

Translation of Liechtenstein Law

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Insurance Distribution Act (VersVertG)
of 5 December 2017

I hereby grant My consent to the following resolution adopted by Parliament:¹

I. General provisions

Article 1

Object and purpose

1) This Act governs the preconditions for taking up and pursuing the activities of insurance distribution and reinsurance distribution and, in particular, aims to protect insured parties and to safeguard confidence in the Liechtenstein insurance and financial centre.

2) It also serves to implement Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19).

Article 2

Scope

Natural and legal persons who take up or pursue the distribution of insurance and reinsurance products in or from Liechtenstein shall be subject to this Act.

¹ Report and Motion of the Government No. 53/2017, Statement of the Government No. 93/2017

Article 3

Exceptions to the scope

1) This Act shall not apply to insurance intermediaries carrying out insurance distribution on an ancillary basis where the following conditions are met:

- a) The insurance is complementary to the good or service supplied by a provider, where such insurance covers:
 1. the risk of breakdown, loss of, or damage to, the good or the non-use of the service supplied by that provider; or
 2. damage to, or loss of, baggage and other risks linked to travel booked with that provider.
- b) the amount of the premium paid for the insurance product does not exceed 600 euros or the equivalent in Swiss francs calculated on a pro rata annual basis.
- c) by way of derogation from subparagraph (b), where the insurance is complementary to a service referred to in subparagraph (a) and the duration of that service is equal to, or less than, three months, the amount of the premium paid per person does not exceed 200 euros or the equivalent in Swiss francs.

2) Where insurance undertakings or insurance intermediaries carry out their distribution activity through an insurance intermediary as referred to in paragraph 1, they shall ensure that:

- a) information is made available to the customer, prior to the conclusion of the contract, about its identity and address and about the procedures referred to in Article 74 allowing customers and other interested parties to lodge complaints.
- b) appropriate and proportionate arrangements are in place to comply with Articles 36 and 48 and to consider the demands and needs of the customer before the proposal of the contract;
- c) the insurance product information document referred to in Article 43(1) is provided to the customer prior to the conclusion of the contract.

Article 4

Definitions and designations

1) For the purpose of this Act, the following terms have the following meanings:

1. "agent" means an insurance intermediary, a reinsurance intermediary, or an ancillary insurance intermediary entrusted with insurance or reinsurance distribution by an insurance or reinsurance undertaking or another agent;
2. "host State" means a State in which an insurance or reinsurance intermediary or an ancillary insurance intermediary has a permanent presence or an establishment or provides services and which is not the intermediary's home State;
3. "supervisory authorities" means authorities which, on the basis of legal and administrative provisions, are competent for supervision of the insurance distributors;
4. "advice" means the provision of a personal recommendation to a customer, either upon their request or at the initiative of the insurance distributor, in respect of one or more insurance contracts;
5. "durable medium" means paper or any other instrument which enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information, and which allows the unchanged reproduction of the information stored;
6. "EIOPA" means the European Insurance and Occupational Pensions Authority;
7. "close link" means a situation in which two or more natural or legal persons are linked by control or participation. A close link between at least two natural or legal persons also means a situation in which the persons concerned are permanently linked to one and the same person by a control relationship;
8. "EEA Contracting Party" means a Contracting Party to the Agreement on the European Economic Area;
9. "large risks" means
 - a) the risks classified under classes 4, 5, 6, 7, 11, and 12 in Annex 1(A) of the Insurance Supervision Act;
 - b) the risks classified under classes 14 and 15 in Annex 1(A) of the Insurance Supervision Act, 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(A) of the Insurance Supervision Act, provided that the policyholder exceeds the upper thresholds with respect to at least two of the three following criteria:

- aa) balance sheet total: 6.2 million euros or the equivalent in Swiss francs;
- bb) net profits from sales in the business year: 12.8 million euros or the equivalent in Swiss francs;
- cc) average number of employees over the course of the business year: 250 employees.

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;

- 10. "primary place of business" the location from where the main business is managed;
- 11. "home State" means
 - a) in the case of natural persons, the State in which that person's (the intermediary's) residence is situated;
 - b) in the case of legal persons, a State in which that person's (the intermediary's) registered office is situated or, if under its national law it has no registered office, the State in which its head office is located;
- 12. "broker" means an insurance intermediary, reinsurance intermediary, or ancillary insurance intermediary entrusted with insurance or reinsurance distribution by a policyholder or another broker;
- 13. "reinsurance undertaking" means an undertaking providing reinsurance as defined in the Insurance Supervision Act;
- 14. "reinsurance intermediary" means any natural or legal person, other than a reinsurance undertaking or its employees, who, for remuneration, takes up or pursues the activity of reinsurance distribution;
- 15. "reinsurance distribution" means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of reinsurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including when carried out by a reinsurance undertaking without the intervention of a reinsurance intermediary;
- 16. "remuneration" means any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities;

17. "insurance-based investment product" means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include:
 - a) non-life insurance products as listed in Annex 1(A) of the Insurance Supervision Act or a corresponding foreign enactment (classes of non-life insurance);
 - b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;
 - c) pension products which, under the applicable national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;
 - d) officially recognised occupational pension schemes falling under the scope of the Pension Funds Act or the Insurance Supervision Act or a corresponding foreign enactment;
 - e) individual pension products for which a financial contribution from the employer is required by the applicable national law and where the employer or the employee has no choice as to the pension product or provider;
18. "insurance undertaking" means an undertaking offering direct insurance as defined by the Insurance Supervision Act;
19. "insurance intermediary" means any natural or legal person, other than an insurance or reinsurance undertaking or their employees and other than an ancillary insurance intermediary, who, for remuneration, takes up or pursues the activity of insurance distribution;
20. "ancillary insurance intermediary" means any natural or legal person, other than a bank or an investment firm, who, for remuneration, takes up or pursues the activity of insurance distribution on an ancillary basis, provided that the following conditions are met:
 - a) the principal professional activity of that natural or legal person is other than insurance distribution;
 - b) the natural or legal person only distributes certain insurance products that are complementary to a good or service;
 - c) the insurance products concerned do not cover life insurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity;

21. "insurance distributor" means any insurance intermediary, ancillary insurance intermediary or insurance undertaking;
22. "insurance distribution" means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media;
23. "branch" means an agency or a branch of an intermediary which is located in an EEA Contracting Party other than the home State.

2) For the purposes of paragraph 1(15) and (22), the following shall not be considered to constitute insurance distribution or reinsurance distribution:

- a) the provision of information on an incidental basis in the context of another professional activity where:
 1. the provider does not take any additional steps to assist in concluding or performing an insurance contract;
 2. the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
- b) the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims;
- c) the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings, or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;
- d) the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract.

3) The terms designating persons, professions, and functions in this Act shall apply to both female and male genders.

II. Taking up insurance and reinsurance distribution

A. Licenses

Article 5

Licensing requirement

1) Insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries shall require a licence issued by the FMA to take up insurance and reinsurance distribution.

2) Persons whose registered office is in another EEA Contracting Party shall not require a licence, provided that they meet the special conditions set out in Articles 28 and 32.

3) Insurance and reinsurance undertakings subject to supervision under the Insurance Supervision Act and their employees shall not require a licence under this Act.

Article 6

Licensing criteria

The following criteria must be met for the granting of a licence to take up insurance and reinsurance distribution:

- a) required professional qualifications (Article 14);
- b) good repute (Article 15);
- c) sufficient financial guarantee (Article 17);
- d) domestic registered office, domestic head office, and domestic place of business (Article 18);
- e) sufficiently ensured payment for the benefit of the policyholder (Article 19);
- f) no interference with proper supervision by the FMA due to holdings or close links of natural or legal persons with the applicant.

B. Licensing procedure

Article 7

Licence application

1) The application for a licence to take up insurance and reinsurance distribution must be submitted to the FMA in writing by post or in electronic form.

