



**COUNTRY
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Belgium

INSURANCE & REINSURANCE

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

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BELGIUM

INSURANCE & REINSURANCE



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

Insurance and reinsurance business is governed by a comprehensive body of law.

The main text for the authorisation and supervision of (re)insurance undertakings, implementing Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance ("Solvency II Directive"), is the Law of 13 March 2016 on the status and supervision of insurance and reinsurance undertakings ("Solvency II Law").

The Solvency II Law is supplemented by implementing Royal Decrees and regulatory guidance by the national competent authority for prudential supervision, the National Bank of Belgium (NBB).

The activity of (re)insurance distribution is governed by the Law of 4 April 2014 on Insurance ("Insurance Law"). Among others, this law implements Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (IDD).

The Insurance Law is supplemented by laws governing specific aspects of insurance law, implementing Royal Decrees and regulatory guidance by the national competent authority for supervision on (re)insurance distribution, the Financial Services and Markets Authority (FSMA).

The Insurance Law and related texts set out Belgian rules protecting the general good. These rules include, among others, mandatory formalities for the conclusion and performance of insurance contracts, rules of conduct and minimum content for all types of insurance contracts.

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

The NBB authorises insurance undertakings for specific

classes of insurance. These classes are grouped in life insurance and non-life insurance. The category for which the insurer is authorised will impact the prudential rules to which it is subject (e.g. capital requirements).

Furthermore, Belgium has implemented the principle of proportionality in various aspects of insurance regulation. For example, less significant insurance undertakings must have a less robust governance framework, may apply simplified methods and techniques to calculate technical provisions and are subject to less rigorous reporting requirements.

Reinsurance undertakings are equally subject to a comprehensive body of insurance regulation. However, both the Solvency II Law and the Insurance Law take into account the specific nature of reinsurance business. Often, this results in less stringent regulatory conditions, such as the requirements for market access for third country reinsurance undertakings or the (non-)imperative nature of the provisions governing reinsurance contracts.

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

The activity of (re)insurance distribution is governed by Part 6 of the Insurance Law, as well as its implementing Royal Decrees and FSMA regulatory guidance.

(Re)insurance intermediaries must register with the FSMA before carrying out insurance distribution activities in Belgium or, alternatively, exercise passporting rights when registered in another EEA Member State.

The FSMA register of insurance intermediaries consists of the following categories:

- Insurance brokers
- Insurance agents
- Insurance subagents
- Mandated underwriters
- Ancillary insurance intermediaries

Reinsurance distribution is equally regulated by the Insurance Law. The FSMA register of reinsurance intermediaries consists of the following categories:

- Reinsurance brokers
- Reinsurance agents
- Reinsurance subagents

The FSMA regularly emphasises that the whole chain of (re)insurance distribution is regulated and that any (re)insurance undertakings must verify whether all intermediaries in the distribution chain are duly authorised.

The Insurance Law sets out detailed registration conditions (e.g. professional knowledge and experience requirements for regulated positions), as well as rules of conduct (e.g. precontractual disclosures, conflict of interest management). These rules are further supplemented by Implementing Royal Decrees, such as the Royal Decree of 18 June 2019 on the implementation of Articles 5, 19° /1, 264, 266, 268 and 273 of the Insurance Law, and FSMA guidance (e.g. IDD Handbook, newsletters, FAQs etc.).

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?

Insurance and reinsurance undertakings must obtain a license before carrying out any activity of insurance in Belgium.

Insurance and reinsurance undertaking established in other EEA Member States may exercise passporting rights in accordance with European rules.

An insurer from a third country wishing to engage in insurance activities in Belgium can, as a first option, establish a Belgian branch. The branch of an insurance company from a third country may only carry out insurance activities in Belgium provided that:

- that insurance undertaking is governed by the law of a third country considered 'equivalent';
- the NBB has concluded a cooperation agreement with the supervisory authorities of the home third country;
- the insurance undertaking has obtained authorisation in the home third country to conduct the insurance activities it wishes to pursue through its Belgian branch;
- the branch is authorised by the NBB. The conditions to obtain such authorisation are largely identical to those for a subsidiary, as

described below. One important difference is that the central management does not need to be located in Belgium.

