision within the meaning of the Law of 20 October 1987 on Occupational Pensions (Occupational Pensions Act, OPA; LLG 1988 No. 12) must provide these institutions with the necessary information for them to meet their legal information requirements. Most importantly, art. 13, para. 5, art. 19a, para. 4 and art. 20, para.s 6 and 7 OPA in conjunction with art. 17 of the Ordinance of 20 December 2005 on the Occupational Pensions Act (OPO, LLG 2005 No. 288) must be observed in this connection. The insurance undertakings must in particular transmit an annual, comprehensible statement on profit participation and a compilation of administrative costs.

9. 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 art. 3 para. 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; LLG 2009 No. 47) and the related 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; LLG 2009 No. 98). According to art. 5 para. 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.

10. Corporate earnings tax, property and income tax

a) Under the Swiss Stamp Duties Act

Under the Treaty between Switzerland and Liechtenstein on the Inclusion of the Principality of Liechtenstein in the Swiss Customs Area of 29 March 1923 (Customs Treaty; LLG 1923 No. 24), Swiss stamp duty legislation is applicable also in Liechtenstein.

Insurers must accordingly pay the stamp duty on premium payments for insurances belonging to their Liechtenstein (or Swiss) insurance portfolio.

The premium payments exempt from the stamp duty are enumerated in art. 22 of the Swiss Federal Law on Stamp Duties (Stamp Duties Act). The stamp duty is calculated on the basis of the cash premium and amounts to 5% for non-life and asset insurance policies and 2.5% for life insurance policies (art. 24 of the Stamp Duties Act).

Either the domestic insurance undertaking or, in the case of an insurance contract concluded with a foreign insurance undertaking, the domestic policyholder must pay the stamp duty (art. 21 of the Stamp Duties Act). The stamp duties may be paid to the Liechtenstein Fiscal Authority or the Liechtenstein Office of Financial Accounting. Before insurance products may be offered in Liechtenstein, the insurers must register without notice with the Liechtenstein Fiscal Authority and provide the following information:

Name and head office of the undertaking and any branch offices in Liechtenstein, the accounting year, the date of assumption of business activities, and the insurance classes to be offered. Changes to this information once the insurer has become subject to the stamp duty must be submitted to the Liechtenstein Fiscal Authority without notice.

The stamp duty forms and the relevant legal provisions on the stamp duty may be obtained from the

Liechtenstein Fiscal Authority
Heiligkreuz 8
P.O. Box 684
9490 Vaduz
Liechtenstein
Tel. +423 236 68 17
Fax +423 236 68 30

The registration and requisite information must be submitted to the:

Swiss Federal Tax Administration
Direct Federal Tax, Withholding Tax, Stamp Duties Division
Eigerstrasse 65
3003 Bern
Switzerland
Tel. +41 58 462 71 06
Fax +41 58 462 73 49

More detailed information on the Swiss stamp duty can be found in Circular No. 33 "Stamp Duty on Insurance Premiums" issued by the Swiss Federal Tax Administration.

b) Under the Liechtenstein Tax Act

The Law of 23 September 2010 on National and Municipal Taxes (Tax Act; LLG 2010 No. 340) also provides for a tax on insurance premiums. This tax is levied unless Swiss stamp duty law applies (art. 67 of the Tax Act), i.e. in the case of insurance contracts concluded in Liechtenstein by way of the free movement of services. The object of the tax is the premium payments pursuant to an insurance relationship, provided the insured risk is situated in Liechtenstein (art. 68 of the Tax Act).

The premium payments exempt from the tax are enumerated in art. 69 of the Tax Act; these are mainly the same exemptions as for the Swiss stamp duty. The tax is calculated on the basis of the cash premium and amounts to 5% for non-life and asset insurance policies and 2.5% for life insurance policies (art. 71 of the Tax Act).

The insurance undertakings are subject to the tax (art. 70 of the Tax Act).

According to art. 107 of the Tax Act, insurance undertakings without a permanent establishment in Liechtenstein as defined in art. 2, para. 1 letter a, sentence 1 of the Tax Act are required to appoint an authorized representative (fiscal representative) who must also be authorized to receive service of documents. The fiscal representative must fulfil the tax-law obligations incumbent on the represented insurer. Only professional trustees, auditors, and lawyers licensed under Liechtenstein law whose residence or domicile is in Liechtenstein as well as domestic insurance undertakings may be appointed as fiscal representatives. The fiscal representative is liable for payment of the tax.

With regard to the tax on insurance premiums, please consult art.s 67 to 72 and art.s 107 to 110 of the Tax Act.

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 art. 44 et seq. of the Law of 23 September 2010 on National and Municipal Taxes (Tax Act, SteG; LLG 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 art. 6(4) and art. 5(b) SteG in conjunction with art. 9 et seq. SteG.

11. Corporate income tax

Insurance undertakings with a head office in a Contracting Party to the EEA Agreement and a branch in Liechtenstein are subject to the corporate income tax as set out in art.s 44 et seq. of the Tax Act.

Foreign insurance undertakings that do not have a branch in Liechtenstein but generate premium income in Liechtenstein by way of the free movement of services are deemed to operate a permanent establishment in Liechtenstein on the basis of the premium income (art. 2, para. 1 lit. a of the Tax Act), and the result of their permanent establishment is subject to the corporate income tax as set out in art.s 44 et seq. of the Tax Act.

12. Liechtenstein legislation

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

Further information is available from:

Financial Market Authority (FMA) Liechtenstein
Landstrasse 109
P.O. Box 279
FL-9490 Vaduz
Liechtenstein

Phone: +423 236 73 73

Fax: +423 236 73 76

<http://www.fma-li.li>

13. 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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