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Liechtenstein

INSURANCE & REINSURANCE

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This country-specific Q&A provides an overview of insurance & reinsurance laws and regulations applicable in Liechtenstein.

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LIECHTENSTEIN INSURANCE & REINSURANCE



1. How is the writing of insurance contracts regulated in your jurisdiction?

The Insurance Contract Act of 2001 (*Versicherungsvertragsgesetz*, VersVG) regulates the relationship between an insurance company and its policyholders and implies the main rights and duties of both parties. Part 1 of the VersVG includes the General Provisions and Part 2 covers damage policy. The chapters below provide specific rules on various insurance sectors, such as life insurance, health insurance and finally casualty insurance. Incidentally, the International Insurance Contract Act of 2015 (*Internationales Versicherungsvertragsgesetz*, IVersVG) establishes rules which law is applicable when insurance contracts are foreign related. Also, the Private International law of 1996 (*Gesetz über das internationale Privatrecht*, IPRG) shall apply for purposes of foreign related private international law.

As a matter of course, the provisions of the Civil Code of 1811 (*Allgemeines Bürgerliches Gesetzbuch*, ABGB) supplement the VersVG and always must be kept in mind when writing contracts. Since Liechtenstein basically adopted a predominantly part of the Austrian law of obligations, Austrian and European Jurisdiction and appropriate literature must be considered in the area of insurance contracts.

Finally, insurance companies in Liechtenstein must be authorised by the Liechtenstein Financial Market Authority (*Finanzmarktaufsicht Liechtenstein*, FMA) before doing insurance business. The FMA supervises all activities of Liechtenstein insurance intermediaries and, in this context, also ensures proper supervision of the cross-border activities of Liechtenstein insurance intermediaries in the European Economic Area and Switzerland. Therefore, provisions of the Insurance Supervision Act of 2015 (*Versicherungsaufsichtsgesetz*, VersAG) and the Insurance Supervision Ordinance of 2015 (*Versicherungsaufsichtsverordnung*, VersAV) may be relevant for writing insurance contracts. By the way, the VersAG was revised in 2015 by implementing the Solvency II Directive 2009/138/EC.

2. Are types of insurers regulated differently (i.e. life companies, reinsurers?)

Pursuant to Article 2 VersAG, companies that operate direct insurance or reinsurance are subject to insurance supervision, so the VersAG governs life companies as well as reinsurance companies.

Article 7 VersAG specifies that very few transactions of life insurance companies are exempt from certain provisions of the VersAG. So does Article 8 VersAG exempts reinsurance companies from the scope of application of the VersAG, provided the companies only operate reinsurance in Liechtenstein and have a domicile in a third country (outside the EAA region) where they are equally supervised by a public authority. Furthermore, the law contains different provisions for life companies and reinsurers regarding the capital requirements as well as the access rules.

Besides, there is a principle separation provided that makes sure companies basically can't operate non-life insurance and life insurance at the same time within the same entities.

3. Are insurance brokers and other types of market intermediary subject to regulation?

Insurance brokers and other intermediaries are subject to regulation in Liechtenstein. The appropriate legal foundations, which are mainly relevant for insurance brokers and other intermediaries, are the Insurance Distribution Act of 2017 (*Versicherungsvertriebsgesetz*, VersVertG) supplemented by the Insurance Distribution Ordinance of 2018 (*Versicherungsvertriebsverordnung*, VersVertV) as well as the Due Diligence Act of 2008 (*Sorgfaltspflichtgesetz*, SPG) complemented by the Due Diligence Ordinance of 2009 (*Sorgfaltspflichtverordnung*, SPV). On the legal basis as just mentioned, insurance intermediaries are subject to supervision by the FMA and require a licence issued by the FMA to take up insurance distribution. They are also registered in the FMA's public Insurance Intermediary Register. The licence is granted if

the applicant meets the legal requirements (i.e. professional qualification, financial guarantee, domestic head office...). Insurance brokers and other intermediaries with ancillary activity can be exempt from the scope when exhaustive legal preconditions are met.

