

# Legal 500

## Country Comparative Guides 2025

### Austria

### Insurance & Reinsurance

### Contributor

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Strasser Haindl Meyer  
Rechtsanwälte GmbH

#### Philipp Strasser

Partner | [philipp.strasser@shm.at](mailto:philipp.strasser@shm.at)

#### Martina Linden

Attorney-at-Law | [martina.linden@shm.at](mailto:martina.linden@shm.at)

#### Gregor Pömer

Attorney-at-Law | [gregor.poemer@shm.at](mailto:gregor.poemer@shm.at)

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

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# Austria: Insurance & Reinsurance

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

The Austrian General Civil Code (Allgemeines bürgerliches Gesetzbuch, ABGB), the Austrian Insurance Contract Act (Versicherungsvertragsgesetz, VersVG), the Austrian Consumer Protection Act (Konsumentenschutzgesetz, KSchG), and the Austrian Distance Financial Services Act (Fern-Finanzdienstleistungs-Gesetz, FernFinG) are applicable within insurance contracts. The ABGB provides general contractual regulations, while the VersVG contains specific provisions tailored for insurance contracts. These provisions cover universally applicable regulations and particular stipulations for specific insurance types.

However, the regulation of insurance contract operations in Austria is primarily guided by the Austrian Insurance Supervision Act 2016 (known as Versicherungsaufsichtsgesetz 2016 or VAG 2016), which incorporates the EU Solvency II Directive 2009/138/EC. Directly applicable to this framework is the Commission Delegated Regulation (EU) 2015/35. The VAG 2016 delineates requirements for obtaining licenses and mandates compliance with various corporate governance, commercial, taxation, and anti-money laundering/counter-terrorism financing statutes for insurance entities operating in Austria.

Furthermore, there are also certain specific provisions applicable within the motor vehicle liability insurance branch which is governed by the Austrian Motor Vehicle Liability Insurance Act 1994 and the retirement provision insurance which is regulated by the Occupational-Retirement-Provision Act.

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

The Austrian Financial Market Authority (Finanzmarktaufsicht or FMA) holds jurisdiction over all insurance entities operating within Austria, as mandated by the VAG 2016. This legislation applies universally to life, non-life, and reinsurance enterprises, ensuring uniform compliance across the board.

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

Generally, the Austrian legal system distinguishes three different forms of insurance mediation: the insurance broker, the insurance agent and intermediaries employed directly by the insurance company they mediate contracts for. They all have to comply with the provisions of the Austrian Trade Regulation Act (GewO). The Directive (EU) 2016/97 on insurance distribution (IDD) was primarily implemented through the GewO and the Insurance Supervision Act 2016 (VAG 2016). These laws encompass provisions broadly applicable to insurance distribution. Moreover, insurance brokers and agents are obliged to secure licensing from the relevant trade and industry authority (Gewerbebehörde). Insurance brokers are governed by the Brokers Act (MaklerG), while insurance agents fall under the jurisdiction of the Commercial Agents Act (HVertrG). Employed sales staff are regulated by the general framework of the Salaried Employees Act (AngG). Additionally, in certain instances, the Austrian Banking Act (BWG) may also be applicable.

## 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?

In order to operate an insurance company a license is required. The VAG 2016 regulates the requirements for it in Section 6 of the VAG 2016. If all necessary requirements are fulfilled, the license is granted by the Financial Market Authority (FMA). According to Section 8 of the VAG 2016 the FMA can reject license applications if conditions are unmet. Generally, the FMA must render a decision within six months after receiving all requisite documentation and clarifications. The duration of the licensing procedure varies based on the quality of submitted documents and any FMA inquiries.

To obtain a license, the insurance company has to operate in form of a stock corporation (Aktiengesellschaft), mutual insurance association (Versicherungsverein auf Gegenseitigkeit) or *societas europaea* (Europäische Gesellschaft). Secondly, the main administrative office has to be established in Austria. Thirdly, a business plan demonstrating the capability to cover insured claims has to be presented. Further, own

funds have to be available to meet minimum capital requirements. Additionally, at least two management board members who meet professional qualifications and integrity standards have to be appointed; and so forth.