2) On its website, the FMA shall provide electronically accessible application forms for legal persons, natural persons, and sole proprietorships.

Article 8

Information accompanying the licence application

1) The application must contain information and documents to demonstrate compliance with the licensing criteria set out in Article 6, in particular:

- a) name or company name, domicile or registered office, address and, if applicable, the legal form of the applicant;
- b) information on the head office and on an adequate domestic place of business;
- c) a current extract from the criminal register and a written declaration regarding any pending criminal and administrative proceedings;
- d) a current extract from the debt collection and garnishment register as well as a written declaration of freedom from execution and bankruptcy;
- e) copy of professional liability insurance policy and the confirmation of coverage signed by the insurance undertaking or evidence of other financial guarantee;
- f) for governing bodies of the applicant which are responsible for insurance or reinsurance distribution and for employees of the applicant working directly in insurance or reinsurance distribution, information and documents in accordance with subparagraphs (c) and (d) and evidence of professional qualifications;
- g) for governing bodies of the applicant which are not responsible for insurance or reinsurance distribution, information and documents in accordance with subparagraphs (c) and (d);

- h) information whether payments are accepted from any party to the insurance contract and, if so, evidence of appropriate measures to ensure payment for the benefit of the policyholder in accordance with Article 19;
 - i) information on the planned activity, including the type of insurance or reinsurance distribution, the classes of insurance, and the insurance-based investment products in respect of which the applicant intends to operate (business model);
 - k) information on the identity of shareholders, members or partners, or other rights holders, whether natural or legal persons, who hold more than 10% in the applicant, and the amount of such holdings;
 - l) information on the identity of persons with close links to the applicant;
 - m) evidence that the holdings or close links referred to in subparagraphs (k) and (l) do not impair proper supervision by the FMA;
 - n) in the case of agents, copies of contracts governing cooperation with insurance and reinsurance undertakings.
- 2) At the request of the FMA, further information and documents required for the assessment of the application must be provided.

C. Granting and scope of the licence

Article 9

Granting of the licence

- 1) The license is granted if the applicant fulfils the legal requirements. It may be granted subject to conditions.
- 2) The FMA shall deny the licence by decree if the applicant does not satisfy the legal criteria or does not meet its requirements, in particular if:
 - a) there are close links between the applicant and another natural or legal person and these close links impair the FMA in the proper performance of its duties;
 - b) the FMA would be impaired in the proper performance of its duties by the laws, regulations, or administrative provisions of a third country governing one or more natural or legal persons with which the applicant has close links, or difficulties involved in the application of those provisions.

3) The FMA shall decide on the granting of a license within three months of receipt of a complete application and shall inform the applicant of the decision without delay.

Article 10

Scope of the application

1) The licence is granted for the exercise of insurance distribution in the form of an agent or broker for one or more classes of insurance and/or for reinsurance.

2) Paragraph 1 also applies to ancillary insurance intermediaries.

Article 11

Register

1) The FMA shall maintain a public register of insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries. This register shall contain one heading each for agents and brokers.

2) All insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries must be entered in the register *ex officio* who have a licence issued by the FMA.

3) The entry must be deleted if the licence lapses or is withdrawn by the FMA. The entry must still be accessible under deleted entries, however.

4) The Government shall provide further details by ordinance, especially the content of the register.

D. Changes to licensing criteria

Article 12

Approval requirement

1) The following are subject to prior approval by the FMA:

- a) changes to the composition of governing bodies as well as of employees who work directly in insurance or reinsurance distribution;
 - b) expansion of business activities to other classes of insurance;
 - c) change in the type of insurance or reinsurance distribution.
- 2) Entries in the Commercial Register required due to changes referred to in paragraph 1 may be made only once approval has been given.

Article 13

Notification requirement

Changes to the information provided in the licence application as referred to in Article 8 that are not subject to the approval requirement under Article 12 shall be notified to the FMA immediately.

III. Professional and organisational requirements

Article 14

Professional qualifications

- 1) Insurance and reinsurance distributors shall have the necessary knowledge to complete their tasks and perform their duties properly.
- 2) All persons who, as management bodies, are responsible for insurance or reinsurance distribution or who, as employees, participate directly in insurance or reinsurance distribution must possess the knowledge required under paragraph 1.
- 3) In the case of ancillary insurance intermediaries, the FMA shall adapt the professional qualification requirements to the activity of the insurance intermediary and the products distributed by the intermediary.
- 4) Insurance and reinsurance intermediaries and their management bodies and employees as referred to in paragraph 2 must comply with continuing professional training and development requirements in order to maintain an adequate level of performance corresponding to the role they perform and the relevant market.

5) Insurance and reinsurance intermediaries must demonstrate compliance with the relevant professional knowledge and competence requirements laid down in the Annex. Article 16 applies to insurance and reinsurance undertakings.

6) The Government shall provide further details regarding professional qualification requirements by ordinance.

Article 15

Good repute

1) Management bodies of an insurance or reinsurance intermediary and persons working in insurance or reinsurance distribution must be of good repute. This is not the case if:

- a) they have been convicted of an offence against the property of another and are registered in the Liechtenstein criminal register or a foreign criminal register;
- b) bankruptcy proceedings have been opened against them or creditor rights are still unsatisfied from a bankruptcy more than ten years prior;
- c) they repeatedly fail to comply with orders or measures imposed by the FMA;
- d) there are reasons to seriously doubt their good reputation as businesspeople; or
- e) there are reasons to seriously doubt their guarantee of sound and proper business operation.

2) If criminal proceedings for an offence against the property of another or disciplinary or supervisory proceedings are pending against one of the persons referred to in paragraph 1, the FMA may interrupt a procedure in accordance with Article 74 of the National Administration Act (LVG).

3) In the case of ancillary insurance intermediaries, paragraphs 1 and 2 apply to persons responsible for ancillary insurance distribution.

Article 16

Obligation of insurance and reinsurance undertakings

1) To ensure that the requirements in paragraphs 14 and 15 are satisfied, insurance and reinsurance undertakings shall approve,

implement and regularly review the necessary internal policies and procedures. They shall identify a function to ensure the proper implementation of the endorsed policies and procedures.

2) Insurance and reinsurance undertakings shall establish, maintain and keep up-to-date records of all the relevant documentation regarding the application of paragraphs 14 and 15. They shall, upon request, make available the name of the person responsible for that function to the FMA.

Article 17

Financial guarantee

1) Insurance and reinsurance intermediaries must conclude professional liability insurance:

- a) which covers liability arising from violations of professional due diligence;
- b) which provides insurance coverage in the amount of at least 1,250,000 euros or the equivalent in Swiss francs for each claim and of 1,850,000 euros or the equivalent in Swiss francs for all claims within a year;
- c) whose territorial scope covers at least all EEA Contracting Parties;
- d) which provides follow-up liability (run-off cover) for at least three years;
- e) which provides a deductible (excess) of at most 10% of the insurance amount; and
- f) which contains a provision requiring the insurance undertaking to notify the FMA without delay of the suspension or cessation of insurance coverage.

2) Professional liability insurance must be concluded with an insurance undertaking licensed to conduct business in Liechtenstein.

3) The minimum insurance amounts shall be periodically adjusted to the European index of consumer prices determined by Eurostat. The FMA shall publish the currently applicable minimum insurance amounts.

4) The obligation to conclude professional liability insurance shall be waived for insurance intermediaries who:

- a) as an insured party are covered by other professional liability insurance satisfying the requirements set out in paragraph 1 that has been concluded by an insurance undertaking or other undertaking on

whose behalf the insurance or reinsurance intermediary acts or is authorised to act;

- b) demonstrates that an undertaking referred to in subparagraph (a) has assumed unlimited liability for the intermediary's actions; or
- c) renders another equivalent guarantee.

5) In individual cases under paragraph 4(b) and (c), the FMA shall decide whether the conditions for waiver of the insurance requirement are met. It shall also take the interests of potential claimants into account.