4. Is authorisation or a licence required and if so how long does it take on average to obtain such permission? What are the key criteria for authorisation?

The FMA as the insurance supervision authority is responsible to supervise all business activities of insurance undertakings (see question 1 above).

The key criteria to obtain such a permission are according to Article 12 and Article 13 VersAG a complete transmission of a licence application and a business plan. This following list gives an overview of essential declaration and documents which the licence application must include:

- Statutes of the company;
- Organisation and local scope of activity of the company; if applicable the group or financial conglomerates where the company belongs to;
- Opening statement of financial position or financial statements of the last 3 business years; if applicable an annual report;
- Evidence that eligible basic own funds are available to cover the absolute floor of the Minimum Capital Requirement;
- Evidence that the company will be able to hold eligible own funds to cover the Solvency Capital Requirement;
- Evidence that the company will be able to hold eligible basic own funds to cover the Minimum Capital Requirement;
- Identities and amount of investment of the shareholder, direct or indirect, whether natural or legal persons who have qualifying holdings in that undertaking or who can influence the company by other means such as strong linkages;
- Names of the governing bodies, other organs including the responsible persons for supervision such as represents with another key function;
- Evidence that the company will be able to guarantee the required governance;
- Names of the external auditors and names of other persons in charge;
- Contracts or miscellaneous agreements concerning the outsourcing of functions;

- Business plan according to Article 13;
- Upon request by the FMA, further declarations and documents that could be needed to confirm the application.

According to FMA Instruction (FMA I 2018/9 Grant of a licence) the duration of the licencing procedure depends primarily on the conclusiveness and completeness of the information and documents contained in the application. Once the application is complete, the FMA is required to decide on the grant of a licence within six months and to inform the applicant without delay. In case of delay, the applicant has the right to make a complaint to the FMA – Appeals Commission. In practice, insurance companies should expect a duration between 3 and 6 months before their licence is granted.

5. Are there restrictions or controls over who owns or controls insurers (including restrictions on foreign ownership)?

The FMA needs to be informed beforehand in writing by the interested parties about every intended purchase or sale of qualifying participations (at least 10 percent) in an insurance company, whether direct or indirect. Likewise, every intended increase or sale of a qualifying participation, directly or indirectly, must be reported in writing when as a result the participation would reach, fell below or exceed the limit of 20, 30 or 50 percent of the share capital or the voting rights of such an insurance undertaking. Even an intended purchase and increase of the participation under 10 percent of the share capital or the voting rights needs to be reported to the FMA, so that the supervision authority can determine whether the interested acquirer could exert significant influence on company management.

Foreign interested purchaser and seller without a domicile in Liechtenstein and with qualifying participations, directly or indirectly, must announce a domicile delivery address. Besides, the FMA needs ancillary information if the interested purchaser is a legal entity from a third country such as clearance certificate and statement from the foreign financial authority.

6. Is it possible to insure or reinsure risks in your jurisdiction without a licence or authorisation? (i.e. on a non-admitted basis)?

We should mention in advance, that Liechtenstein has been a member of the EEA since 1995 and participates in the EU internal market. Together with the two other EEA countries, Norway and Iceland, Liechtenstein is thus

one of the third countries most integrated into European structures, which is why Liechtenstein's economy gains access to the common market.

Principally, non-admitted insurance is not permitted in Liechtenstein. But as an EEA-member, Liechtenstein is required to implement all EU legal acts in the area of financial services into domestic law. The same legal framework conditions therefore apply in Liechtenstein as in other EU countries. As a result, Liechtenstein financial institutions enjoy direct access to the EU single market. They benefit from a system that allows providers of financial services, that are already licenced in the EEA, to offer their services in the other EEA-states without additional licencing requirements.

So, pursuant to Article 11 VersAG insurance companies domiciled in another EEA-member state don't need a licence or authorisation, provided they fulfil the conditions set out in Article 112 et seqq. VersAG. However, when companies want to operate in Liechtenstein, they must inform the FMA about their intended insurance business.