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

Sections 24 to 27 of the VAG 2016 outline regulations concerning ownership control. Any individual or entity intending to acquire or increase, a qualified interest within an (re)insurance company headquartered in Austria, must notify the FMA accordingly. Similarly, the (re)insurance company must fulfil these obligations upon becoming aware of pertinent circumstances.

Upon receiving a complete notification, the FMA must acknowledge receipt and issue a decision within 60 working days, although this timeframe may be extended slightly due to requests for additional information. The FMA has to take the aspects listed in Section 26 VAG 2016 into account when evaluating the planned acquisition.

Particular attention must be given to assessing the reliability and financial stability of the potential acquirer. It is essential to ensure that the insurance undertaking can operate in compliance with legal requirements. Additionally, thorough checks must be conducted to ensure there are no criminal law concerns.

The FMA is obligated to take necessary actions, if the assessment of these factors concludes that there is a potential risk of individuals seeking to acquire a significant interest in an insurance company exerting influence that could undermine its sound and prudent management.

Additionally, the Austrian Investment Control Act (Investitionskontrollgesetz, InvKG) may apply to acquisitions by foreign entities or individuals outside the EU, EEA, and Switzerland. The FDI regime entails an evaluation of whether the investment poses a threat to security or public order, encompassing considerations such as crisis management and general interest services.

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

It is not possible to insure or reinsure risks in Austria without a license or authorization. The license has to be

granted by the FMA. This license is also valid throughout the entire European Economic Area. Therefore, Austrian (re)insurers may also operate in those states once the notification procedure has been completed with the FMA.

Moreover, (Re)insurers licensed and headquartered in another EU/EEA member state can also operate in Austria under the single license regime without needing an additional license. They only need to notify their home supervisory authority, which subsequently notifies the FMA.

In Austria, third-country (re)insurers typically must secure a license, necessitating the establishment of a branch office within the country, as stipulated in section 13 of the VAG 2016. However, section 13(4) of the VAG 2016 exempts this requirement for third-country (re)insurers domiciled in nations where the European Commission has deemed the solvency regime equivalent, in accordance with Articles 172(2) or (4) of the Solvency II Directive. Presently, this exception applies to Switzerland.

As of September 22, 2019, reinsurers headquartered or domiciled in the United States can operate in Austria if they meet the prerequisites outlined in Article 3(4) and (8) of the bilateral agreement between the EU and the United States on prudential measures regarding insurance and reinsurance dated September 22, 2017 (the US-EU Covered Agreement), as specified in section 19a of the VAG 2016. In this scenario, the FMA serves as the host supervisory authority in accordance with Article 2(i) of the US-EU Covered Agreement.

### **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?**

Distinctions need to be made between insurers operating within the European Economic Area (EEA) and those from third countries.

Insurers domiciled within the European Economic Area (EEA) are exempt from the provisions outlined in the Insurance Supervision Act 2016 (VAG 2016) when operating in Austria. Instead, they function under the authority of their home-state license. Consequently, the supervisory authority responsible for regulating them is located in their respective home-state.

A third-country insurance or reinsurance company can engage in insurance or reinsurance activities in Austria solely through an Austrian branch and must secure a license from the FMA. This license, specifically for

branches of third-country insurance or reinsurance companies, is applicable only within Austria as per section 13 of the VAG 2016. Numerous provisions outlined in the VAG 2016 extend to these branches.

## 8. Are there any restrictions/substance limitations on branches established by overseas insurers?

As third-country insurance undertakings require licensing from the FMA, they fall under the supervision of the FMA, similar to Austrian insurance undertakings but distinct from branches of EEA insurance undertakings.

Certain provisions necessitate considering the business of the branch separately from the overall business of the overseas insurance undertaking. This separation is warranted to avoid imposing excessive requirements on the entire overseas entity, particularly in adhering to Solvency II provisions. However, branches of overseas insurance undertakings cannot be exempted from key Solvency II provisions to prevent them from having an unfair advantage over EEA insurance undertakings. When ambiguity arises in the VAG 2016 regarding whether specific requirements apply solely to the branch or the entire company, it is presumed that only the branch is subject to the relevant provision.

Overseas reinsurance undertakings benefit from more lenient treatment, as these requirements do not apply to them if they are headquartered in a country for which the European Commission has determined that the solvency regime is equivalent under the Solvency II Directive.