6) Ancillary insurance intermediaries shall conclude professional liability insurance or provide an equivalent guarantee pursuant to paragraph 4, the amount of which shall be determined by the FMA taking into account the type of products to be sold and the activity performed; the guarantee shall correspond to at least half of the amounts specified in paragraph 1(b).

Article 18

Registered office, head office, and place of business

1) Insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries that are legal persons must have their registered office and head office in Liechtenstein. They must establish and maintain a domestic place of business that is adequate in terms of personnel and premises.

2) Paragraph 1 applies *mutatis mutandis* to sole proprietorships and natural persons; in the case of natural persons, the place of residence shall apply in lieu of the registered office. In the case of persons whose place of residence is outside Liechtenstein, the domestic place from which they carry out their distribution activities shall apply in lieu of the place of residence.

Article 19

Ensuring payment for the benefit of the policyholder

1) Insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries are required to ensure by appropriate measures that they are always able to forward payments made to them by a party to the insurance contract for the benefit of the other contracting party to such contracting party.

- 2) Appropriate measures for purposes of paragraph 1 are:
- a) a contractual agreement pursuant to which satisfaction of a demand of the insurance undertaking is made through payment by the policyholder to the intermediary with discharging effect and satisfaction of a demand of the policyholder is made through payment by the insurance undertaking to the intermediary without discharging effect;
 - b) evidence of sufficient financial capacity. Such capacity exists if the intermediary has, on a permanent basis, financial means amounting to 4% of the sum of annual premiums received, subject to a minimum of 18,750 euros or the equivalent in Swiss francs; or
 - c) payment transactions conducted via strictly segregated client accounts, provided that such accounts are shielded from access by creditors in the event of bankruptcy.
- 3) The euro amount indicated in paragraph 2(b) shall be adjusted periodically on the basis of the consumer price index published by Eurostat. The FMA shall publish the currently valid amount.

Article 20

Business secrecy

1) The members of the governing bodies of insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries as well as their employees and all other persons working for such companies shall keep facts confidential that are not known to the public and that have been entrusted or made available to them pursuant to their business connections with clients. The duty of secrecy is not limited in time.

2) This provision is subject to the legal provisions governing the duty to give testimony or information to criminal courts, the Financial Intelligence Unit, and other official supervisory bodies as well as the provisions on cooperation with the Financial Intelligence Unit or other supervisory authorities.

3) Policyholders and other clients may grant release from the duty of secrecy referred to in paragraph 1 upon concluding a contract or at a later time; the declaration to this effect must be in writing and be provided with knowledge of the facts. In particular, the category of persons to whom the information may be transmitted must be clearly described.

Article 21

Restriction of insurance and reinsurance distribution

1) Insurance and reinsurance intermediaries may only use the services of insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries licensed in accordance with this Act or the relevant foreign legal provisions.

2) Insurance and reinsurance distribution for the benefit of insurance and reinsurance undertakings subject to the Insurance Supervision Act that are not authorised to conduct business in Liechtenstein is prohibited.

IV. Cross-border activities**A. Foreign activities of domestic intermediaries****1. Establishment of a branch or permanent presence in another EEA Contracting Party**

Article 22

Preconditions

1) If an insurance, reinsurance or ancillary insurance intermediary whose registered office is in Liechtenstein intends to establish a branch or permanent presence in another EEA Contracting Party in accordance with the freedom of establishment, it shall notify the FMA accordingly.

2) The notification under paragraph 1 must contain:

- a) designation of the EEA Contracting Party in which the branch or permanent presence is to be established;
- b) disclosure of the name or company name, registered office, address, and registration number of the intermediary;
- c) the category of intermediary and, in the case of agents, the name of the insurance or reinsurance undertaking or undertakings represented;
- d) the classes of insurance envisaged;
- e) name and address of the branch or permanent presence under which documents and information may be requested in the host State;

f) the name of the person responsible for the management of the branch or permanent presence.

3) Any permanent presence in another EEA Contracting Party shall be deemed equivalent to a branch, even where that presence does not take the form of a branch but consists merely of an office managed by the own staff of the intermediary or by a person who is independent but has permanent authority to act for the intermediary in the same way as a branch.

Article 23

Procedure

1) Upon receipt of the information referred to in Article 22(2), the FMA shall examine, taking into account the distribution activities envisaged, the legal admissibility of the project and the adequacy of the organisational structure and the financial situation of the insurance, reinsurance or ancillary insurance intermediary.

2) If the FMA has no concerns, it shall, within one month of receiving the information referred to in Article 22(2), communicate that information to the competent authority of the host State. The FMA shall inform the intermediary in writing that the information has been received by the competent authority of the host State once receipt has been acknowledged by the latter.

3) Where the FMA refuses to communicate information as referred to in paragraph 2, it shall, within one month of receipt of all the information, issue a decree to the intermediary concerned giving reasons for its refusal.

4) If the competent authority of the host State notifies the FMA within one month of receipt of the notification referred to in paragraph 2 of the conditions to be observed for the exercise of the distribution activity in the host State for reasons of the general good, the FMA shall forward this notification to the intermediary concerned.

5) The intermediary may establish the branch and take up business from the date of receipt of a communication from the competent authority of the host State as referred to in paragraph 4, provided that the intermediary complies with the conditions notified in accordance with paragraph 4; in the absence of such a communication, business may be taken up after a period of one month has elapsed following a communication as referred to in paragraph 2.

6) The intermediary must notify the FMA of any changes to the information provided pursuant to Article 22(2) at least one month prior to their intended implementation. The FMA must inform the competent authority of the host State of this change as soon as possible, but no later than one month after the date of receipt of the information by the FMA.

Article 24

Division of competence between the FMA and the competent authorities of the host State

If an insurance, reinsurance or ancillary insurance intermediary's primary place of business is located in another EEA Contracting Party, the FMA may agree with the competent authority of that other EEA Contracting Party to act as if it were responsible for exercising the powers of the FMA as the competent authority of the home State with regard to ongoing supervision, including the resulting measures and sanctions. The FMA shall notify the intermediary and EIOPA without delay of the conclusion of such an agreement.

2. Exercise of the freedom to provide services in another EEA Contracting Party

Article 25

Preconditions

1) If an insurance, reinsurance or ancillary insurance intermediary whose registered office is in Liechtenstein intends to carry on business in another EEA Contracting Party under the freedom to provide services, it shall notify the FMA accordingly before taking up the activity for the first time.

2) The notification under paragraph 1 must contain:

- a) designation of the EEA Contracting Party in which the activities are to be carried out;
- b) disclosure of the name or company name, registered office, address, and registration number of the intermediary;
- c) the category of intermediary and, in the case of agents, the name of the insurance or reinsurance undertaking or undertakings represented;

d) the classes of insurance envisaged.

Article 26

Procedure

1) The FMA shall communicate the information referred to in Article 25(2) to the competent authority of the host State within one month of receiving it.

2) After the competent authority of the host State has acknowledged receipt of the information referred to in paragraph 1, the FMA shall inform the intermediary in writing that the information has been received by the competent authority of the host State and that the intermediary may take up activities in the host State.

3) At the same time, the FMA shall inform the intermediary of the accessibility of the conditions to be observed for the exercise of the distribution activity in the host State for reasons of the general good and also that the intermediary must comply with those provisions in order to commence its business in the host State.

4) The intermediary must notify the FMA of any changes to the information provided pursuant to Article 25(2) at least one month prior to their intended implementation. The FMA must inform the competent authority of the host State of this change as soon as possible, but no later than one month after the date of receipt of the information by the FMA.

3. Distribution activities in third countries

Article 27

Preconditions

1) An insurance, reinsurance or ancillary insurance intermediary whose registered office or place of residence is in Liechtenstein and which takes up or expands distribution activities in a third country must provide the FMA in advance with evidence that the intermediary is authorised or does not require authorisation in the country of activity in question; furthermore, the intermediary must indicate which distribution activities the intermediary intends to pursue.