7. Is a branch of an overseas insurer, insurance broker and/or other types of market intermediary in your jurisdiction subject to a similar regulatory framework as a locally incorporated entity?

Yes, the domestic activities (in Liechtenstein) of foreign insurance companies are explicitly regulated in the Insurance Supervision Act (Art. 112 et seq. VersAG) and are therefore also subject to regulatory requirements and supervision.

Direct insurance undertakings domiciled in another EEA Contracting State may establish a branch in the Principality of Liechtenstein after the supervisory authority of the home State has provided the FMA with the following:

- a. a confirmation that the insurance undertaking is authorised to conduct insurance business in the home State;
- b. a confirmation that the foreign supervisory authority is aware that the insurance undertaking intends to establish a branch in the Principality of Liechtenstein;
- c. a plan of operations stating in particular the planned business activity and the organisation of the branch;
- d. the name and address of the branch;
- e. the name of the general agent of the branch, duly authorised; in the case of Lloyd's,

evidence of the authorisation of the general agent to be sued and to incur liabilities in that capacity on behalf of the participating individual underwriters;

- f. a certificate that the insurance undertaking has own funds that satisfy the Solvency Capital Requirement and the Minimum Capital Requirement;
- g. a statement that the insurance undertaking has become a member of the National Bureau of Insurance and the National Guarantee Fund, if it intends to transact the class of insurance 'third party liability for self-propelled land vehicles'.

Third-country insurance undertakings require a licence under this Act in order to take up insurance activities in the country. In addition to the above requirements, they must meet special requirements pursuant to Art. 117 et seqq. VersAG.

8. What penalty is available for those who operate in your jurisdiction without appropriate permission?

N/A

9. How rigorous is the supervisory and enforcement environment? What are the key areas of its focus?

In principle and according to our experience, the FMA Liechtenstein is very cooperative with regulated companies. The FMA ensures the stability of the Liechtenstein financial market, the protection of clients, the prevention of abuses, and the implementation of and compliance with recognised international standards. Therefore, the FMA Liechtenstein takes a strict approach to make sure that insurance undertakings comply with the applicable laws and supervisory rules. Since implementing the Solvency II Directive (2009/138/EC) the supervisory and enforcement environment for insurance companies has become increasingly stringent.

With the strong regulation of the financial sector, the volume of data in supervision has also increased. In the new transaction data monitoring system for transactions in financial instruments implemented throughout Europe, the FMA has received data on six million transactions (FMA Annual Report 2018, Page 5).

Quite naturally, the international cooperation of the FMA Liechtenstein is strongly influenced by Liechtenstein's membership in the EEA and is also closely involved in

the European supervisory structure. The FMA Liechtenstein has observer status in all three European financial supervisory authorities: the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities and Markets Authority (ESMA). The FMA is also a member of the most important global supervisory bodies. These include the International Organisation of Securities Commissions (IOSCO), the International Association of Insurance Supervisors (IAIS) and the International Organisation of Occupational Pensions Supervisors (IOPS).

10. How is the solvency of insurers (and reinsurers where relevant) supervised?

Apart from the fact that Solvency Capital Requirements are already a major topic within the licencing process (see above), insurance undertakings need the necessary eligible own funds to cover the Solvency Capital Requirement according to Article 42 VersAG. As a matter of course, European legal provisions must be observed. So, one of the main responsibilities of the FMA as the insurance supervision authority is to supervise all business activities of insurance undertakings (Article 177 VersAG), which includes especially monitoring their solvency.

The Solvency II Directive entailed increased requirements on the corporate governance, risk management and internal control systems of insurance undertakings. According to Article 30 VersAG insurance undertakings are obligated to ensure they have an effective governance. The FMA must review the company's governance and needs to assess the potential risks, identified by the insurance companies itself, which may affect their financial soundness.

Insurance companies in Liechtenstein must present and publish an annual report, including an annual account. Furthermore, they must submit to the FMA a report form with detailed business figures for the previous financial year. These data make sure that the FMA can respond promptly in the event of identifying potential weakness.