Alternatively, an insurer from a third country wishing to engage in insurance activities in Belgium can establish a subsidiary under Belgian law. The NBB has published a memorandum offering a comprehensive overview of the application process and requirements on its website. In this case the candidate-insurer must comply with certain licensing conditions relating to the following aspects:

- the legal form of the company and its target;
- the programme of operations;
- the assets of the candidate;
- the shareholders or partners;
- the leadership of the candidate;
- the organisation of the candidate; and
- the location of the central management of the candidate (which must be Belgium).

The Solvency II Law and the Royal Decree of 22 February 1991 on the general regulation on the supervision of insurance undertakings set out detailed and comprehensive conditions and documentary requirements for authorisation. The NBB has issued further practical guidance in its 2017 Memorandum on the application for authorisation by an insurance or reinsurance company under Belgian law and related communications.

The key criteria for authorisation relate to quantitative requirements (e.g. minimum capital requirements), qualitative requirements (e.g. governance) and transparency requirements (e.g. reporting to the NBB and disclosures to the general public).

The NBB approves applications for authorisation within a period of six months from the date of receipt by the NBB of a complete application. In practice, candidates discuss the application with the NBB and submit their file informally well in advance. Both the informal and formal process are regulated by the NBB in its 2017 Memorandum on the application for authorisation by an insurance or reinsurance company under Belgian law. The time to obtain authorisation largely depends on the discussions during the informal pre-approval process. Recent applications for authorisation took around 12 to 24 months to be processed.

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

The NBB approves the suitability of qualified shareholders. Any shareholder having a holding of 20%,

30% or 50% or parent company must notify the NBB in advance of its intention.

The NBB can oppose to the holding if the candidate-shareholder is not suitable to ensure the sound and prudent management of the undertaking. The suitability assessment is carried out based on the following criteria:

- Reliability
- Professional aptitude and competence
- Solvency position
- The assurance that the shareholder will continue to comply with prudential requirements
- The absence of any indications of money laundering and terrorist financing

Further regulatory guidance on the requirements for persons or entities owning or controlling insurance or reinsurance undertakings can be found in the NBB's Governance Circular, its 2017 thematic Circulars, and the ESA's Joint Committee's Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors.

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

The Solvency II Law provides several exemptions on the licensing requirement. These exemptions relate, for example, to certain social security schemes, export credit insurance and car assistance cover.

Furthermore, Belgium is a party to the WTO General Agreement on Trade in Services and the OECD Code on the liberalisation of current invisible operations.

Insurance undertakings established in WTO Member States enjoy freedom of services to carry out regulated activities insofar the insured risks relate to maritime transport, commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom; and risks related to goods in international transit. Such (re)insurers must notify the FSMA of their intention to exercise their right to write risks in Belgium.

Insurance undertakings established in third countries that have adopted the OECD Code may cover, under the freedom to provide services, risks located in Belgium belonging to classes 4 (rolling stock CASCO), 5 (aircraft

CASCO), 6 (inland and sea vessel CASCO), 7 (transported goods), 11 (civil liability for aircraft) and 12 (civil liability for sea and inland vessels) if the policyholder took the initiative to enter into the contract.

Finally, reinsurance undertakings established and licensed in third countries may establish a branch in Belgium or carry out their activities without a branch with regard to the same activity for which they have obtained authorisation in their home state.

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?

Insurance undertakings established in third countries obtain Belgian market access by establishing a branch in Belgium. This procedure is governed by the Solvency II Law and regulatory guidance by the NBB, notably NBB's 2017 Communication on the procedures for the performance of insurance or reinsurance activities in Belgium by insurance or reinsurance companies governed by foreign law.

The branch of an insurance company from a third country may only perform insurance activities in Belgium if:

- the insurance company is governed by the law of a third country that is considered "equivalent";
- the NBB has entered into a cooperation agreement with the supervisory authorities of the third
- country of origin;
- the insurance company has been granted authorisation in the third country of origin for performing the insurance activities it intends to carry out through its Belgian branch; and
- the branch has been granted prior authorisation by the NBB.