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

According to Section 329 (1) of the Insurance Supervision Act 2016 (VAG 2016), engaging in insurance activities without the necessary license constitutes an administrative offense. Offenders may be fined by the FMA with penalties of up to EUR 100,000.00.

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

The Financial Market Authority (FMA) has acquired far-reaching additional powers due to the implementation of the Solvency II Directive (2009/138/EC). They publish Circular Letters, Minimum Standards, and Guidelines.

While these documents may not carry legal weight, especially Circular Letters, they effectively set forth the supervisory authority's expectations, creating a de facto obligation.

Outlined in the FMA's priorities for supervision and inspections for 2025, as detailed in its "Facts and Figures, Trends and Strategies 2025" publication and on its website, are key areas of focus: resilience and stability, digitalization and new business models, consumer protection, sustainability, a clean financial center and data-driven supervision.

Based on these trends, challenges and risks (the aftermath of the COVID-19-Pandemy, the war in Ukraine, the challenges within the real estate branch, etc.) the FMA derived those six topics for its priorities.

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

Section VIII of the VAG 2016 outlines the solvency framework for (re)insurers, aligning with the regulations of the Solvency II Directive (2009/138/EC). The Solvency II Directive has implemented great innovations especially in the area of solvency which are supervised by the FMA. Consequently, (re)insurance companies are mandated to maintain eligible own funds, as determined by a solvency balance sheet, to cover the solvency capital requirement. This requirement can be calculated using a predefined standard formula or an internal model developed by the (re)insurance company. The solvency capital requirement serves as a threshold, below which regulatory intervention by the supervisor may occur.

## 12. What are the minimum capital requirements?

According to Section 193 of the VAG 2016 (re)insurance undertakings must maintain eligible basic own funds to cover the minimum capital requirement. The calculation method for determining this requirement is specified in Delegated Regulation 2015/35/EU. The minimum capital requirement is set at EUR 2.7 million for non-life insurance undertakings, EUR 4 million for life insurance undertakings, EUR 3.9 million for reinsurance undertakings, and the combined sum of non-life and life insurance undertakings for composite undertakings.

## 13. Is there a policyholder protection scheme in your jurisdiction?

There is not a distinct legislation singularly dedicated to ensuring primary protection for policyholders.

Nevertheless, the Insurance Contract Act (Versicherungsvertragsgesetz or VersVG) includes numerous provisions designed to safeguard the interests of the policyholder, which may only be altered to benefit the policyholder. The Insurance Distribution Directive (IDD) imposes stricter requirements on insurance distribution, which have been incorporated into various Austrian laws. Furthermore, the Distance Financial Services Act (Fern-Finanzdienstleistungs-Gesetz or FernFinG) and Consumer Protection Act (Konsumentenschutzgesetz or KSchG) apply when the policyholder is a consumer. These statutes ensure consumer-friendly terms and conditions, information obligations, and a 14-day right of withdrawal.

#### 14. How are groups supervised if at all?

Sections 195 et seqq. of the Insurance Supervision Act 2016 (VAG 2016) establish requirements for insurance companies within a group, including governance provisions applied similarly at the group level, with additional special provisions. Detailed guidelines for calculating group solvency are also specified. The aim of group supervision is to provide the supervisory authority, notably the Austrian Financial Market Authority (FMA), with a clear and transparent assessment of the integrated insurance undertaking's solvency within the group. The FMA is endowed with extensive rights, such as conducting review procedures and assessing management board members. Additionally, there is an obligation to inform the FMA about significant risk concentrations at the group level or substantial intra-group transactions.

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

As per section 120 of the VAG 2016, (re)insurance undertakings are obligated to ensure that individuals holding significant roles within the organization, or those responsible for governance or other pivotal functions, possess adequate professional qualifications, knowledge, and experience to facilitate sound and prudent management (fit) and demonstrate good repute and integrity (proper). Compliance with these fit and proper requirements is a prerequisite for obtaining a license.

Furthermore, Section 122 of the Austrian Insurance Supervision Act (VAG 2016) mandates notification to the Austrian Financial Market Authority (FMA) regarding the proposed appointment of management members and individuals responsible for company management, governance, or other critical functions. This requirement

aims to facilitate effective supervision by the authority.