Besides the Supervision of the calculation of the Solvency Capital Requirements complied with Article 42 et seqq. VersAG, Article 73 VersAG authorises the FMA ancillary to develop tools that help evaluate the ability of those undertakings.

11. What are the minimum capital requirements?

The minimum capital requirements depend on what type

of insurance businesses are operated by the insurance undertakings. The minimum capital requirements may not be lower than the following amounts in accordance with Article 51 (2) VersAG:

- a. EUR 2'500'000.00 (in words: two million five hundred thousand) or the equivalent in Swiss Francs for non-life insurance undertakings, including captive direct insurance undertakings;
- b. EUR 3'700'000.00 (in words: three million seven hundred thousand) or the equivalent in Swiss Francs for non-life insurance undertakings, including captive insurance undertakings, if all or more of the risks listed in classes 10 to 15 in Annex 1 (A) need to be covered;
- c. EUR 3'700'000.00 (in words: three million seven hundred thousand) or the equivalent in Swiss Francs for life insurance undertakings, including captive direct insurance undertakings;
- d. EUR 3'600'000.00 (in words: three million six hundred thousand) or the equivalent in Swiss Francs for reinsurance undertakings, except for captive reinsurance undertakings, for which a minimum capital requirement of at least EUR 1'200'000.00 (in words: one million two hundred thousand) or the equivalent in Swiss Francs applies.

12. Is there a policyholder protection scheme in your jurisdiction?

One of the main purposes of insurance supervisory, as it is standardised in Article 1 (2) VersAG, are to protect the policyholders and to secure confidence in the Liechtenstein insurance and financial centre. Even there is no own set down protection scheme for policyholders, there are mostly protected in Liechtenstein by provisions in the form of tied assets. One could even claim that the insurance legislation with its strict solvency, minimum capital and information requirements, is guided and animated by the aim of policyholder protection.

But also, the regulation is increasing mainly in favour of transparency and consumer protection. For instance, the Solvency II as a risk-based regulation that sets the technical and governance standards required for EU insurers to manage capital requirements pursues the goal of effective policyholder protection. It provides transparency and consistency to risk management and reporting to protect consumer interest against insurers defaulting on their obligations.

13. How are groups supervised if at all?

The provisions regarding the supervision of insurance groups are set out in the tenth chapter of the VersAG (Article 194 to 256). In general principle, group insurance supervision applies in addition to the individual insurance supervision.

These undertakings are subject to group insurance supervision in Liechtenstein:

- a. Insurance companies which are a participating undertaking in at least one insurance undertaking or third-country insurance undertaking;
- b. Insurance companies whose parent undertaking is an insurance holding company or a mixed-activity holding company established in another EEA State.

In case the FMA Liechtenstein is the competent authority for the group supervision, she is charged with following supervision tasks accorded to Article 238 VersAG, that also give an overview of how groups are supervised:

- a. Coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;
- b. Supervisory review and assessment of the financial situation of the group;
- c. Assessment of compliance with the rules on capital adequacy and of risk concentration and intra-group transactions;
- d. Assessment of the system of governance of the group, as set out in Article 231 to 234 VersAG, and of whether the members of the management of the participating undertaking fulfil the requirements set out in Articles 33 and 232 VersAG;
- e. Planning and co-ordination of supervisory activities in ongoing supervisory, going concern as well as in emergency situations, in co-operation with the relevant competent authorities involved;
- f. Other tasks assigned to the competent authority for the group supervision by this act.

To summarise in short: insurance groups' financial situation including the groups' solvency and minimum capital requirements as well as risk concentration and intra-group transactions including reporting requirements are supervised by the competent authority.

14. Do senior managers have to meet fit and proper requirements and/or be approved?

All persons that perform key functions should be fit and proper. Pursuant to Article 33 VersAG members of the Management Bodies as well as all other persons responsible with internal supervision, governance or with other key functions, must have adequate professional qualifications and must possess high personal integrity. At least one member of the Board of Directors / Supervisory Board and of the Senior Management must be a Liechtenstein citizen or must have a citizenship from another EEA member state or from Switzerland.