To obtain NBB approval, the insurance undertaking must comply with similar authorisation requirements as a Belgian insurer. In practice, it must submit a dossier to the NBB containing, among others, information on its organisation, solvency and prudential information, proof that it has the necessary eligible own funds to attain half of the absolute floor of the minimum capital requirement and sufficient collateral in Belgium and the contact details of the authorised agent in Belgium.

Reinsurance undertakings established and licensed in

third countries may establish a branch in Belgium or carry out their activities without a branch with regard to the same activity for which they have obtained authorisation in their home state.

Insurance intermediaries established in third countries must register with the FSMA prior to starting their activities of insurance distribution in Belgium. They are subject to the same regulatory requirements as Belgian insurance intermediaries (e.g. incorporation of a Belgian company, appointment of regulated positions, etc.).

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

Both the activity of writing insurance and the activity of insurance distribution without authorisation are penalised by administrative and criminal sanctions (fines, imprisonment, penalty payments etc.).

Furthermore, the Insurance Law provides that insurance contracts concluded without authorisation are null and void. However, for the protection of policyholders' interests, the insurance contract continues to bind the unauthorised insurer, provided the policyholder has taken out the contract in good faith.

Consequences for breaches also include (extra-)judicial proceedings by policyholders and other interested persons, both in civil proceedings (contract or tort and individual or class action) and criminal circumstances.

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

The NBB and FSMA are well-equipped and no less rigorous than their larger neighbours in their scrutiny of applications and investigations. However, both regulators have shown themselves to be pragmatic, easily accessible and able to communicate in multiple languages (including English).

The NBB notes that in 2022, the Belgian financial sector had to adapt to a changed macrofinancial environment. A key development during this period was the significant tightening of monetary policy in response to high inflation, thus ending a long period of very low (and even negative) interest rates. To date, the insurance sector has always benefited from rising interest rates. However, the NBB emphasizes that, coupled with inflation, these could negatively impact the sector in the future, as inflation affects the liabilities of insurance companies by increasing their overhead (salaries, operating costs, etc.)

and the cost of claims. The NBB also points out that financial risks resulting from climate-related risks, both physical and transition, are considerable for insurance companies: the number of claims due to damage caused by climate change is rising in Belgium. Climate change and the transition to a more sustainable, low-carbon economy can also have a major impact on the economy and financial stability and will thus constitute an area of focus, together with structural developments related to digitalisation. In recent years, the NBB has contributed significantly to a regulatory framework aimed at better controlling cyber and IT risks; this remains a top priority, and the NBB expects the cyber insurance market to grow rapidly throughout 2023. Lastly, in connection with negotiations on the European Commission's key proposal for a Directive establishing a framework for the recovery and resolution of insurance and reinsurance undertakings (IRRDR), the NBB participates in the ongoing discussions and highlights both the need for a financing mechanism and arrangements for cooperation between authorities in cases involving financial conglomerates.

In recent years, the FSMA has focused on the duty of regulated entities to rely on registered insurance intermediaries only. We expect the FSMA to maintain this priority, in particular in light of cross-border organisational structures post-Brexit. Furthermore, market behaviours causing consumer detriment remain a priority. The FSMA published its comprehensive IDD Handbook (available in Dutch and French) in February 2022, containing regulatory guidance on IDD obligations (with a key focus on information obligations). In May 2023, the FSMA issued a communication on the IDD inventory (or "cartography"), a new periodic report on distribution activities and products to be filed by Belgian insurance companies and branches established in Belgium of foreign insurance companies as from 30 September 2023. This inventory is an instrument used by the FSMA in its supervision of compliance with the rules that fall within its competence.

Finally, we continue to see an increased focus on sustainability and sustainable finance on all policy levels. These developments should be monitored closely, as the new regulatory initiatives will have a large impact on various aspects of the insurance business (capital requirements, (precontractual) disclosures, investments, risk management, reporting, internal training, etc.). The FSMA has issued some communications setting out guidelines relating to compliance with sustainability requirements. Tackling "greenwashing" (i.e. unfounded claims to sustainability) will be one of the FSMA's priorities in the following years: the supervisory authority has stated that as from 2024, when the European regulatory framework on sustainability disclosures is expected to be fully in place, infringements will be

severely sanctioned.