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

Violations of regulatory requirements may result in the imposition of administrative penalties. According to Section 9 of the Administrative Penal Code (Verwaltungsstrafgesetz, VStG), the individual appointed to represent the company externally is generally accountable for ensuring compliance with administrative regulations by legal entities. In the case of insurance companies, this responsibility typically falls on the management board. Additionally, corporate laws typically mandate members of the executive board to exercise due diligence and act in the company's best interests. Should they fail to fulfill these duties, they may be held liable to compensate the company for damages incurred.

Furthermore, the VAG 2016 explicitly imposes administrative fines on individuals appointed under section 9 VStG, as evidenced in sections 319, 322, and 326 of the VAG 2016.

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

As per the regulations outlined in the Insurance Supervision Act 2016 (Versicherungsaufsichtsgesetz, VAG 2016), conducting insurance activities within Austria necessitates the establishment of at least one domestic branch office. Additionally, a license granted by the Austrian Financial Market Authority (FMA) is mandatory for such operations. Third country insurance companies do need a license to operate in Austria.

Branches of EEA insurance and reinsurance undertakings operating in Austria do not require a separate license and can operate under a passported license. They must notify the competent home supervisory authority, which then informs the FMA. Insurance activities can commence two months after the FMA receives the notification. Branch offices must have a designated general representative, a physical address in Austria, a business plan, and confirmation of meeting solvency and minimum capital requirements, which must be communicated to the FMA by the home supervisory authority.



## 18. Are there restrictions on outsourcing services, third party risk management and/or operational resilience requirements relating to the business?

Section 109 of the Insurance Supervision Act 2016 (VAG 2016) regulates the outsourcing of functions or business activities to service providers by insurance and reinsurance undertakings. It mandates cooperation between service providers and the Financial Market Authority (FMA), ensuring access to data and business premises, and compliance with basic requirements. Critical or important functions or activities outsourced must be notified to the FMA beforehand, with prior approval required if the service provider is not an insurance or reinsurance undertaking.

Certain important operational functions or activities may not be outsourced if it significantly impacts governance quality, increases operational risk excessively, impairs compliance monitoring, or jeopardizes service provision to policyholders and beneficiaries. This section imposes restrictions to ensure accountability and compliance with supervisory requirements when outsourcing functions or activities.

## 19. 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?

Section 124 of the VAG 2016 mandates that (re)insurance undertakings invest all their assets according to specific principles. This entails only investing in assets and instruments for which they can adequately identify, measure, monitor, manage, and control risks, and report risks appropriately while considering overall solvency requirements. Investments must prioritize the safety, quality, liquidity, and profitability of the portfolio as a whole, with assets located to ensure their accessibility.

## 20. Are there requirements or regulatory expectations regarding the management of an insurer's reinsurance risk, including any restrictions on the level / type of reinsurance utilised?

A crucial aspect of the business plan, which needs to be submitted with the application for the license, is the outline of the guiding principles of reinsurance. As a result, small insurance undertakings are required to notify the FMA of significant changes in the reinsurance

relationship, as stipulated in section 87(4) of the VAG 2016. Additionally, the anticipated impact of the changes in reinsurance arrangements on the required amount of own funds must be specifically outlined.

Furthermore, section 104 of the VAG 2016 dictates that insurance and reinsurance companies entering into financial reinsurance contracts or engaging in financial reinsurance transactions must ensure that they appropriately identify, measure, monitor, manage, and control the risks arising from these contracts or transactions, and be able to report on them accordingly. Within this context, reinsurance contracts must be appropriate in terms of type (such as proportional reinsurance, excess of loss, or aggregate insurance) and scope to mitigate the company's (residual) risk that it cannot absorb independently.

## 21. How are sales of insurance supervised or controlled?

The Insurance Distribution Directive (RL 2016/97/EU; IDD) which came into effect in February 2016, governs the initiation and conduct of the entire insurance distribution activity, with a particular focus on insurance mediation.

Key legislations pertaining to insurance mediation include sections 137 to 138 of the Austrian Trade and Industry Act (Gewerbeordnung, GewO), the Insurance Contract Act (Versicherungsvertragsgesetz, VersVG) and the Insurance Supervision Act (Versicherungsaufsichtsgesetz, VAG 2016). Additionally, the regulations outlined in the Insurance Distribution Directive (IDD) are not limited to agents and brokers but also extend to employees of insurance companies, including direct sales. This ensures fair competition and establishes uniform provisions for all distribution channels. As a result, insurance customers benefit from consistent standards, regardless of the type of intermediary they engage with.

