



**COUNTRY  
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# **The Legal 500 Country Comparative Guides**

## **Liechtenstein**

# **INSURANCE & REINSURANCE**

### **Contributor**

Ospelt



**M.A. HSG Judith Hasler**

Attorney at Law, Partner |

**Dr. iur. HSG Alexander Ospelt, LL.M.**

Attorney at Law, Trustee, Partner of Ospelt & Partner Attorneys at Law Ltd. | [alexander.ospelt@ospelt-law.li](mailto:alexander.ospelt@ospelt-law.li)

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?

There are contractual and regulatory provisions regulating the writing of insurance contracts.

#### Contractual provisions:

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. In addition, 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. 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. As Liechtenstein has in principle adopted a large part of the Austrian law of obligations, Austrian and European Jurisdiction and appropriate literature must be taken into account in the area of insurance contracts.

#### Regulatory Provisions

(Re-)Insurance companies as well as Insurance Intermediaries in Liechtenstein must be licensed by the Liechtenstein Financial Market Authority (Finanzmarktaufsicht Liechtenstein, FMA) before they can conduct insurance business. The FMA supervises all activities of Liechtenstein insurances and 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) as well as the Insurance Distribution Act of 2017 (Versicherungsvertriebsgesetz, VersVertG) and the

Insurance Distribution Ordinance of 2018 (Versicherungsvertriebsverordnung, VersVertG) may be relevant for writing insurance contracts.

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

The VersAG generally regulates direct insurance and reinsurance companies, as well as non-life and life insurance companies and the same rules apply. However, there are special provisions for certain types of insurers.

For example, Article 7 VersAG specifies that certain transactions of life insurance companies are exempt from certain provisions of the VersAG. Similarly Article 8 VersAG exempts reinsurance companies from the scope of application of the VersAG, provided the companies operate reinsurance only in Liechtenstein and are domiciled in a third country (outside the EEA 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 and the access rules.

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

Insurance brokers and other intermediaries are regulated in Liechtenstein. The relevant legal foundations, which are mainly relevant for insurance brokers and other intermediaries, are the VersVertG supplemented by the VersVertV as well as the Due Diligence Act of 2008 (Sorgfaltspflichtgesetz, SPG) supplemented by the Due Diligence Ordinance of 2009 (Sorgfaltspflichtverordnung, SPV). With the VersVertG and the complementary VersVertV Liechtenstein has implemented the EU Directive on Insurance Distribution (IDD, (EU) 2016/97). Based on the above-mentioned legal basis, insurance intermediaries are subject to supervision by the FMA and require a licence issued from 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 fulfils the legal requirements (i.e. professional qualification, financial guarantee, domestic head office...). Insurance brokers and other intermediaries with ancillary activities may be exempted 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?**

As the insurance supervisory authority, the FMA is responsible for supervising all business activities of insurance undertakings (see questions above).

According to Article 12 and Article 13 of the VersAG, the main criteria for obtaining such a licence are the complete transmission of a licence application and a business plan. The following list provides an overview of essential declaration and documents that must be included in the licence application:

- 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 the FMA Instruction (FMA 2017/26 Formation of an Insurance Company), the duration of the licensing procedure depends primarily on the conclusiveness and completeness of the information and documents contained in the application. First, a draft of the licence application (preliminary application) without original documents must be submitted. The applicant receives a written statement from the FMA on the conclusiveness, form and completeness of the application. After the pre-application has been corrected, if necessary, the final application can be submitted with the original documents. Once the application is complete, the FMA must decide on the granting of a licence within six months and to inform the applicant without delay. In case of a delay, the applicant has the right to make a complaint to the FMA – Appeals Commission (Article 15 VersAG). In practice, insurance companies should expect a duration between 6 and 12 months in total before their licence is granted. The requirements for insurance intermediaries are less stringent and therefore a shorter period of time can usually be expected before a licence is issued.

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

Yes, there are restrictions or controls on who owns or controls the insurance. In particular, the suitability and financial soundness of a qualifying interest must be verified before the participation is acquired. A qualified participation is deemed to be the direct or indirect holding of at least 10% of the capital or voting rights of a company or another possibility of exercising a significant influence over the management of that company.