2) This article is subject to treaty arrangements.

B. Domestic activities of foreign intermediaries

1. Establishment of a branch or a permanent presence in Liechtenstein

Article 28

Preconditions

1) Insurance, reinsurance and ancillary insurance intermediaries with registered offices in another EEA Contracting Party may establish a branch or permanent presence in Liechtenstein in accordance with the freedom of establishment, after the competent authority of the home State has communicated the following to the FMA:

- a) confirmation that the competent foreign authority is aware that the intermediary intends to establish a branch or permanent presence in Liechtenstein;
- b) the name or company name, registered office, address, and registration number of the intermediary where applicable;
- c) the category of intermediary and, in the case of agents, the name of the insurance or reinsurance undertaking or undertakings represented;
- d) the classes of insurance or business envisaged;
- e) name and address of the branch or permanent presence under which documents and information may be requested in Liechtenstein;
- f) the name of the person responsible for the management of the branch or permanent presence.

2) Any permanent presence in Liechtenstein shall be deemed equivalent to a branch, even where that presence does not take the form of a branch but consists merely of an office managed by the own staff of the intermediary or by a person who is independent but has permanent authority to act for the intermediary in the same way as a branch.

Article 29

Procedure

1) Upon receipt of the information referred to in Article 28(1) from the competent authority of the home State, the FMA shall acknowledge receipt thereof without delay and within one month inform the competent authority of the home State of the conditions which must be

fulfilled for the establishment of the branch or the permanent presence for reasons of the general good.

2) The branch or permanent presence of the intermediary may take up its activities in Liechtenstein as soon as the period referred to in paragraph 1 has expired.

Article 30

Competences of the FMA

1) The FMA shall have the responsibility for ensuring that the services provided by the branch or permanent presence in Liechtenstein comply with the obligations laid down in Articles 36 to 59 and with measures set out by the FMA.

2) The FMA shall have the right to examine establishment arrangements and to request such changes as are needed to enable the FMA to enforce the obligations under Articles 36 to 59 and the measures ordered.

Article 31

Breach of obligations when exercising the freedom of establishment

1) Where the FMA ascertains that an insurance, reinsurance or ancillary insurance intermediary is in breach of the provisions set out in Articles 36 to 59, the FMA may take appropriate measures. At the same time, the FMA shall notify the competent authority of the home State.

2) Where the FMA has reason to consider that an insurance, reinsurance or ancillary insurance intermediary is in breach of any obligation under this Act, and where the FMA does not have responsibility in accordance with Article 30(1), it shall communicate this consideration to the competent authority of the home State.

3) The FMA shall obtain information from the competent authority of the home State of any measures taken by that authority.

4) Where, despite the measures taken by the home State or because those measures prove to be inadequate or are lacking, the insurance, reinsurance or ancillary insurance intermediary persists in acting in a manner that is clearly detrimental to the interests of consumers in Liechtenstein on a large scale, or to the orderly functioning of insurance and reinsurance markets, the FMA may, after informing the competent

authority of the home State, take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing that intermediary from continuing to carry on new business in Liechtenstein.

5) Paragraphs 2 to 4 shall not affect the power of the FMA to take appropriate and non-discriminatory measures to prevent or penalise irregularities committed in Liechtenstein, in situations where immediate action is strictly necessary, in order to protect the rights of consumers in Liechtenstein, and where equivalent measures of the home State are inadequate or lacking. In such situations, the FMA shall have the possibility of preventing the insurance, reinsurance or ancillary insurance intermediary concerned from carrying out new business in Liechtenstein.

2. Exercise of the freedom to provide services in Liechtenstein

Article 32

Preconditions

Insurance, reinsurance and ancillary insurance intermediaries with registered offices in another EEA Contracting Party may carry on business in Liechtenstein under the freedom to provide services, after the competent authority of the home State has communicated the following to the FMA:

- a) confirmation that the competent authority of the home State is aware that the intermediary intends to carry on cross-border business in Liechtenstein;
- b) the name or company name, registered office, address, and registration number of the intermediary where applicable;
- c) the category of intermediary and, in the case of agents, the name of the insurance or reinsurance undertaking or undertakings represented;
- d) the classes of insurance or business envisaged.

Article 33

Procedure

1) Upon receipt of the information referred to in Article 32 from the competent authority of the home State, the FMA shall acknowledge receipt thereof without delay.

2) The intermediary may take up its activities in Liechtenstein as soon as the competent authority of the home State has notified the intermediary to that effect.

Article 34

Breach of obligations when exercising the freedom to provide services

1) Where the FMA has reason to consider that an insurance, reinsurance or ancillary insurance intermediary is in breach of any obligation under this Act, it shall communicate this consideration to the competent authority of the home State.

2) The FMA shall obtain information from the competent authority of the home State of any measures taken by that authority.

3) Where, despite the measures taken by the home State or because those measures prove to be inadequate or are lacking, the insurance, reinsurance or ancillary insurance intermediary persists in acting in a manner that is clearly detrimental to the interests of consumers in Liechtenstein on a large scale, or to the orderly functioning of insurance and reinsurance markets, the FMA may, after informing the competent authority of the home State, take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing that intermediary from continuing to carry on new business in Liechtenstein.

4) Paragraphs 1 to 3 shall not affect the power of the FMA to take appropriate and non-discriminatory measures to prevent or penalise irregularities committed in Liechtenstein, in situations where immediate action is strictly necessary, in order to protect the rights of consumers in Liechtenstein, and where equivalent measures of the home State are inadequate or lacking. In such situations, the FMA shall have the possibility of preventing the insurance, reinsurance or ancillary insurance intermediary concerned from carrying out new business in Liechtenstein.

3. Intermediaries from third countries

Article 35

Licensing requirement

1) Insurance, reinsurance and ancillary insurance intermediaries who have their registered office or residence in a third country shall require a

licence in accordance with this Act to take up distribution activities in Liechtenstein.

2) This article is subject to treaty arrangements.

V. Information requirements and conduct of business rules

A. In general

Article 36

Principles

1) When carrying out their activities, insurance distributors shall always act honestly, fairly and professionally in accordance with the best interests of their customers.

2) All information, including marketing communications, addressed by the insurance distributor to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall always be clearly identifiable as such.

3) Insurance distributors shall not be remunerated and shall not remunerate or assess the performance of their employees in a way that conflicts with their duty to act in accordance with the best interests of their customers. In particular, an insurance distributor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs.

Article 37

General information provided by insurance intermediaries and insurance undertakings

1) In good time before the conclusion of an insurance contract, insurance intermediaries and insurance undertakings shall make the information referred to in paragraphs 2 and 3 available to their customers.

- 2) An insurance intermediary shall make the following disclosures:
- a) its identity and address and that it is an insurance intermediary;
 - b) whether it provides advice about the insurance products sold;
 - c) the register in which it has been included and the means for verifying that it has been registered;
 - d) whether it is acting as an agent or a broker;
 - e) information on the extrajudicial conciliation board and the procedure enabling customers and other interested parties to register complaints about insurance intermediaries;
 - f) whether it has a holding, direct or indirect, representing 10% or more of the voting rights or of the capital in a given insurance undertaking;
 - g) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing 10% or more of the voting rights or of the capital in the insurance intermediary.
- 3) An insurance undertaking shall make the following disclosures:
- a) its identity and address and that it is an insurance undertaking;
 - b) whether it provides advice about the insurance products sold;
 - c) information on the extrajudicial Conciliation Board and the procedure enabling customers and other interested parties to register complaints about insurance undertakings.

Article 38

Transparency regarding the contract proposed

In relation to the contracts proposed or advised upon, the insurance intermediary shall, in good time before the conclusion of an insurance contract, provide the customer with at least the following information:

- a) whether it gives advice on the basis of a fair and personal analysis;
- b) whether it is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings, in which case it is to provide the names of those insurance undertakings;
- c) whether it is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair and personal analysis, in which case it is to provide the names of the insurance undertakings with which it may and does conduct business.