## 22. 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?

There has been a notable rise in the sale of insurance policies through websites or mobile applications, often categorized as direct sales in the past years. To address this significant growth in online distribution, the same legal framework applies to these online platforms as it does to traditional sales in person. Insurance companies based in another EU/EEA member state can operate in

Austria under the single license regime without needing an additional license. They simply need to notify their home supervisory authority, which then informs the Austrian Financial Market Authority (FMA).

However, insurers based in third countries must obtain a license from the FMA to operate in Austria. Once licensed, third-country insurers can only conduct business in Austria by establishing a branch office, with the activities of the domestic branch office being supervised by the FMA.

### **23. Are insurers in your jurisdiction subject to additional requirements or duties in respect of consumers? Are consumer policies subject to restrictions, including any pricing restrictions? If so briefly describe the range of protections offered to consumer policyholders**

There is not a distinct legislation singularly dedicated to ensuring primary protection for policyholders. Nevertheless, the provisions of the Insurance Contract Act (Versicherungsvertragsgesetz, VersVG) primarily aim to protect customers, regardless of whether they are consumers or not. They may only be altered to benefit the policyholder. The Insurance Distribution Directive (IDD) imposes stricter requirements on insurance distribution, which have been incorporated into various Austrian laws. Furthermore, the Distance Financial Services Act (Fern-Finanzdienstleistungs-Gesetz or FernFinG) and Consumer Protection Act (Konsumentenschutzgesetz or KSchG) apply when the policyholder is a consumer. These statutes ensure consumer-friendly terms and conditions, information obligations, and a 14-day right of withdrawal.

### **24. Is there a legal or regulatory resolution regime applicable to insurers in your jurisdiction?**

The VAG 2016 outlines procedures for resolving financial difficulties faced by insurance companies, with insolvency being the primary method. However, there are specific regulations addressing insolvency proceedings for these companies. According to section 309 of the VAG 2016, restructuring proceedings under the Austrian Insolvency Act are not applicable to insurance firms, and only the Austrian Financial Market Authority (FMA) has the authority to initiate insolvency proceedings for them.

While insolvency typically results from an inability to repay debts or being over-indebted, section 316 of the VAG 2016 states that insolvency proceedings may be

avoided if it benefits policyholders. In such instances, the FMA is empowered to restrict certain payments and benefits from life insurance policies based on available assets.

Insurance companies in Austria are required to maintain a premium reserve fund for life and health policies, managed separately from other assets. This fund, considered a special entity, takes precedence over other claims in bankruptcy proceedings and can only be utilized to fulfill insurance obligations. Specific regulations governing the coverage of claims from this fund during insolvency are outlined in section 312 of the VAG 2016.

### **25. Are the courts adept at handling complex commercial claims?**

The Austrian court system consists of district courts (Bezirksgerichte), state courts (Landesgerichte), higher state courts (Oberlandesgerichte), and the supreme court (Oberster Gerichtshof). In Austria, disputes on civil law matters, including those related to insurance, are typically adjudicated in the court system. However, in Vienna, the Austrian capital, there are commercial courts (Handelsgerichte) that specialize in handling complex commercial claims. These courts are separate from other civil courts and are particularly experienced in adjudicating commercial disputes. As many large companies are headquartered in Vienna, commercial disputes often end up being litigated in these courts.

The civil law courts handle a wide range of disputes, including commercial matters but there are no specific courts dedicated solely to insurance disputes in Austria.

### **26. Is alternative dispute resolution well established in your jurisdictions?**

Austria's legal system has well-established mechanisms for alternative dispute resolution, including numerous arbitration boards and statutory regulations.

Austria has a well-established legal framework for arbitration proceedings, with the Vienna International Arbitral Centre (VIAC) serving as a prominent institution for administering international arbitral proceedings.

However, alternative dispute resolution plays a secondary role in insurance disputes compared to other areas.