The FMA must be notified in writing in advance by the interested parties about every intended purchase or sale of qualifying participations 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, fall 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. In addition, the FMA needs ancillary information if the interested purchaser is a legal entity from a third country, such as a clearance certificate and a 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)?**

In principle, non-admitted insurance is not permitted in Liechtenstein. However, as a member of the EEA, Liechtenstein is obligated to transpose 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 have 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 licensing 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 (notification).

One advantage Liechtenstein is that Liechtenstein it has concluded an agreement with Switzerland regarding on direct insurance and insurance intermediation (Abkommen zwischen der schweizerischen Eidgenossenschaft und dem Fürstentum Liechtenstein betreffend die Direktversicherung sowie die Versicherungsvermittlung). With this agreement Liechtenstein and Switzerland mutually recognize the supervision system and introduce a passporting/notification system comparable to the system within the EEA. As a result, Liechtenstein offers the unique opportunity to insurance companies and insurance intermediaries, to provide cross border services to the EEA and to Switzerland without obtaining additional licences.

## **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 Member State may establish a branch in the Principality of Liechtenstein if the supervisory authority of the home State has provided the FMA that:

- a. a confirmation that the insurance undertaking is authorised to conduct insurance business in its home Member 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. Are there any restrictions/substance limitations on branches established by overseas insurers?**

Third-country insurance companies (outside the EEA) must obtain a permit in accordance with the Insurance

Supervision Act (VersAG) in order to commence insurance activities in Liechtenstein. A third-country insurance undertaking may only be granted a licence to take up insurance activities in Liechtenstein if it fulfils the following requirements:

- a. it must be authorised to conduct on insurance business under the law of its country of domicile;
- b. it must establish a branch office in the Principality of Liechtenstein and appoint a general representative as its head, whose appointment requires the approval of the FMA;
- c. it must undertake to keep separate accounts for its domestic business activities at the registered office of the branch and to keep available all relevant business documents available;
- d. it must undertake to cover the Solvency Capital Requirement and the Minimum Capital Requirement;
- e. it must have assets in the Principality of Liechtenstein amounting to at least half of the threshold value of the minimum capital requirement must deposit one quarter of this amount as a security;
- f. it shall communicate the name and address of the claims representative appointed in each EWRA Contracting State (other than the Principality of Liechtenstein) if the risks to be covered fall under class 10 of Annex 1, letter A, with the exception of carrier's liability;
- g. it submits a plan of operations that complies with the requirements
- h. it complies with the governance requirements.

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

An insurance or insurance intermediary activity without a licence constitutes a misdemeanour under Article 257 VersAG and Article 82 VersVertG. Anyone who conducts insurance business in Liechtenstein without the appropriate permission of the FMA may be punished by the District Court with an imprisonment for up to one year or with a fine of up to 360 daily rates. The FMA is entitled to publish information on the application of the final penalty.

### 10. How rigorous is the supervisory and enforcement environment? What are the

### key areas of its focus?

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. For this reason, the FMA Liechtenstein takes a strict approach to make sure that insurance undertakings comply with the applicable laws and supervisory rules. In principle, however, and based on to our experience, the FMA cooperates with the regulated companies. Nevertheless, since the implementation of the Solvency II Directive (2009/138/EC) the supervisory and enforcement environment for insurance companies has become increasingly stringent.

Of course, the international cooperation of the FMA is strongly influenced by Liechtenstein's membership in the EEA and Liechtenstein is also closely involved in the European supervisory structure. The FMA 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).

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

Apart from the fact that the Solvency Capital Requirements are already a major topic within the licensing 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 an insurance supervision authority is to supervise all business activities of insurance undertakings (Article 177 VersAG), which includes in particular the monitoring of their solvency.

Insurance companies in Liechtenstein must present and publish an annual report, including an annual account. They must also submit to the FMA a report form with detailed business figures for the previous financial year. In addition, there are further reporting and notification obligations with regard to solvency. These data make sure that the FMA can respond promptly in the event of identifying potential weakness.