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

The NBB is the competent authority for prudential supervision of insurers and reinsurers. These entities report on a regular basis and spontaneously to the NBB. Furthermore, the NBB has extensive powers under the Solvency II Law to, for example, request additional information on the insurer's solvency position, to conduct audits and to intervene where necessary.

11. What are the minimum capital requirements?

Minimum capital requirements are set out in the Solvency II Law in accordance with the provisions of the Solvency II Directive.

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

Belgium has introduced detailed rules on contracts of insurance. In general, these rules are part of the provisions protecting the general good and are imperative. Therefore, they apply to all insurance undertakings, regardless of their place of incorporation.

These rules relate to contract formalities as well as the content of the insurance contract (termination conditions, mandatory cover or exclusions, language, claims notification process etc.).

Belgium has also enacted rules on specific lines of business such as, for example, workplace accidents, compulsory motor vehicle liability insurance and pension schemes. These texts are considerably more prescriptive.

Note that policy protection not only applies to consumers, but to undertakings as well.

Finally, various general texts apply to the insurance sector. A key example is the Code of Economic Law of 28 February 2013, which sets out rules on unfair contract terms and market practices. Also to be noted is the new Civil Code, which will eventually encompass 10 new 'books': these are gradually being implemented, while some legislative proposals remain to be finalised. Although largely a codification of existing and prevailing case law (mainly of the Supreme Court), these contain a number of new provisions that will need to be taken into account. On 1 January 2023, Book 5 regarding the law of

obligations/contract law entered into force: some of these provisions will have a (limited) impact on insurance and reinsurance law.

13. How are groups supervised if at all?

Group supervision applies to any insurance Belgian undertaking that is:

- a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking;
- a subsidiary of an insurance holding company which has its head office in the Community;
- a subsidiary of an insurance holding company having its head office outside the Community or a third-country insurance or reinsurance undertaking; and
- a subsidiary of which is a mixed-activity insurance holding company.

The Solvency II Law implements the detailed provisions of the Solvency II Directive governing supervision on groups and conglomerates.

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

Yes, the NBB approves the appointment of board members, executive managers and the persons who effectively run the insurance undertaking.

The NBB has published comprehensive guidance on its expectations regarding the fitness and propriety of these persons. In particular, it has dedicated a chapter in its Overarching Governance Circular and provided specific guidance in thematic Circulars, such as the *"Fit & Proper Handbook"*.

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

Under certain circumstances, directors, executive managers and persons who effectively run the insurance undertaking may be personally liable for damages incurred for failure to comply with prudential requirements. This liability concerns administrative fines up to EUR 5,000,000.

Serious breaches may lead to criminal prosecution and

potential liability up to imprisonment from one month to one year and a criminal fine up to EUR 80,000.

Note that, as pointed out by the NBB in its Overarching Governance Circular, members of the Management Committee of insurance undertakings are required to have an independent (self-employed) status and cannot be employees. As such, they do not enjoy the same level of protection afforded to workers under the prevailing labour law.

Finally, creditors may invoke the personal civil liability of senior managers for serious breaches of their mandate.

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

Insurance undertakings subject to the supervision of the NBB must hold their central administration in Belgium.

The NBB has provided further guidance on corporate substance requirements in its Overarching Governance Circular. It expects Belgian insurance undertakings to keep their principal place of business in Belgium and to take the principal decisions of the company in Belgium.

Furthermore, the NBB assesses corporate substance requirements on a case-by-case basis. It will take into account all relevant circumstances and will not rely on a tick box exercise.

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

Outsourcing of activities or procedures which are specific to the (re)insurance company and are performed on a recurring or continual basis are subject to prudential requirements. These are set out in the Solvency II Law and the NBB's Overarching Governance Circular, as well as the NBB's thematic Circulars, such as the Circular on cloud outsourcing.

Outsourcing is defined as *"an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself"*.

The Solvency II framework distinguishes between the outsourcing of critical or important activities and functions and forms of outsourcing that are not critical or important. Critical or important outsourcing is subject to more stringent regulatory requirements.