### **27. Is there a statutory transfer mechanism**

### available for sales or transfers of books of (re)insurance? If so briefly describe the process

The legal framework governing portfolio transfers is outlined in Sections 28 et seq. of the Insurance Supervision Act 2016 (VAG 2016). These transfers can occur from one Austrian (re)insurance undertaking to another, or to an insurer within the European Economic Area (EEA). Additionally, transfers can occur from an EEA insurer to an Austrian (re)insurance undertaking, provided the risks are limited to the country of that branch.

Approval from the Financial Market Authority (FMA) is required for portfolio transfers.

Upon approval of the portfolio transfer, the rights and obligations arising from the insurance contracts within the transferred portfolio are transferred to the accepting undertaking. This transfer occurs upon entry in the companies register or upon approval of the portfolio transfer, as stated in section 31(1) of the VAG 2016. For insurance contracts covering risks in Austria, the accepting company or branch office must promptly notify the affected policyholders of the transfer after approval by the FMA, as per section 31(2) of the VAG 2016.

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

In recent years, the insurance industry has experienced significant regulatory changes, resulting in stricter legal requirements and more severe penalties for non-compliance. This has made it increasingly challenging for companies to navigate the regulatory landscape. Additionally, non-insurance-specific regulations like the General Data Protection Regulation (GDPR) add further complexity.

While the Austrian insurance market appears relatively stable in terms of the number of insurance companies, intermediaries may be seeking to join larger groups or alliances to manage rising regulatory costs. Despite challenges for new entrants, cooperation and support from the Financial Market Authority (FMA) may facilitate entry into the market.

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

The onset of COVID-19 acted as a catalyst for digital innovation within the insurance market. Facing urgent needs to assist customers, most insurance companies

swiftly implemented technological solutions.

Technological advancements such as artificial intelligence, e-mobility, and cloud technologies propel industry evolution, demanding meticulous integration into existing frameworks. Insurers grapple with the internal challenge of effectively adapting to these technological shifts, acknowledging the imperative to lead innovation for comprehensive insurance provision.

InsurTechs, a newly established concept, emerged to address the evolving needs of the insurance industry, finding adoption among many Austrian insurance companies. These innovations have led to increased efficiency and more refined pricing models. Concurrently, insurers have prioritized investing in expanding their digital offerings to private customers, encompassing platforms like comparison portals and mobile apps. Furthermore, insurers are contending with the escalating significance of cyber risks, which have garnered the attention of regulatory bodies such as the Financial Market Authority (FMA). The FMA, for instance, conducts simulations of cyber-attacks to assess the efficacy of the safety protocols provided by insurance companies.

### 30. 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 legal landscape is in a state of continual evolution, driven by emerging legislation stemming from contemporary (technological) advancements. As technological progress outpaces legislative response, the industry confronts potential obstacles in navigating a complex regulatory terrain. The persistent requirement for clarifying judgments, especially in the absence of established case law concerning cyber-related claims, presents an ongoing challenge.

As the regulatory framework continues to develop, insurers must adeptly navigate these shifting dynamics. They must strike a delicate balance between regulatory adherence and fulfilling the evolving expectations of policyholders within this dynamic environment.

The Financial Market Authority (FMA) strongly advocates for the ongoing digitization of the insurance sector. According to the Austrian Economic Chambers, 71 percent of insurance customers gather information online, with one in four purchasing insurance through online channels.



Given that Austrian contract law primarily adheres to the principle of freedom of form, with few exceptions, contracts concluded online are generally considered valid. Section 12 of the E-Commerce Act governs the receipt of electronic declarations, stipulating that they are deemed received when the intended party can access them under ordinary circumstances. The Insurance Contract Act (Versicherungsvertragsgesetz, VersVG) further regulates electronic communication in sections 5a and 5b. Consent for electronic communication must be explicitly given by the policyholder and can be revoked by either party. Both parties retain the right to transmit information on paper, with the insurer required to inform the policyholder if they choose to revoke electronic communication. Additionally, policyholders have the right to request paper versions of electronically received documents, with clear notifications mandated when transmitting contract-relevant content electronically.

A growing number of insurance agreements are now being conducted electronically, with communication between insurer and policyholder often occurring via digital channels. Similarly, policyholders frequently submit claims reports electronically. However, due to the limited adoption of qualified electronic signatures (as defined in the eIDAS Regulation (EU) No. 910/2014), particularly outside specific business sectors, many insurance contracts still require physical signatures. Additionally, certain requirements, such as discussing and recording customer needs, may be more conveniently fulfilled in person.

