

Information on legal provisions governing the insurance business in Liechtenstein within the framework of the free movement of services and/or by way of a branch establishment

Information sheet for insurance undertakings whose head office is situated in a Contracting Party to the Agreement on the European Economic Area (EEA Agreement)

1. Supervision law

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.

2. Contract law and procedural law

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.

Within the scope of international private law, the Law of 12 June 2015 on International Insurance Contract Act (IICA; LLG 2015 No. 233) and subsidiary the Law of 19 September 1996 on International Private Law (International Private Law Act, IPLA; LLG 1996 No. 194) apply.

For legal matters arising from insurance contracts, any agreement of a foreign court is invalid if the policyholder lives in Liechtenstein or if the insured interest is situated in Liechtenstein. Vaduz is the place of jurisdiction for such legal matters. Jurisdiction is therefore exclusive and cannot be modified by the parties (article 53a, paragraph 3 of the Jurisdiction Rules, LLG 1912 No. 9/2).

3. Establishments of foreign insurance undertakings

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

4. Overview of compulsory insurance

If an insurance undertaking whose head office is in a Contracting Party to the EEA Agreement intends to offer compulsory insurance in the Principality of Liechtenstein by way of an establishment or crossborder provision of services, then the following provisions must be observed:

- Compulsory buildings insurance:

The applicable special enactments govern compulsory buildings insurance: the Law of 26 November 2004 on Insurance Protection for Buildings against Damage caused by Fire and Natural Forces (Buildings Insurance Act, BIA; LLG 2005 No. 20) and the associated ordinance (Buildings Insurance Ordinance, BIO; 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 (article 8, paragraph 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 (article 8, paragraph 2 BIA in conjunction with article 9, paragraph 3 BIO).

- Compulsory motor vehicle liability insurance:

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 crossborder 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 (article 28 and 115 ISA; article 55 ISO). In the case of free movement of services, it must also appoint a representative located in Liechtenstein responsible for processing claims (article 115, paragraph 1, letter a ISA).

With respect to compulsory motor vehicle liability insurance, the ISA and the ISO are subject to the special laws and ordinances (Road Traffic Act, RTA; LLG 1978 No. 18, and the Traffic Insurance Ordinance, TIO; LLG 1978 No. 21).

- Health insurance legislation:

With respect to health insurance, the legislation on health insurance shall be observed, the provisions of which necessarily apply to all health insurance contracts (article 2, paragraph 5 ISA; see the Health Insurance Act, HIA; LLG 1971 No. 50, and the Health Insurance Ordinance, HIO; LLG 2000 No. 74).

According to the HIA, a distinction is made between compulsory insurance (healthcare costs, daily allowances for sickness) and voluntary insurance (benefits exceeding those covered by compulsory insurance). Only recognized health insurance schemes may provide compulsory health insurance pursuant to the HIA (healthcare costs, daily allowances for sickness).

- Compulsory accident insurance:

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 (article 2, paragraph 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 State of Liechtenstein and the insurance undertakings providing compulsory accident insurance.

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 crossborder 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 (article 181, paragraph 4 ISA).

6. Information requirements

Prior to 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 (article 106 ISA).

7. General terms and conditions

With respect to clauses in general terms and conditions, §§ 864a and 879, paragraph 3 of the General Civil Code (ABGB) must be observed. Abusive clauses used in the general terms and conditions of consumer contracts are dealt with according to article 8 of the Law of 22 October 1992 against Unfair Competition (Unfair Competition Act, UCA; LLG 1992 No. 121) and article 8 of the Consumer Protection Act (CPA; LLG 2002 No. 164).

Article 8, paragraph 1 CPA contains a catalogue of clauses that are non-binding in all cases. The clauses enumerated in article 8, paragraph 2 CPA are only non-binding if the user of the general terms and conditions does not show that the clauses have been negotiated individually.

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, article 13, paragraph 5, article 19a, paragraph 4 and article 20, paragraphs 6 and 7 OPA in conjunction with article 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

According to article 3, paragraph 2, Liechtenstein branches of insurance undertakings whose head office is in the EEA fall within the scope of application of the Due Diligence Act (Law of 11 December

2008 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing, DDA; LLG 2009 No. 47). According to article 5, paragraph 2 DDA, the persons subject to due diligence must in particular identify and verify the identity of the contracting party and the beneficial owner, establish a business profile, and ensure risk-adequate monitoring of the business relationships. If there is suspicion of money laundering, a predicate offense of money laundering, organized crime, or terrorist financing, a report must be made to the Financial Intelligence Unit (FIU).

10. Tax on insurance premiums (insurance 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 article 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 (article 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 (article 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 (article 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 (article 68 of the Tax Act).

The premium payments exempt from the tax are enumerated in article 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 (article 71 of the Tax Act).

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

According to article 107 of the Tax Act, insurance undertakings without a permanent establishment in Liechtenstein as defined in article 2, paragraph 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 articles 67 to 72 and articles 107 to 110 of the Tax Act.

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 articles 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 (article 2, paragraph 1 letter a of

the Tax Act), and the result of their permanent establishment is subject to the corporate income tax as set out in articles 44 et seq. of the Tax Act.

Liechtenstein legislation

All the legislation mentioned above may be obtained from the following website:

<http://www.gesetze.li>

Additional information is available from:

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

Tel. +423 236 73 73

Fax +423 236 73 74

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

FMA – Financial Market Authority Liechtenstein

Insurance and Pension Funds Division

Telephone: +423 236 73 73

E-mail: info@fma-li.li

Updated: June 2016