Article 39

Transparency regarding remuneration

1) In good time before the conclusion of an insurance contract, the insurance intermediary shall provide the customer with the following information:

- a) the nature of the remuneration received in relation to the insurance contract;
- b) whether in relation to the insurance contract, it works:
 1. on the basis of compensation, that is the remuneration paid directly by the customer;
 2. on the basis of a commission of any kind, that is the remuneration included in the insurance premium;
 3. on the basis of any other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or
 4. on the basis of a combination of any type of remuneration set out at points 1 to 3.

2) Where compensation is payable directly by the customer, the insurance intermediary shall inform the customer of the amount thereof or, where that is not possible, of the method for calculating it.

3) If any payments, other than the ongoing premiums and scheduled payments, are made by the customer under the insurance contract after its conclusion, the insurance intermediary or insurance undertaking shall also make the disclosures in accordance with this article for each such payment.

4) In good time before the conclusion of an insurance contract, insurance undertakings shall communicate to their customer the nature of the remuneration received by their employees in relation to the insurance contract.

Article 40

Information provided by ancillary insurance intermediaries

Ancillary insurance intermediaries must comply with the information requirements set out in Article 37(2)(a), (c), and (e) as well as Article 39(1)(a).

Article 41

Determination of insurance needs

1) Prior to the conclusion of an insurance contract, insurance distributors shall specify, on the basis of information obtained from the customer, the demands and the needs of the customer.

2) Any contract proposed shall be consistent with the customer's insurance demands and needs.

Article 42

Information about the insurance product

Prior to the conclusion of a contract, whether or not advice is given and irrespective of whether the insurance product is part of a package in accordance with Article 48, the insurance distributor shall provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision.

Article 43

Non-life insurance product information document

1) In relation to the distribution of non-life insurance products as listed in Annex 1 of the Insurance Supervision Act, the information referred to in Article 42 shall be provided by way of a standardised insurance product information document. The information document must be drawn up on a durable medium.

2) The information document referred to in paragraph 1 shall be drawn up by the manufacturer of the non-life insurance product.

3) The information document referred to in paragraph 1 shall:

- a) be a short and stand-alone document;
- b) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
- c) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
- d) be written in German, or in one of the official languages used in the part of the EEA Contracting Party where the insurance product is

offered or, if agreed by the customer and the distributor, in another language;

- e) be accurate and not misleading;
- f) contain the title "insurance product information document" at the top of the first page;
- g) include a statement that complete pre-contractual and contractual information on the product is provided in other documents.

4) The information document referred to in paragraph 1 shall contain the following information:

- a) information about the type of insurance;
- b) a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and a summary of the excluded risks;
- c) the means of payment of premiums and the duration of payments;
- d) main exclusions where claims cannot be made;
- e) obligations at the start of the contract;
- f) obligations during the term of the contract;
- g) obligations in the event that a claim is made;
- h) the term of the contract including the start and end dates of the contract;
- i) the means of terminating the contract.

Article 44

Obligations when providing advice

1) Where advice is provided prior to the conclusion of any specific contract, the insurance distributor shall provide the customer with a personalised recommendation explaining why a particular product would best meet the customer's demands and needs.

2) Where an insurance intermediary informs the customer that it gives its advice on the basis of a fair and personal analysis, it shall give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

Article 45

Proportionality of information

The information in accordance with Articles 41, 42, and 44 must be modulated according to the complexity of the insurance product being proposed and the type of customer.

Article 46

Exceptions to the obligation to provide information and advice

The information referred to in Articles 37 to 44 need not be provided if the insurance distributor carries out distribution activities relating to the insurance of large risks.

Article 47

Arrangements for the provision of information

1) Where the insurance distributor is responsible for the provision of mandatory occupational pension arrangements and an employee becomes a member of such an arrangement without having taken an individual decision to join it, the insurance distributor shall ensure that the information referred to in this section is provided to the employee promptly after their enrolment in the arrangement concerned.

2) The Government shall provide further details by ordinance regarding the arrangements for the provision of information, without prejudice to the second sentence of Article 43(1).

B. Cross-selling

Article 48

Principle

1) When an insurance product is offered 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 shall inform the customer whether it is possible to buy the different components separately. If so, the insurance distributor shall provide an adequate description of the different components of the agreement or package as

well as separate evidence of the costs and remuneration for each component.

2) Where the insurance product and the ancillary product differ, the insurance distributor shall provide an adequate description of the different components and the way in which their interaction modifies the risk or the insurance coverage.

3) Where an insurance product is ancillary to a good or a service which is not insurance, as part of a package or the same agreement, the insurance distributor shall offer the customer the possibility of buying the good or service separately. This shall not apply where an insurance product is ancillary to an investment service or activity, a credit agreement, or a payment account.

4) In the cases referred to in paragraphs 1 and 3, an insurance distributor must specify the demands and needs of the customer in relation to the insurance products that form part of the overall package or the same agreement.

5) This article shall not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

VI. Additional requirements in relation to insurance-based investment products

Article 49

Scope

1) This chapter establishes additional requirements applicable to insurance distribution where the insurance distribution is carried out by an insurance intermediary or an insurance undertaking in relation to the sale of insurance-based investment products.

2) The information referred to in Articles 51 to 56 need not be provided in relation to a professional client.

Article 50

Prevention of conflicts of interest

1) Insurance intermediaries and insurance undertakings must take all appropriate steps to identify conflicts of interest between themselves, including their governing bodies and employees, or any person directly or indirectly linked to them by control, and their customers or between one customer and another, that arise in the course of carrying out any insurance distribution activities.

2) Without prejudice to Article 36, an insurance intermediary or an insurance undertaking carrying on the distribution of insurance-based investment products shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its customers. Those arrangements must be proportionate to the activities performed, the insurance products sold and the type of the distributor.

3) Where arrangements made in accordance with paragraph 2 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose to the customer the general nature or sources of the conflicts of interest, in good time before the conclusion of an insurance contract.

4) The disclosure referred to in paragraph 3 shall be made on a durable medium and include sufficient detail, taking into account the nature of the customer, to enable that customer to take an informed decision with respect to the distribution channel in the context of which the conflict of interest arises.

Information to customers

Article 51

a) Insurance-based investment products

1) Without prejudice to Articles 37, 38, and 39(1) and (2), appropriate information shall be provided in good time, prior to the conclusion of a contract, to customers or potential customers with regard to the distribution of insurance-based investment products, and with regard to all costs and related compensation. That information shall include at least the following:

- a) when advice is provided (Article 44), whether the insurance intermediary or insurance undertaking will provide the customer with a periodic assessment of the suitability of the recommended insurance-based investment products, referred to in Article 53;
- b) as regards the information on the insurance product (Article 42), appropriate guidance on, and warnings of, the risks associated with the insurance-based investment products or in respect of particular investment strategies proposed;
- c) as regards the information on remuneration (Article 39), information relating to the distribution of the insurance-based investment product, including the cost of advice, where relevant, the cost of the insurance-based investment product recommended or marketed to the customer and how the customer may pay for it, also encompassing any third party payments.

2) The information about all costs and compensation, including costs and compensation in connection with the distribution of the insurance-based investment product, which are not caused by the occurrence of underlying market risk, shall be in aggregated form to allow the customer to understand the overall cost as well as the cumulative effect on the return of the investment. Where the customer so requests, an itemised breakdown of the costs and compensation shall also be provided. Where applicable, such information shall be provided to the customer on a regular basis, at least annually, during the life cycle of the investment.

3) The information referred to in paragraphs 1 and 2 shall be provided in a comprehensible form in such a manner that customers or potential customers are reasonably able to understand the nature and risks concerning the insurance-based investment product offered and, consequently, to take investment decisions on an informed basis. That information may be provided in a standardised format.