In Accordance to Article 4 b) VersAV at least one member of the Senior Management and a member of the Board of Directors / Supervisory Board of an insurance company need to demonstrate appropriate theoretical and practical knowledge in insurance matters as well as management experience. This shall be assumed to be given if the persons are proven to have at least three years of managing experience at an insurance company of comparable size and type of business. In order to meet with the requirements of high personal integrity, the persons that perform key functions must not be registered in the criminal record of Liechtenstein or a foreign country because of punishable acts against property and no bankruptcy proceedings shall be initiated against them. Also, they must comply with the instructions of the FMA, have a good reputation and guarantee serious and proper business activity.

15. To what extent might senior managers be held personally liable for regulatory breaches in your jurisdiction?

According to the so-called Business Judgement Rule, which is originated from the USA and is implemented in Article 182 (2) of the Liechtenstein person and corporate law (*Personen- und Gesellschaftsrecht*, PGR), the company's management structures are free from liability when business decisions were made with the best knowledge and intentions. The senior management must run the business with precision and is responsible to ensure that the business is conducted properly and carefully.

In addition, Art. 258 VersAG states that if offenses are committed in the business operations of a legal entity or a general or limited partnership or sole proprietorship, the penal provisions apply to the persons who acted or should have acted on its behalf, but with joint and several liability of the legal entity, partnership or sole proprietorship for the fines and penalties.

16. Are there minimum presence requirements in order to undertake insurance activities in your jurisdiction (and obtain and maintain relevant licences and authorisations)?

Both the statutory seat and the head office of the company must be located in Liechtenstein (Art. 14 (2) VersAG) if you want to obtain and maintain relevant licences and authorisations in Liechtenstein. There are no numerical requirements as to how many staff must actually be active in Liechtenstein; rather, the FMA assesses this on the basis of the overall circumstances. However, the main decisions must be effectively made in Liechtenstein so that the head office remains in Liechtenstein.

17. Are there restrictions on outsourcing services and/or operational resilience requirements relating to the business?

Pursuant to Art. 30 VersAG, insurance companies must have effective governance. Effective governance is the assurance of a sound and prudent management, taking into account all risks. It must be appropriate to the nature, scale and complexity of the activities of an insurance undertaking (Art. 31 (1) VersAG). Pursuant to Art. 31 (2), the individual governance functions are to be set out in a transparent organizational structure with clear allocations or segregations of responsibilities. Insurance undertakings shall issue written guidelines on governance and implement them (Art. 31 (4) VersAG in conjunction with Art. 2 VersAV). According to Art. 31 (5), appropriate, necessary and proportionate systems, resources and procedures must be in place to ensure the continuity and regularity of operations, including the development of contingency plans in order to be able to take the necessary measures in the event of significant changes in the business or systems.

Outsourcing of services is possible. As part of the licencing process, modifications in the outsourcing need to be approved by the FMA before implementing. Laid down in Article 89 VersAG, insurance companies that outsource functions or activities, remain liable to fulfil their obligations. In case of intended outsourcing, the head office of the company must remain in Liechtenstein.

The outsourcing of critical or essential functions is prohibited, if the outsourcing leads to either:

- a. Materially impairing the quality of the system of governance of the undertaking concerned;
- b. More than proportionate increase of the

operational risk;

- c. Impairing the ability of the FMA to monitor the insurance undertaking's compliance with commitments given;
- d. Endangering quality of services for policyholders.

18. Are there restrictions on the types of assets which insurers or reinsurers can invest in or capital requirements which may influence the type of investments held?

Insurance undertakings must invest all their assets in accordance with the principle of entrepreneurial prudence, as specified in Article 80 et seqq. VersAG. In respect of all their assets, insurance undertakings may only invest in assets and instruments whose risks they can properly identify, measure, monitor, manage, control, report and whose risks can properly be considered when determining the overall Solvency Capital Requirement under Article 37 (2) a) VersAG. All assets, particularly those covering the Solvency Capital Requirement and the Minimum Capital Requirement, shall be invested in such a way as to ensure the security, quality, liquidity and profitability of the portfolio. In addition, the location of these assets shall ensure their availability.