In addition to supervising the calculation of the Solvency Capital Requirements complied with Article 42 et seq. VersAG, Article 73 VersAG authorises the FMA ancillary to develop tools that help evaluate the ability of such undertakings.

## 12. What are the minimum capital requirements?

The minimum capital requirements depend on the type of insurance businesses are operated by the insurance undertakings. The minimum capital requirements may not be less 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, other than captive reinsurance undertakings, which shall have 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.

## 13. 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 though there is no specific protection scheme for policyholders, in Liechtenstein they are mostly protected by provisions in the form of tied assets. One could even say that the insurance legislation, with its strict solvency, minimum capital and information requirements, is guided and animated by the goal of protecting policyholder.

Regulation is increasing, particularly in favour of transparency and consumer protection. For example, the Solvency II as a risk-based regulation that sets the technical and governance standards required for EU insurers to manage capital requirements, aims to provide effective policyholder protection. It provides transparency and consistency to risk management and reporting to protect consumer interests against insurers that fail to meet their obligations.

In addition, a certain level of protection is also provided by the provisions on insurance distribution and, where applicable, by the provisions of the Consumer Protection Act of 2002 (Konsumentenschutzgesetz, KSchG).

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

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

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 of which is an insurance holding company or a mixed-activity holding company established in another EEA State.

If the FMA Liechtenstein is the competent authority for the group supervision, it is charged with following supervision tasks accorded to Article 238 VersAG, which 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 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.

In short, the financial situation of insurance groups, 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.

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

All persons that have a senior management function (Board of Directors, Executive Board) or perform key functions (e.g. Compliance, Internal Audit) must be fit and proper. Pursuant to Article 33 VersAG, the members of the Management Bodies as well as all other persons responsible for internal supervision, governance or with other key functions, must have adequate professional qualifications and be of 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 citizen of 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 of insurance matters and management experience. This shall be assumed to be given if the persons are proven to have at least three years' managing experience in 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 have a criminal record in Liechtenstein or a foreign country because of punishable acts against property and no bankruptcy proceedings shall be initiated against them. In addition, they must comply with the instructions of the FMA, have a good reputation and guarantee serious and proper business activity.

### **16. 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 in 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 if 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.

However, Art. 258 VersAG states that if offenses are committed in the business operations of a legal entity or a general or limited partnership or a 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, the partnership or the sole proprietorship for the fines and penalties.

### **17. Are there minimum presence requirements in order to undertake insurance activities in your jurisdiction (and obtain and maintain relevant licenses 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 actually be taken in Liechtenstein, so that the head office remains in Liechtenstein. Experience has shown, however, it can be stated that the requirements in this regard, also due to pressure from European authorities, have become more and more stringent in recent times.

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

According 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).

However, outsourcing of services is possible. As part of the licensing process, modifications in the outsourcing must be approved by the FMA before implementing. According to Article 89 VersAG, insurance companies

that outsource functions or activities, remain for the fulfilment of their obligations. In the 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 results in 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 the commitments given;
- d. Endangering quality of services for policyholders.

### **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?**

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 the risks of which they can properly identify, measure, monitor, manage, control and report and the risks of which can be properly considered by determining the overall Solvency Capital Requirement under Article 37 (2) a) VersAG. All assets, in particular 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 their investment categories. Their investment decisions do not require prior approval by the FMA or systematic notification to the FMA.

### **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?**

In principle, companies are free to structure their reinsurance. However, the respective reinsurance has an

impact on the insurance company, e.g. on its risk management or solvency calculation.

Experience has shown, however, that a partnership with a well-known and strong reinsurer can also have a positive effect on, among other things, the granting of approval.

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

Indeed, sales have a significant role for insurance undertakings. Therefore, the sale of insurance products is subject to supervision by the FMA. The FMA has the power to intervene in the case of unconventional sales techniques.

As a result of implementing the Insurance Distribution Directive (Directive 2016/97/EU, IDD), the VersVertG and the VersVertV entered 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. The VersVertG not only regulates intermediaries, but also applies to insurance companies that sell insurance directly.