Article 52

b) Remuneration

Without prejudice to Article 39(1) and (3), insurance intermediaries or insurance undertakings shall be regarded as fulfilling their obligations under Article 36(1) and Article 50 where they pay or are paid any compensation or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party

except the customer or a person on behalf of the customer only where the commission or benefit:

- a) does not have a detrimental impact on the quality of the relevant service to the customer; and
- b) does not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers.

Article 53

Assessment of suitability and appropriateness of insurance-based investment products

1) In order to be able to make a recommendation on insurance-based investment products that are suitable for the customer or potential customer and that, in particular, are in accordance with that person's risk tolerance and ability to bear losses, the insurance intermediary or insurance undertaking shall, when providing advice on an insurance-based investment product and without prejudice to Articles 41, 42, and 44(1), also obtain the necessary information regarding:

- a) the customer's or potential customer's knowledge and experience in the investment field relevant to the specific type of product or service;
- b) the customer's financial situation, including the customer's ability to bear losses; and
- c) the customer's investment objectives, including the customer's risk tolerance.

2) Where an insurance intermediary or insurance undertaking provides investment advice recommending a package of products or services bundled pursuant to Article 48, the overall bundled package must be suitable for the customer.

3) Without prejudice to Articles 41, 42, and 44(1), insurance intermediaries or insurance undertakings, when carrying out distribution activities where no advice is given, must ask the customer or potential customer to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or the insurance undertaking to assess whether the insurance service or product envisaged is appropriate for the customer. Where a bundle of services or products is envisaged pursuant to Article

48, the assessment shall consider whether the overall bundled package is appropriate.

4) Where the insurance intermediary or insurance undertaking considers, on the basis of the information received under paragraph 3, that the product is not appropriate for the customer or potential customer, the insurance intermediary or insurance undertaking shall warn the customer or potential customer to that effect. That warning may be provided in a standardised format.

5) Where customers or potential customers do not provide the information referred to in paragraph 3, or where they provide insufficient information regarding their knowledge and experience, the insurance intermediary or insurance undertaking shall warn them that it is not in a position to determine whether the product envisaged is appropriate for them. That warning may be provided in a standardised format.

Article 54

Simplifications where no investment advice is given

1) Without prejudice to Articles 41, 42, and 44(1), insurance intermediaries and insurance undertakings shall, in cases where no advice is given in relation to insurance-based investment products, be released from the obligations referred to in Article 53(3) to (5) where all the following conditions are met:

- a) the activities refer to either of the following insurance-based investment products:
 1. contracts which only provide investment exposure to the financial instruments deemed non-complex and do not incorporate a structure which makes it difficult for the customer to understand the risks involved; or
 2. other non-complex insurance-based investments that must be treated in the same way as contracts referred to in point 1;
- b) the distribution activity is carried out at the initiative of the customer or potential customer;
- c) the customer or potential customer has been clearly informed that:
 1. in the provision of the insurance distribution activity, the insurance intermediary or the insurance undertaking is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered; and

2. the customer or potential customer does not benefit from the corresponding protection of the relevant conduct of business rules.

Such a warning may be provided in a standardised format;

- d) the insurance intermediary or insurance undertaking complies with its obligations under Article 50.

2) Insurance intermediaries and insurance undertakings operating under the freedom to provide services or the freedom of establishment shall observe the provisions applicable in the host State if a State does not make use of the simplifications contained in this article.

Article 55

Documentation requirement

Insurance intermediaries and insurance undertakings shall establish a record that includes the document or documents agreed between the insurance intermediary or insurance undertaking and the customer that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

Article 56

Ongoing reports

1) The insurance intermediary or the insurance undertaking must provide the customer with adequate reports on the services provided on a durable medium. Those reports shall include:

- a) periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer; and
- b) where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.

2) When providing advice on an insurance-based investment product, the insurance intermediary or the insurance undertaking shall, prior to the conclusion of the contract, provide the customer with a suitability statement on a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the

customer. The Government shall by ordinance set out details regarding the form in which the suitability statement must be provided.

3) Where the contract is concluded using a means of distance communication which prevents the prior delivery of the suitability statement, the insurance intermediary or the insurance undertaking may provide the suitability statement on a durable medium immediately after conclusion of the contract, provided both of the following conditions are met:

- a) the customer has consented to receiving the suitability statement without undue delay after the conclusion of the contract; and
- b) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract in order to receive the suitability statement in advance of such conclusion.

4) Where an insurance intermediary or an insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics of the customer.

VII. Internal product approval process and information requirements vis-à-vis distributors

Article 57

Internal product approval process

1) Insurance undertakings and insurance intermediaries which manufacture any insurance product for sale to customers, shall maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers.

2) The product approval process must be proportionate and appropriate to the nature of the insurance product.

3) The product approval process shall specify an identified target market for each product, and it shall be ensured that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market.

Moreover, reasonable steps must be taken to ensure that the insurance product is distributed to the identified target market.

4) Insurance undertakings must understand and regularly review the insurance products they offer or market, taking into account any event that could materially affect the potential risk to the identified target market. Insurance undertakings must also assess at least whether a product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

Article 58

Information requirements vis-à-vis distributors

1) Insurance undertakings and insurance intermediaries which manufacture insurance products, shall make available to all distributors all appropriate information on the insurance product and the product approval process referred to in Article 57(1), including the identified target market of the insurance product.

2) Where an insurance distributor advises on, or proposes, insurance products which it does not manufacture, it shall have in place adequate arrangements to obtain the information referred to in paragraph 1 and to understand the characteristics and identified target market of each insurance product.

Article 59

Reservation of other obligations and exceptions

1) The policies, processes and arrangements referred to in Articles 57 and 58 shall be without prejudice to all other requirements and obligations under this Act and other insurance legislation.

2) Article 57 and 58 shall not apply in relation to the insurance of large risks.

VIII. Cessation of insurance and reinsurance distribution

Article 60

Principle

1) The FMA shall supervise the cessation of insurance and reinsurance distribution if the licence of an insurance intermediary, reinsurance intermediary, or ancillary insurance intermediary is withdrawn or lapses.

2) The FMA shall inform the competent authorities of the host States about a cessation of insurance and reinsurance distribution.

Article 61

Lapse of licence

1) The licence shall lapse if:

- a) an insurance intermediary, reinsurance intermediary, or ancillary insurance intermediary renounces the licence for insurance and reinsurance distribution;
- b) bankruptcy proceedings have been opened against the intermediary with legal effect; or
- c) the intermediary dies.

2) A renunciation as referred to in paragraph 1(a) must be communicated to the FMA by way of a legally signed letter.

Art. 62

Withdrawal of licence

1) The FMA may withdraw the licence of an insurance intermediary, reinsurance intermediary, or ancillary insurance intermediary for individual classes of insurance or for all business activities if:

- a) an intermediary no longer meets the requirements for granting the licence;
- b) the intermediary gravely violates obligations arising from supervisory regulations or official orders; or
- c) such serious grievances arise that a continuation of business operations would endanger the interests of the insured parties.

2) If the licence is withdrawn, the FMA shall take all measures likely to safeguard the concerns of the insured parties.

3) If the FMA gains knowledge of facts that would justify withdrawal of a licence, it may instead demand the dismissal of members of the supervisory board or the board of directors or of other management bodies to whom the facts personally relate, and it may also prohibit such persons from engaging in their business activities.

4) In the case under paragraph 1(a), the FMA shall determine an appropriate deadline before withdrawing the licence to restore a lawful state of affairs, provided there is a reasonable prospect that the defect will be remedied.

Article 63

Publication

1) If the licence of an insurance intermediary, reinsurance intermediary, or ancillary insurance intermediary is withdrawn, the FMA may provide information in this regard through publication in the Official Journal or on its website.

2) The intermediary shall bear the costs of publication.

IX. Supervision

Article 64

Supervisory authority

1) The Financial Market Authority (FMA) shall be responsible for the supervision of insurance and reinsurance distribution.