Provided that Article 80 VersAG is observed, insurance undertakings are free to choose investment categories. Their investment decisions require neither prior approval by the FMA nor systematic notification to the FMA.

19. How are sales of insurance supervised or controlled?

As a matter of fact, sales have a significant role for insurance undertakings. So obviously the sales of insurance products are subject to supervision by the FMA. The FMA has the power to intervene in case of unconventional selling techniques.

As a result of implementing the Insurance Distribution Directive (Directive 2016/97/EU, IDD) the VersVertG and the VersVertV came into force in Liechtenstein, which aims are to regulate the distribution of insurance products and protect policyholders. The VersVertG established applicable rules on the conduct of distribution of insurance as well as information duties in the interest of policyholders. Insurance undertakings are always committed to act with integrity and fairness and in best interest towards their clients. Article 57 VersVertG contains an internal product approval

procedure, which must be passed, before the insurance product is supplied to clients.

20. To what extent is it possible to actively market the sale of insurance into your jurisdiction on a cross border basis and are there specific or additional rules pertaining to distance selling or online sales of insurance?

Due to Liechtenstein's EEA membership, cross-border activity is possible under FOS and FOE. In addition, there is an agreement with Switzerland, which also provides for these possibilities in relation to Switzerland. Third-country insurance undertakings, on the other hand, require a license in order to commence insurance activities in Liechtenstein.

Liechtenstein implemented the EU-Directive 2002/65/EG concerning the distance marketing of consumer financial services with its Distance-Financial Services-Act of 2000 (*Fern-Finanzdienstleistungs-Gesetz*, FernFinG). The core content of the Directive are comprehensive information obligations towards the consumers and their right of withdrawal. The Directive covers all retail financial services such as banking, insurance or investment services which are sold at a distance by telephone, fax or via internet.

The aim of this act was to enable consumers to make a well-considered contractual decision despite the lack of personal (physical) contact between the contracting parties. That's why companies are required to inform their customers in time about the circumstances that are essential for the conclusion of a consumer contract. In addition, the consumer is given the right to withdraw from the contract within a certain period. This is intended to promote consumer confidence in the distance selling form of distribution in the financial services sector.

21. Are consumer policies subject to restrictions, including any pricing restrictions? If so briefly describe the range of protections offered to consumer policyholders

According to Article 3 VersVG, policyholders have the right of withdrawal in case insurance companies breach certain obligations to provide information as especially provided in the VersAG.

Besides, consumer policies are also within the scope of the Consumer Protection Act of 2002

(*Konsumentenschutzgesetz*, KSchG) which grants different rights for the policyholders, such as various rights of withdrawal from insurance contracts. For instance, Article 4 KSchG entitles consumers to withdraw within 14 days after the contract has been concluded. Article 5 allows the consumers to withdraw in the event of misapprehension. The Act also lays down a list of contract components considered unfair and which are inadmissible for policyholders. Concerning clauses in pre-formulated terms and conditions, §§ 864a and 879 (3) ABGB must be observed. The use of unfair terms in pre-formulated terms and conditions of consumer contracts is dealt with in Article 8 of the Act of 1992 against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*, UWG) and Article 8 KSchG.

22. Are the courts adept at handling complex commercial claims?

As Liechtenstein is a very small country and has always been affected by Austrian history, Liechtenstein's legal system and the organisation of Liechtenstein's courts are heavily influenced by Austrian law and jurisdiction.

Liechtenstein is a civil law country and its court system is based on three court channels that are called "instances". As there is no specific commercial court in Liechtenstein, civil matters, which includes inter alia commercial claims, are handled by following courts. In first instance jurisdiction is exercised by the District court ("*Landgericht*"), in second instance by the Superior Court ("*Obergericht*") and the third and final instance by the Supreme Court ("*Oberster Gerichtshof*").