As Austrian contract law is primarily governed by the principle of freedom of form, insurers are permitted to utilize smart contracts – in principle. A smart contract is a self-executing program that automates the actions required in an agreement or contract. By aiming to automate contracts and eliminate intermediaries, smart contracts execute consequences without the need for human intervention. For example, a smart contract could be programmed to adjust an insured party's insurance premium at the end of the month if certain behaviors, such as unsafe driving, are recorded. It remains intriguing to observe the extent to which smart contracts will be implemented in practice.

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

Data protection regulations are outlined in the General Data Protection Regulation (GDPR) and the Austrian Data Protection Act (Datenschutzgesetz, DSG). Furthermore, sections 11a seqq. of the Insurance Contract Act (Versicherungsvertragsgesetz, VersVG) introduce

supplementary provisions for insurers concerning the handling of health data.

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

There are no specific regulations pertaining to this limitation within the insurance sector. Data transfers must adhere to the provisions outlined in the General Data Protection Regulation (GDPR). However, transferring data to non-EU countries is more complex and requires adherence to specific conditions, such as an adequacy decision by the European Commission or the implementation of appropriate safeguards.

### 33. To what extent are insurers subject to ESG regulation or oversight? Are there regulations/requirements, including in connection with managing climate change and climate change related financial risks specific to insurers? If so, briefly describe the range of measures imposed.

As of now, Austria has not implemented any specific ESG regulations tailored to the insurance sector. Nevertheless, since 2021, the FMA has emphasized ESG risks as a key aspect of supervision and is actively tackling issues related to greenwashing.

However, the introduction of the new EU Corporate Sustainability Reporting Directive (CSRD) presents notable challenges for European insurance companies and their subsidiaries operating outside the EU. This directive expands reporting obligations to a broader range of companies and introduces mandatory limited assurance. Its objective is to enhance sustainability reporting by increasing the number of reporting entities, enhancing comparability in disclosures, and ensuring the reliability of reporting. Compliance deadlines vary depending on the size and location of the company, with a phased implementation scheduled between 2024 and 2028.

### 34. Is there a legal or regulatory framework in respect of diversity and inclusion to which (re)insurers in your jurisdiction are subject?

Up to this point, a certain directive, referred to as Directive 2014/95/EU, has led to the establishment of a non-financial reporting duty outlined in section 243b (2) of the

Austrian Business Code (Unternehmensgesetzbuch, UGB). This duty pertains to sizable enterprises, typically including (re)insurance entities, necessitating the divulgence of details regarding environmental, social, and employee-oriented matters, alongside issues related to human rights and efforts to combat corruption and bribery. Although not explicitly stated in section 243b UGB, this also encompasses some reporting on variety.

Additionally, in 2010, the Austrian Diversity Charter was launched by the Austrian Federal Economic Chamber and the Vienna Economic Chamber, based on an idea by factor-D Diversity Consulting. The Charter aims to recognize and appreciate diversity.

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

As the landscape of cyber threats continues to evolve, the demand for cyber insurance coverage is on the rise,

aiming to safeguard businesses and individuals against cyber risks. Insurers that provide comprehensive cyber insurance policies along with proactive risk management services stand poised to seize opportunities within this burgeoning market segment.

Furthermore, with a growing focus on environmental awareness and sustainability, insurers must enhance their integration of environmental, social, and governance (ESG) criteria into their investment strategies and product offerings. Many insurance companies have already recognized the significance of ESG factors within the sector, paving the way for potential new business avenues. At the same time, insurance companies are also under pressure to formulate and implement ESG goals.

However, while the insurance industry acknowledges these emerging trends, significant transformations within established insurance companies are not necessarily anticipated.

## Contributors

**Philipp Strasser**  
Partner

[philipp.strasser@shm.at](mailto:philipp.strasser@shm.at)



**Martina Linden**  
Attorney-at-Law

[martina.linden@shm.at](mailto:martina.linden@shm.at)



**Gregor Pömer**  
Attorney-at-Law

[gregor.poemer@shm.at](mailto:gregor.poemer@shm.at)