As a general principle, all (re)insurance undertakings remain fully responsible for the outsourced functions or activity.

The outsourcing of operational tasks must not lead to any of the following:

- material impairment of the quality of the governance system of the insurance company;
- undue increase of the operational risk;
- impairment of the NBB's ability to monitor compliance by the insurance company with the obligations laid down by or pursuant to the Solvency II Law;
- undermining of the continuous and satisfactory service to policyholders, insureds and beneficiaries of insurance policies or the persons concerned by the performance of reinsurance policies.

All (re)insurance undertakings must develop an outsourcing policy containing mandatory content, for example including rules regarding continuity plans (ensuring operational resilience), protection of personal data and reporting to the NBB.

Specific and comprehensive rules apply to the outsourcing of critical or important functions or activities. In such a case, special emphasis is placed on ensuring that the service provider has suitable contingency plans to deal with emergencies or business interruptions, as well as the obligation for insurance and reinsurance undertakings to have a documented exit strategy in accordance with its outsourcing policy and its business continuity plan, ensuring that withdrawal from an outsourcing agreement does not cause any disruption to its business operations.

Finally, on 4 April 2019, the Belgian legislator has introduced restrictions on certain b2b transactions. These restrictions relate to unfair market practices and unfair terms. These rules entered into force on 1 September 2019 (unfair market practices), 1 June 2020 (abuse of a dominant position) and 1 December 2020 (unfair terms). While financial services are excluded from the scope of the "b2b law", outsourcing arrangements fall within its scope. Note that the provisions of the new Civil Code, which will consist of 10 separate 'books' and is currently being gradually phased in, will also need to be taken into account. Book 5 regarding the law of

obligations/contract law entered into force on 1 January 2023 and introduces some new concepts liable to have a (limited) impact on insurance and reinsurance law.

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?

The Solvency II Law, Solvency II Royal Decree, Solvency II Delegated Regulation and the NBB's regulatory guidance govern the capital requirements applicable to (re)insurance undertakings. The choice of assets in which (re)insurance undertakings invest directly impacts the calculation of the Solvency Capital Requirement (SCR) and the Minimum Capital Requirement (MCR).

As a general principle, (re)insurance undertakings should have assets of sufficient quality to cover their overall financial requirements. (Re)insurance undertakings should manage these assets in accordance with the 'prudent person' principle. Investments are only permitted if the (re)insurance undertaking can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency needs. Furthermore, the (re)insurance undertakings must invest all assets in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole, while ensuring appropriate diversification. Assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities. Those assets shall be invested in the best interest of all policy holders and beneficiaries taking into account any disclosed policy objective.

In the case of a conflict of interest, insurance undertakings, or the entity that manages their asset portfolio, shall ensure that the investment is made in the best interest of policyholders and beneficiaries.

Investments in derivatives are permitted if the investment contributes to risk management or facilitates effective portfolio management.

While the Belgian legislator does not require (re)insurance undertakings to invest in particular categories of asset, the FSMA has published guidance on certain assets that are not suited for distribution to retail customers. In practice, most life insurance undertakings have adhered to this voluntary moratorium of structured products. The moratorium applies to the distribution of structured products that are considered particularly complex.

Finally, recent regulatory initiatives have an impact on the investment management of insurance undertakings. In particular, the Shareholders Rights Directive and the sustainable finance package create additional points of attention for (re)insurance undertakings when determining their investment strategy. These rules may impact the choice of assets, precontractual disclosures and (contractual) reporting to policyholders, the general public and the regulator.

19. How are sales of insurance supervised or controlled?

The distribution of insurance contracts is governed by the Law of 4 April 2014 on Insurance ("Insurance Law"), its implementing Royal Decrees and regulatory guidance of the national competent authority, the Financial Services and Markets Authority (FSMA).

Furthermore, specific legislation applies to certain aspects of the distribution, such as the prohibition on discrimination, or to specific lines of business, such as compulsory motor vehicle liability insurance or payment protection cover.