2) The FMA shall ensure that legislation is complied with and that the interests of insured parties and potential insured parties are safeguarded. The FMA shall regularly review compliance with the licensing criteria.

3) In particular, the FMA shall be responsible for:

- a) granting and withdrawing licences;
- b) maintaining the register of insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries;

- c) cooperating with foreign authorities;
- d) receiving complaints.

Article 65

Supervision taxes and fees

The supervision taxes and fees to be paid for the FMA's activities shall be levied in accordance with the financial market supervision legislation.

Article 66

Publication of general good rules

The FMA shall regularly publish on its website the relevant and current Liechtenstein legal provisions protecting the general good which are applicable to the carrying on of insurance and reinsurance distribution in Liechtenstein.

Article 67

Duty to provide information

1) Insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries must provide the FMA with all information necessary for it to perform its responsibilities.

2) Third parties are required to provide information to the FMA to the extent necessary for its supervisory activities.

Article 68

Reporting

1) For supervisory purposes, the FMA may require insurance intermediaries, reinsurance intermediaries, and ancillary insurance intermediaries to provide an annual report of the past business year, which must be submitted no later than 31 March of the following year.

2) The report referred to in paragraph 1 must meet the requirements laid down by the FMA.

Article 69

Audit powers, measures, and publication of supervisory practice

1) The FMA may take the measures necessary to fulfil its supervision responsibilities and in particular make arrangements that are adequate to prevent or eliminate abuses.

2) With respect to insurance, reinsurance and ancillary insurance intermediaries whose registered offices are in another EEA Contracting Party, the FMA may take measures adequate to prevent or punish violations of Liechtenstein provisions enacted in the public interest. In particular, the FMA may prohibit the pursuit of further activities in Liechtenstein.

3) The FMA shall have the power to carry out audits at the premises of the insurance, reinsurance and ancillary insurance intermediaries (on-the-spot inspection).

4) In order to protect the insured parties and to safeguard confidence in the Liechtenstein insurance and financial centre, the FMA may, to the extent necessary and proportionate, inform the public about unfair conduct and other abuses by undertakings or natural persons.

5) The FMA shall ensure that its supervisory practice is made available to the public.

Article 70

Measures in the event of violation of the information requirements, conduct of business rules, and product approval processes in particular

1) In the event of a violation of the information requirements, the conduct of business rules, and the internal product approval processes (Articles 36 to 58) by an insurance undertaking or an insurance intermediary, the FMA may:

- a) order a responsible natural or legal person to cease a certain conduct and to desist from a repetition of that conduct;
- b) in the case of an insurance intermediary or an ancillary insurance intermediary, withdraw the licence.

2) In the event of a violation of the information requirements, the conduct of business rules, and the internal product approval processes in relation to the distribution of insurance-based investment products (Article 36 to 58) by an insurance undertaking or an insurance intermediary, the FMA may additionally order the following:

- a) a temporary ban on the exercise of management functions in insurance intermediaries or insurance undertakings imposed against any member of the management body of the insurance intermediary or insurance undertaking who is held responsible;
- b) a public statement, which indicates the responsible natural or legal person and the nature of the breach.

Article 71

Official secrecy

1) The persons mandated to implement this Act and any other persons consulted by them as well as all representatives of public authorities shall be subject to official secrecy without any time limits with respect to the confidential information that they gain knowledge of in the course of their official activities.

2) The information subject to official secrecy may not be transmitted to others, subject to provisions governing cooperation with other authorities as well as other special legal provisions.

3) If liquidation or bankruptcy proceedings have been initiated by a court decision against an insurance, reinsurance or ancillary insurance intermediary, then confidential information that does not relate to third parties may be used in civil or commercial proceedings, insofar as it is necessary for the proceedings in question.

Article 72²

Processing of personal data

The bodies entrusted with implementation of this Act may process or have processed personal data, including personal data relating to criminal convictions and offences, of persons responsible for the governance and management of an intermediary or of a branch of an intermediary, to the extent necessary for the performance of their duties under this Act.

² Article 72 amended by LGBI. 2018 No. 295.

Article 73

Reporting of breaches

1) The FMA shall have an effective and reliable reporting system at its disposal through which potential or actual breaches of provisions of this Act and the associated ordinances can be reported via a generally accessible, secure reporting channel.

2) The reporting system shall include at least:

- a) specific procedures for the receipt of reports on breaches and their follow-up;
- b) appropriate protection, at least against retaliation, discrimination or other types of unfair treatment, for employees of insurance or reinsurance distributors and, where possible, for other persons, who report breaches committed within those companies or bodies;
- c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in accordance with data protection legislation;³
- d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports a breach, unless disclosure is required in the context of prosecutorial, judicial, or administrative proceedings.

X. Legal remedies and appeals

Article 74

Complaints concerning intermediaries

1) The FMA shall receive complaints by insured parties and other affected parties, especially consumer protection organisations, concerning insurance, reinsurance or ancillary insurance intermediaries.

2) Such complaints must be dealt with and answered. Mediation must be pursued where possible.

³ Article 73(2)(c) amended by LGBL 2018 No. 295.

Article 75

Extrajudicial conciliation board

- 1) The Government shall appoint a conciliation board to settle disputes between clients and insurance distributors concerning the services provided.
- 2) The conciliation board shall be responsible for mediating as appropriate in disputes between the parties and in this way for reaching a settlement between the parties.
- 3) If no settlement between the parties can be reached, then the parties shall be referred to the ordinary legal process.
- 4) The proceedings before the conciliation board shall be free of charge for the complaining client.
- 5) The Government shall provide further details by ordinance, especially concerning the organisational structure, the composition, the procedure, and compensation for the administration of cases.

Article 76

Appeals

- 1) Decisions and decrees of the FMA may be appealed within 14 days of service by way of complaint to the FMA Complaints Commission.
- 2) Decisions and decrees of the FMA Complaints Commission may be appealed within 14 days of service by way of complaint to the Administrative Court.

XI. Cooperation with other authorities**A. Cooperation with other domestic authorities**

Article 77

Principle

- 1) In the context of supervision, the FMA shall work together with other domestic authorities to the extent necessary for the fulfilment of its responsibilities.

2) The competent domestic authorities may transfer personal data, including personal data relating to criminal convictions and offences, to each other to the extent necessary for the performance of their supervisory duties.⁴

Article 78

Notification obligation of the courts and the Office of Justice

1) The courts shall provide the FMA with a copy of all judgments relating to insurance contract law or insurance or reinsurance distribution.

2) The Office of Justice shall communicate all changes to entries in the Commercial Register concerning an insurance, reinsurance or ancillary insurance intermediary to the FMA.

B. Cooperation with foreign authorities

Art. 79

Principle

1) The FMA may, to the extent necessary to perform its duties, work together with the competent foreign authorities within the scope of its supervision, subject to Article 26b(2) to (4) FMAG.⁵

2) Especially in licensing and registration procedures as well as on a continuous basis, the FMA shall forward relevant information concerning the good repute and professional knowledge and competence of insurance and reinsurance distributors.

3) The FMA shall work together with EIOPA, the EFTA Surveillance Authority, and other competent European authorities and institutions in order to ensure the smooth functioning of the supervision of insurance and reinsurance distribution.

⁴ Article 77(2) inserted by LGBL 2018 No. 295.

⁵ Article 79(1) amended by LGBL 2018 No. 295.

Article 80

Exchange of information

1) The FMA may, within the scope of its supervision, exchange all information with the competent authorities of other EEA Contracting Parties necessary to fulfil the responsibilities under this Act.

2) The FMA shall also exchange information on insurance and reinsurance distributors who have been subject to a sanction or other measures, especially a penalty under Article 82, where such information is likely to lead to removal from the register of any such distributors.

Article 81

Transmission of information to EIOPA

1) The FMA shall inform EIOPA of all sanctions and other measures imposed but not published, including any appeal in relation thereto and the outcome thereof.