We would describe the court system in Liechtenstein as experienced in handling complex commercial claims, as Liechtenstein's commercial law has not changed a lot over the last years, the courts are able to offer high legal certainty.

23. Is alternative dispute resolution well established in your jurisdictions?

Under the principle of freedom of contract, contractual parties are free to agree to settle disputes in the area of non-court. From our experience, methods for alternative dispute resolution, such as arbitration and mediation, are well established in Liechtenstein. Arbitration has a great significance in our jurisdiction since Liechtenstein has been a member of the New York Convention in 2011 and implemented the standards of the United Nations Commission on International Trade Law.

Due to the fact, that practically every pecuniary claim may be subject to arbitration agreements, we are

observing an increasing switch from ordinary court jurisdiction to arbitral tribunals in the area of dispute resolution.

24. Is there a statutory transfer mechanism available for sales or transfers of books of (re)insurance? If so briefly describe the process.

Any contract by which the insurance portfolio of an insurance company is to be transferred, in whole or in part, with rights and obligations, to another insurance company subject to supervision requires the approval of the competent supervisory authorities (Art. 124 VersAG). After each portfolio transfer, policyholders have the right to terminate the insurance contract within three months of notification. In the case of transfers of portfolios in the course of mergers and among insurance undertakings with close links, the FMA may exclude the right of termination upon application. Further information on the transfer of books can be found in Art. 124 et seqq. VersAG.

Also the FMA is entitled to order the transfer of an entire insurance portfolio to another regulated insurance company in Liechtenstein, which is afterwards responsible to administer the policies, if the insurance undertakings no longer meet the regulatory requirements. The insurance portfolios will be transferred to a insurance company in Liechtenstein in order to protect policyholders and the reputation of the financial market. The FMA will monitor and supervise the process of portfolio transfer. The Special Administrator appointed ensures that the interest of the policyholders is safeguarded until the portfolio transfer is completed.

25. What are the primary challenges to new market entrants? Are regulators supportive (or not) of new market entrants?

There are relatively high market access barriers in Liechtenstein because of the strict regulatory requirements. The insurance sector was hallmarked by significant developments within the last years, such as the Solvency II, European General Data Protection Regulation and the IDD, just to mention a few.

However, since Liechtenstein joined the EEA in 1995 and concluded the Direct Insurance Agreement with Switzerland, Liechtenstein is still the only location that provides direct market access to all countries of the European Economic Area and simultaneously to Switzerland.

The FMA is very supportive of new market entrants.

26. To what extent is the market being challenged by digital innovation?

In the age of globalisation, also the insurance sectors are not spared from increasing digitalisation and as a matter of fact, the market does indeed change rapidly and permanently. InsurTech is booming internationally, so especially traditional insurers must face these overcoming challenges. Besides, it is getting even more difficult for insurance undertakings complying with all the strict regulatory requirements and staying up-to-date in adopting new technologies. And finally, supervision is also getting quite complex from FMA's point of view.

27. How is the digitization of insurance sales and/or claims handling treated in your jurisdiction, for example is the regulator in support (are there concessions to rules being made) or are there additional requirements that need to be met?

The Liechtenstein FMA recognised the importance of using modern information technologies at an early stage and has consistently promoted digitalisation. The digitalisation of reporting and supervisory processes will be consistently advanced, whereby the supervisory authority has already stated that the automated real-time monitoring of the financial markets and financial intermediaries will be a major challenge.

As a result, the regulator in Liechtenstein can therefore be seen as supportive of digitalisation.

28. To what extent is insurers' use of customer data subject to rules or regulation?

All personal data are processed exclusively on the base of legal provisions. The main legal basis in the field of data protection is the General Data Protection Regulation (*Datenschutzgrundverordnung, DSGVO*), which applies to all companies in Liechtenstein. The DSGVO of 2018 is directly applicable in Liechtenstein, since Liechtenstein is an EEA member. However, the DSGVO contains a range of so-called opening and special clauses which grant the states certain scope for action and enable them to maintain or create new national data protection regulations. Liechtenstein made use of this leeway with the total revision of the national Data Protection Act of 2018 (*Datenschutzgesetz, DSG*) and

the Data Protection Ordinance of 2018 (*Datenschutzverordnung, DSV*).