At all times, the general principles of civil and commercial law continue to apply, if not derogated from by specific laws. For example, the Civil Code sets out rules on the conclusion of contract (e.g. valid consent), the Code of Economic Law on unfair market practices and unfair terms, the Brussels Ibis Regulation governs the choice of jurisdiction and the Rome I Regulation the choice of law.

These rules are, in general, imperative and part of the provisions protecting the general good. Insurance contracts cannot derogate from these legal provisions. However, specific lines of business may fall outside the scope of certain rules (e.g. large risks, export credit insurance or maritime insurance). In that case, parties may enjoy larger contractual freedom.

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?

Belgian insurance distribution laws apply to non-Belgian (re)insurance intermediaries when activities of (re)insurance distribution are "*carried out in Belgium*".

In the context of Brexit, the FSMA has issued further

guidance on the interpretation of the notion “*carried out in Belgium*”. The FSMA has clarified, e.g. in its newsletters and other publications, that Belgian distribution laws apply to non-Belgian insurance distributors when:

- the latter carry out (re)insurance distribution activities for policyholders established in Belgium and for risks situated in the EEA;
- they factually carry out their activities in Belgium by targeting the Belgian market, for example by using a website with a .be extension or using communications in one of the Belgian official languages (Dutch, French and German).

In that case, the insurance distributor must comply with all Belgian requirements for the distribution of insurance contracts, including the registration requirement for insurance intermediaries and the requirement to comply with Belgian general good provisions. The FSMA and NBB publish an indicative list of general good provisions on their websites.

Specific rules apply to distance selling. The insurance undertaking must grant a cooling-off period of 14 days to the policyholder. This period is extended to 30 days for life insurance contracts. Furthermore, the distributor must make additional disclosures and include appropriate contractual clauses in the insurance contract.

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

Industrial risk and financial lines insurance disputes as well as reinsurance disputes are often submitted to arbitration, whereas arbitration is not allowed in case of insurance disputes with consumer-policyholders. In case there is a technical controversy part of the dispute, the courts will appoint a court expert whose advice in a final report will be quasi-decisive for the outcome of the case. The fact that witness examination and cross-examination practically never happen and the slow pace of court proceedings, especially at the level of the (important) Brussels Court of Appeal, are considered to be a considerable disadvantage of the Belgian court system.

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

Arbitration and mediation are in Belgium labelled as “alternative dispute resolution” techniques. Arbitration is often used for reinsurance disputes and complex industrial risk and financial lines disputes, but is not

allowed in case of insurance disputes with consumers. Mediation is not often used in insurance disputes, generally because the parties seem capable of settling without needing the assistance of a mediator.

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

An insurance portfolio transfer is subject to prior approval by the NBB. The procedure for approval is set out in Articles 102 to 106 of the Solvency II Law and the NBB’s regulatory guidance. Furthermore, Belgium has introduced certain general good rules in the Insurance Law, which must be taken into account when transferring insurance contract with risks situated in Belgium (such as mandatory disclosures). The FSMA supervises compliance with those rules of conduct.

Once approved, the portfolio transfer is published in the Belgian Official Gazette. After this publication, the transfer is binding upon third parties, such as insureds, policyholders and beneficiaries. During the approval process, these third parties have no right to intervene and should not consent to the transfer.

Belgium has made use of the option under Article 39.6 of the Solvency II Directive and grants policyholders an additional cancellation right when their insurance contract is part of a portfolio transfer.

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

In general, the regulators are found to be supportive of new market entrants. Belgium is generally considered a relatively attractive market in the EU, notably through the arrival and establishment in Belgium of insurers from various EU Member States as well as UK insurers (further to Brexit).

One unique challenge consists in the dual language system (French and Dutch), which obliges insurers to develop policy wordings and marketing materials (website, etc.) in both languages (yet, some insurance policies benefit from legal exemptions where it is possible to draft the policy documentation in English).

In general, the regulatory authorities are rather accessible and communicate in multiple languages (including English). An unofficial English translation is

generally made available on their website for key regulatory guidance (e.g. the NBB's 2017 Memorandum on the application for authorisation by an insurance or reinsurance company under Belgian law or its Overarching Governance Circular).