2) The FMA shall provide EIOPA annually with aggregated information regarding all sanctions and other measures imposed, whether or not they have been published. At the same time, the FMA shall inform EIOPA of publications of sanctions and other measures imposed.

XII. Penal provisions

Article 82

Misdemeanours and contraventions

1) The Court of Justice shall punish with a custodial sentence of up to one year or with a monetary penalty of up to 360 daily penalty units for committing a misdemeanour anyone who:

- a) without a licence, carries out an activity subject to the licensing requirement under this Act (Article 5);
- b) violates business secrecy (Article 20) or induces or attempts to induce such a violation;
- c) obtained a license dishonestly by providing false information or in any other unlawful manner.

2) The FMA shall punish for committing a contravention anyone who, as an insurance undertaking or insurance intermediary, violates the provisions governing the information requirements, conduct of business rules, and internal product approval processes in relation to the distribution of insurance-based investment products (Articles 36 to 58):

- a) in the case of a legal person with a fine of at most:
 - 1. 6,000,000 Swiss francs or 5% of the total annual turnover according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts, the relevant total turnover shall be the total annual turnover according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking; or
 - 2. up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined;
- b) in the case of a natural person with a fine of at most:
 - 1. 840,000 Swiss francs; or
 - 2. up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined.

3) The FMA shall punish with a fine of up to 50,000 francs for committing a contravention anyone who:

- a) fails to comply, to comply fully, or to comply in a timely manner with the approval and notification requirements as set out in Articles 12 and 13;
- b) fails to comply with the continuing professional training and development requirements as set out in Article 14(4);
- c) as an insurance or reinsurance undertaking, violates the organisational requirements as set out in Article 16;
- d) fails to permanently fulfil the financial guarantee provisions as set out in Article 17;
- e) violates the obligations relating to the registered office, the head office, and the place of business as set out in Article 18;
- f) fails to take or comply with the measures to ensure payment for the benefit of policyholders as set out in Article 19;
- g) fails to comply, to comply fully, or to comply in a timely manner with the notification requirements relating to the performance of cross-border activities as set out in Article 22(1) and (2), Article 23(6), Article 25(1) and (2), Article 26(4), and Article 27(1);

- h) fails to satisfy the conduct of business rules as set out in Articles 36 to 48 in relation to insurance products other than those referred to in paragraph 2;
- i) fails to meet the obligations governing internal product approval processes as set out in Article 57 and information requirements governing distribution as set out in Article 58 in relation to insurance products other than those referred to in paragraph 2;
- k) uses insurance or reinsurance distribution services of persons without the requisite licence, or performs distribution activities for unauthorised insurance or reinsurance undertakings (Article 21);
- l) fails to comply, to comply fully, or to comply in a timely manner with the information and reporting obligations vis-à-vis the FMA as set out in Articles 67 and 68;
- m) fails to comply, to comply fully, or to comply in a timely manner with a demand to bring about a lawful state of affairs or with any other decree of the FMA.

4) If the offences are committed negligently, the maximum penalties are reduced by half.

Article 83

Sentencing

Sentencing shall take all relevant circumstances into account, in particular:

- a) the gravity and the duration of the breach;
- b) the degree of responsibility of the responsible natural or legal person;
- c) the financial strength of the responsible natural or legal person, as indicated by either the annual income of the responsible natural person or the total turnover of the responsible legal person;
- d) the importance of profits gained or losses avoided by the responsible natural or legal person, in so far as they can be determined;
- e) the losses for customers and third parties caused by the breach, in so far as they can be determined;
- f) the level of cooperation of the responsible natural or legal person with the FMA;
- g) measures taken by the responsible natural or legal person to prevent repetition of the breach; and
- h) any previous breaches by the responsible natural or legal person.

Article 84

Responsibility

Where breaches are committed in the business operations of a legal person or a general or limited partnership or sole proprietorship, then the penal provisions shall apply to the persons who acted or should have acted on its behalf; the legal person or partnership or sole proprietorship shall, however, be jointly and severally liable for monetary penalties and fines.

Article 85

Announcement of penalties

1) On its website, the FMA shall publish all final penalties imposed for contraventions under Article 82, once the person concerned has been informed of the penalty. Such publication does not constitute a violation of official secrecy under Article 71. The publication shall contain:

- a) information on the type and nature of the breach; and
- b) the name or business name of the natural or legal person against which the penalty was imposed.

2) The FMA shall waive publication under paragraph 1 or shall publish the information only in anonymised form if public announcement of the personal data:

- a) would be disproportionate, taking into account the damage to the natural or legal persons concerned; or
- b) would endanger the stability of financial markets or ongoing criminal investigations.

3) The FMA shall issue a decree for publication in accordance with paragraph 1; this shall not be the case for anonymous publications.

XIII. Transitional and final provisions

Article 86

Implementing ordinances

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

Article 87

Amounts in euros

Where this Act refers to amounts in euros, the equivalent value on the 31st of the preceding month of October shall be deemed the equivalent value in Swiss francs or other currency applicable from 31 December of each year.

Article 88

Insurance intermediaries authorised under the law hitherto in force

1) Licences for insurance intermediaries granted under the law hitherto in force shall remain valid to the extent that the requirements of this Act and the associated ordinances are fulfilled.

2) The required professional qualifications as referred to in Article 14 shall be met by 23 February 2019.

Article 89

Repeal of law hitherto in force

The Law of 17 May 2006 on Insurance Mediation (Insurance Mediation Act; VersVermG), LGBI. 2006 No. 125, as amended, is repealed.

Article 90

Reference to legal provisions of the European Union

1) Where the ordinances enacted in conjunction with this Act refer to provisions for the implementation of Directive (EU) 2016/97, those provisions shall be regarded as national legal provisions until their incorporation into the EEA Agreement.

2) The full text of the implementing provisions referred to in paragraph 1 is published in the Official Journal of the European Union at <http://eur-lex.europa.eu>; the full text may also be accessed on the FMA website at www.fma-li.li.

Article 91

Entry into force

1) The Government shall by ordinance determine entry into force of this Act, taking into account the applicability of Directive (EU) 2016/97 in the European Union.⁶

2) Article 1(2) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Directive (EU) 2016/97.

Representing the Reigning Prince:

signed *Alois*

Hereditary Prince

signed *Adrian Hasler*

Prime Minister

⁶ Entry into force: 1 October 2018 (LGBL 2018 No. 68).

Annex
(Article 14(5))

Minimum professional knowledge and competence requirements

A. General knowledge and competence

Irrespective of the insurance products distributed, adequate knowledge and competence must be demonstrated in the following areas:

- a) applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;
- b) complaints handling;
- c) assessing customer needs;
- d) insurance market;
- e) business ethics standards; and
- f) (minimum) financial competency.

B. Special knowledge and competence in individual insurance segments

The following knowledge and competence are additionally required in the respective insurance segments:

1. in the insurance classes of non-life insurance as referred to in Annex 1(A) of the Insurance Supervision Act, adequate knowledge of:
 - a) terms and conditions of policies offered, including ancillary risks if covered by such policies;
 - b) relevant social and labour law;
 - c) claims handling;
2. in the insurance classes of life insurance as referred to in Annex 2 of the Insurance Supervision Act, adequate knowledge of:
 - a) policies including terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;
 - b) organisation and benefits guaranteed by the pension system of the relevant EEA Contracting Party;

- c) the applicable insurance contract law, data protection law, due diligence law, and relevant social and labour law;
- d) the relevant financial services markets; and
- e) conflicts of interest management.

C. Special knowledge and competence in relation to insurance-based investment products

In relation to insurance-based investment products, adequate knowledge and competence are required in regard to:

- a) the individual insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;
- b) advantages and disadvantages of different investment options for policyholders;
- c) financial risks borne by policyholders;
- d) policies covering life risks and other savings products;
- e) organisation and benefits guaranteed by the pension system;
- f) the saving products market; and
- g) complaints handling.