### **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?**

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

Liechtenstein implemented the EU-Directive 2002/65/EG on the distance marketing of consumer financial services with its Distance-Financial Services-Act of 2000 (Fern-Finanzdienstleistungs-Gesetz, FernFinG). The key elements 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 over the internet.

The aim of this law 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 to 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.

**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**

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.

Consumer policies are also covered by the Consumer Protection Act of 2002 (Konsumentenschutzgesetz, KSchG) which grants different rights for the policyholders, such as various rights of withdrawal from an insurance contract. For example, 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.

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

In principle, liquidation and bankruptcy proceedings are governed by the provisions of company law and bankruptcy law generally applicable to all companies. In addition, the VersAG provides for a number of special legal provisions regarding the resolution regime,

including in particular the supervision of the FMA.

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

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

Liechtenstein is a civil law country and its court system is based on three court channels, known as "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 Liechtenstein court system 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 a high degree of legal certainty.

**26. 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 out of court. In our experience, alternative dispute resolution methods, such as arbitration and mediation, are well established in Liechtenstein. Arbitration is of great importance in our jurisdiction since Liechtenstein has been a member of the New York Convention since 2011 and has implemented the standards of the United Nations Commission on International Trade Law.

Due to the fact, that practically every pecuniary claim can be the subject of an arbitration agreement, we are observing an increasing shift from ordinary court jurisdiction to arbitral tribunals in the area of dispute resolution.

**27. 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 any portfolio transfer, policyholders have the right to terminate the insurance contract within three months of notification. In the case of portfolio transfers in the course of mergers and between 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.

The FMA is also 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 an insurance company in Liechtenstein 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 are safeguarded until the portfolio transfer is completed.

## **28. 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, the 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.

## **29. 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. In addition, 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. Finally, supervision is also getting quite complex from FMA's point of view. However, the Liechtenstein market is generally open to digital innovation, for example, Liechtenstein was one of the first countries to introduce a law on blockchain. Nevertheless, the regulatory provisions have to be followed.

## **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 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 is being 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.

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

All personal data is 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, as Liechtenstein is a member of the EEA. However, the DSGVO contains a range of so-called opening and special clauses, which grant the states a certain scope for action and enable them to maintain or create new national data protection regulations. Liechtenstein has 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 is being processed, doesn't collect more data than necessary for the purpose for which it's being used, and ensures that the data is protected from unauthorised access and misuse.

### **32. 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 organisations, strict rules apply in accordance with the General Data Protection Regulation (GDPR). This is the only way to ensure that 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 high level of data protection that is comparable to 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, the 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 the purposes to which these authorities have expressly consented.

### **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.**

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

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

Unequal treatment of women and men in the pricing of insurance contracts is not permissible due to European requirements.

The insurance regulations do not provide special provisions in respect on diversity and inclusions regarding employment. However, insurers are subject to the ordinary regulations regarding employment law. The law on the Equality of Persons with Disabilities from 2006 (Disability Equality Act; BGIG) provides, for example, that people with disabilities may not be discriminated. Similarly, the Gender Equality Act from 1999 (GIG) provides that no discrimination on the basis of gender is permitted in working conditions (including wages).

### **35. 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 mentioned 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. At the same time, getting technology and data right will be a critical and challenging issue for all insurance undertakings, especially for traditional insurers.

As one of the few countries in the world, Liechtenstein has taken up on the challenge of creating a legal framework that promotes the “token economy” and at the same time offers 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 on how the blockchain technology can be used in the Liechtenstein insurance sector. One thing is for sure: the blockchain technology opens up 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 whether it will bring about enormous changes in the insurance sector.

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### Contributors

**M.A. HSG Judith Hasler**  
**Attorney at Law, Partner**



**Dr. iur. HSG Alexander Ospelt, LL.M.**  
**Attorney at Law, Trustee, Partner of**  
**Ospelt & Partner Attorneys at Law**  
**Ltd.**

[alexander.ospelt@ospelt-law.li](mailto:alexander.ospelt@ospelt-law.li)