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

Digital innovation is growing rapidly. Insurers innovate by applying digital techniques for the distribution of their insurance policies (e.g. smart phone apps), by cooperating with (ancillary) insurance intermediaries having innovative distribution models, by implementing advanced internal processes (e.g. cloud computing) and by developing new insurance products (e.g. cyber cover). We have seen a rise of banks acting as insurance distributors for insurance products offered through their websites or apps with no physical contact with the policyholders. COVID-19 has led many insurers to amend their more traditional distribution models (using more agencies and brokers), in favour of digital and online tools. Finally, in the last few years a number of specialised companies have entered the Belgian market as Lloyd's broker or coverholder (or its Belgian equivalents, respectively the insurance broker and the mandated underwriter) who underwrite insurance only via the internet.

26. 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 regulators prioritise the supervision of new technologies. While there is no overall approach to *InsurTech* or digitisation, regulators regularly issue specific guidance. For example, the NBB has published guidance on the outsourcing to cloud service providers and cloud computing. Detailed rules on cyber security exist, such as the FSMA's communication on basic principles for the management of cyber risks and the NBB's prudential expectations on the management of cyber risks. See also question 9 for a further discussion on the regulators' priorities with regard to cyber risks.

27. To what extent is insurers' use of customer data subject to rules or

regulation?

Insurance undertakings are subject to the rules set out in the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR") and its "implementation" in Belgium in the Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data.

Furthermore, laws and regulatory guidance specific to the insurance industry set out additional rules on the processing of personal data (e.g. medical data, AML-related KYC data), the storage of data and cyber security.

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

The GDPR provides detailed rules on the sharing of data outside the European Economic Area. Sharing of personal data with entities established in third countries is only permitted under specific conditions and when the data controller has sufficient legal ground for such transfer (e.g. explicit consent, adequacy decision, necessity for the conclusion or performance of a contract in the interest of the data subject).

29. 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.

The European Commission has further implemented its sustainable finance package throughout 2021 and the start of 2022 by issuing and implementing three major regulations:

- i. the Taxonomy Regulation, which creates an overall framework for the classification of sustainable economic activities, and which has introduced a reporting requirement for large or listed (re)insurance companies, as well as several disclosure requirements in precontractual documents and annual reporting to clients;

- ii. the Benchmarks Regulation, which has introduced two new low carbon benchmarks and requires environmental, social and governance (ESG) disclosure requirements for benchmarks. The direct impact of the Benchmark Regulation is however rather limited for (re)insurance undertakings;
- iii. The Sustainable Finance Disclosure Regulation (or SFDR), which has introduced extensive disclosure obligations for insurance undertakings offering insurance-based investment products (IBIPs), pension funds, as well as insurance intermediaries providing insurance advice with regard to IBIPs.

The Taxonomy Regulation and SFDR will be implemented further in Commission Delegated Acts setting out detailed technical screening criteria (TSC) and regulatory technical standards (RTS). After many revisions and rounds of consultation, the long-awaited RTS for SFDR and the Taxonomy Regulation ('Level 2' of both Regulations) finally entered into force on 1 January 2023, setting out for example mandatory disclosure and reporting templates. These Regulations continue to be subject to review and clarification, notably in several official Q&A documents issued by the Commission.

The FSMA, as the competent supervisory authority, regularly issues regulatory guidance specifically directed towards insurance undertakings and intermediaries.

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

The established, traditional insurers continue to fill an important position on the market. However, those insurers and distributors who will be able to concentrate on new products to cater for new needs associated with, for example, climate change, pandemics and communicable diseases as well as cyber risks, have more chances of being successful in the long run compared to others. Furthermore, we have seen a steady growth in run-off transactions on the Belgian market. We expect that the growth of this market of specialised run-off service providers (risk carriers, service companies, consultants) will continue.

Compliance has also become a crucial focus area for undertakings and their board of directors. The compliance function has taken on a more important role in recent years, with insurers devoting increasing attention to the evolution of the applicable regulatory framework to ensure proper identification and assessment of non-compliance risks.

Data is another element that is fast increasing in importance, both the gathering of data as well as its treatment and analysis. Those insurance distributors with the most data at their disposal and the capacity to best make use of it, are likely to take up an increasingly dominant role as market players.

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