The DSGVO contains several obligations for companies, which must be fulfilled and for which they are accountable. The principle of accountability applies, which means that companies must be able to actively demonstrate that the principles are being observed. These principles include inter alia that the company ensures transparency in the processing of personal data, has obtained consent for it, informs the data subject whose data are processed, doesn't collect more data than necessary for the purpose for which they are used and ensures that the data is protected against unauthorised access and misuse.

29. To what extent are there additional restrictions or requirements on sharing customer data overseas/on a cross-border basis?

If personal data is transferred not only within the EU/EEA area, but also to third countries or international organizations, strict rules apply in accordance with the General Data Protection Regulation (GDPR). Only in this way can the high level of protection not be factually undermined by transferring the data to a third country not subject to the GDPR. Therefore, personal data may in principle only be transferred to a recipient in a third country if - in addition to compliance with all other provisions of the GDPR - the third country or the recipient itself ensures a comparably high level of data protection as that in the EU/EEA area (Art. 44 GDPR). To ensure this, a certificate of adequacy from the EU Commission ("safe third countries") or other appropriate guarantees for data protection and the rights of data subjects (other "unsafe third countries") are required.

Within the scope of its supervision, the FMA may exchange with the competent authorities all information required for the performance of the duties incumbent upon it under this Act, provided that:

- a. the sovereignty, security, public order or other essential national interests are not violated;
- b. the recipients or persons employed and commissioned by the competent authority are subject to a duty of confidentiality equivalent to Art. 183;
- c. it is ensured that the information disclosed is only used for financial market supervision purposes, in particular the supervision of insurance undertakings; and
- d. in the case of information originating from abroad, express consent has been obtained

from the authority that communicated this information and it is ensured that, where applicable, this information is only passed on for those purposes to which these authorities have expressly consented.

30. To what extent are insurers subject to ESG regulation or oversight? Are there regulations/requirements specific to insurers? If so, briefly describe the range measures imposed.

In the EU, the Disclosure Regulation and the Taxonomic Regulation with regard to the two environmental goals of climate change mitigation already came into force. As Liechtenstein is a member to the EEA but not the EU, regulations have to be adapted in the EEA first. As the adaption process has, contrary to the assumptions, been delayed, in particular due to the elections in Norway and Iceland, Liechtenstein has enacted the EEA Financial Services Sustainability Act (EWR-FNDG) to implement Regulations (EU) 2019/2088 and (EU) 2020/852 in advance. This law will come into force on 1 May 2022 and entails corresponding reporting and disclosure obligations for financial market participants, including insurers.

31. Over the next five years what type of business do you see taking a market lead?

Liechtenstein insurance undertakings are mainly active in the insurance lines of life, non-life, property, casualty and reinsurance and we don't expect any major changes in this regard in the coming years.

As discussed above, we expect to see significant growth in InsurTech, as the insurance industry is already in the process of massive changes due to the digital possibilities and developments. We see enormous potential in automation and in the use of new technologies. Simultaneously, the proper handling of technology and data will be crucial and challenging for all insurance undertakings, especially for traditional insurers.

As one of the few countries worldwide, Liechtenstein has taken up the challenge of creating a legal framework that promotes the "token economy" and offers at the same time adequate protection when using this technology. Liechtenstein is thus playing a pioneering role in the area of Blockchain. We could observe and have already received inquiries in regard about how the Blockchain technology can be used in the Liechtenstein insurance sector. One thing is for sure: the Blockchain

technology opens many new opportunities for Liechtenstein and brings enormous potential with it. Time will tell and it remains to be seen, whether

Blockchain technology will play a key role in Liechtenstein's business in future and if it will bring about enormous changes in the insurance sector.

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