COUNTRY UPDATE-Liechtenstein: Insurance

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At the end of 2019, 20 life, 14 non-life, and 3 reinsurance undertakings were operating in Liechtenstein. Of these companies, 8 operated exclusively as captive insurers, and of these three operated as reinsurers and five as direct insurers.

Life insurance undertakings mainly offer fund-linked/unit-linked life insurance. The importance of the internationally active non-life insurance undertakings has increased considerably in recent years.

In 2019, Liechtenstein insurance companies accounted for a premium volume of approximately 5,549 billion Swiss francs. Of the premium written, CHF 3,073 billion (56%) are attributable to non-life insurance, CHF 2,411 billion (43%) to life insurance, and CHF 0,065 billion (1%) to reinsurance. According to provisional reporting, the balance sheet total of all insurance undertakings was CHF 31 billionv at the end of 2019, and the capital managed as part of fund-linked / unit-linked life insurance for the account and risk of policyholders amounted to about CHF 22 billion. The solvency ratio of the Liechtenstein insurance sector was approximately 223 % at the end of 2019. One insurance undertaking was not able to meet the solvency capital requirements as of the reporting date.

19 foreign insurance undertakings maintained a dependent branch in Liechtenstein at the end of 2019. 17 of these had their registered offices in Switzerland. In addition, at the end of 2019, 419 insurance undertakings from various EEA countries and Switzerland were notified to the FMA for the cross-border provision of services in Liechtenstein via their home country supervisory authority.

Regulatory framework

General overview

The attraction of the Liechtenstein insurance sector stems, on the one hand, from Liechtenstein's accession to the European Economic Area on May 1, 1995. Shortly after joining the EEA, Liechtenstein brought its insurance supervision laws into line with European standards. This means that insurance companies domiciled in Liechtenstein have free access to the EEA. Business activities are subject to wholly EU-compliant insurance supervision, which is based upon comparable minimum standards. Switzerland and the Principality of Liechtenstein also concluded an agreement concerning direct insurance, which came into force on July 9, 1998. Liechtenstein is up to now the only country with a direct access to the European market and Switzerland.

This agreement enables Liechtenstein and Swiss insurance companies to act as direct insurers in the respective other country. A number of non-domestic insurance companies have already taken advantage of the unique benefits of having access to the Swiss market as well as to the market of the EEA by founding subsidiaries in Liechtenstein. It is also possible to offer insurance products on the free market for services, instead of via subsidiaries.

Supervision and licensing obligations

The supervisory authority for the activities of Liechtenstein insurance companies within the EEA and in Switzerland is the Liechtenstein Financial Market Authority. This exercises the "single-licence principle" or the "home country control principle". Article 11 of the ISA stipulates the licensing obligations. In accordance with these, insurance companies, which are subject to the supervision of the FMA, require a separate licence from the FMA, and must obtain this licence before commencing business operations.

Of particular importance in this respect are the minimum capital requirements. The minimum capital requirement for insurance companies is determined in accordance with art 49 et seqq of the ISA.

In the case of life insurance companies, the supervisory authority requires fully paid-in minimum capital of 3.7 million euros, while the respective figure for reinsurance companies is 3.6 million euros. In the indemnity insurance field, the minimum capital is set at 2.5 million euros and 5/3.7 million euros in case where all or some of the risks included in one of the classes 10 to 15 listed in Part A of Annex I are covered. A reinsurance captive is required to have fully paid-in minimum capital of 1.2 million euros at its disposal.

The FMA has published several Guidelines on various insurance topics on its website.

Overview of individual insurance types

Direct life insurers

The liberal statutory framework makes it possible to offer innovative insurance products in the principality. These include, for example, capitalisation products, which may not be offered in Switzerland or in other EEA member states.

Direct indemnity insurance

Liechtenstein is especially suitable for direct indemnity insurance, particularly in specialist fields such as comprehensive insurance solutions for art collections or financial institutions.

Reinsurance

As the statutory insurance supervisory provisions are only partially applicable to reinsurance, the reinsurance business is able to develop within a liberal and flexible environment.

Captives

The main advantage, which Liechtenstein presents for captives, is the fact that, in addition to advantageous fiscal operating conditions, Liechtenstein-based captives are able to operate in Switzerland as direct insurers and can directly insure risks in Switzerland and throughout the EEA. Liechtenstein deliberately promotes the establishment of captives by distinguished parent companies.

Insurance intermediaries

At the end of 2019, the FMA supervised a total of 54 licensed and registered insurance intermediariesnts.

Relevant statutory provisions

In the field of insurance law, the following laws and ordinances are of particular relevance:

Act on Supervision of Insurance Undertakings (Insurance Supervision Act, ISA).
Ordinance on Supervision of Insurance Undertakings (Insurance Supervision Ordinance, ISO).
Act on Insurance Contracts (Insurance Contract Act, ICA).
Act on International Insurance Contract Law (International Insurance Contract Act, IICA).
Act on Persons and Companies (Persons and Companies Act, PCA).
Act on Professional Due Diligence to Combat Money Laundering, Organized Crime, and terrorist Financing (Due Diligence Act, DDA).
Ordinance on Professional Due Diligence to Combat Money Laundering, Organized Crime, and terrorist Financing (DDO).
Act on National and Municipal Taxes (Tax Act, TA).
Act on Insurance Distribution (Insurance Distribution Act, IDA).
Ordinance on Insurance Distribution (Insurance Distribution Ordinance, IDO).
Act on Supervision of Institutions for Occupational Retirement Provisions (Pension Funds Act, PFA).
Financial Market Supervision Act (FMAA).
Agreement between the Principality of Liechtenstein and the Swiss Confederation on Direct Insurance and Insurance Mediation.
Act on Insurance Protection for Buildings against Damage caused by Fire and Natural Forces (Buildings Insurance Act, BIA).
Ordinance on the Act on Insurance Protection for Buildings against Damage caused by Fire and Natural Forces (Buildings Insurance Ordinance; BIO).
Act on the Road Transport (Road Transport Act, RTA).
Ordinance on Vehicle Insurance (Vehicle Insurance Ordinance, VIO).

On January 1, 2016 the completely revised Insurance Supervision Act (ISA) came into force. The ISA implements Directive 2009/138/EC of the European Parliament and of the Council of November 25, 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) and Directive 2014/51/EU of the European Parliament and of the Council of April 16, 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) into Liechtenstein law. The total revision of the ISA lead to corresponding amendments of the Insurance Contract Act, of the International Insurance Contract Act, of the Pension Funds Act, of the Persons and Companies Act, as well as of the Insurance Mediation Act.

Particular attention is drawn to the provisions of articles 104 and 161 of the ISA as well as articles 77-79 of the ICA. Article 104 of the ISA places business secrets on a comparable footing to bank secrecy, which, therefore, guarantees the protection of the privacy of the policyholder. Article 161 of the ISA contains provisions that pertain to the bankruptcy of an insurance company. Paragraph one thereof

stipulates that in the event of the bankruptcy of the insurer, the technical insurance provisions shall constitute special assets, which shall be used to satisfy the insurance claims.

Articles 77-79 of the ICA regulate the insurance claims of insurance beneficiaries within the framework of bankruptcy or pledging proceedings brought against the beneficiaries. In these cases, for example, the benefit entitlement, which arises out of an insurance policy, expires. If spouses, registered partners, persons who cohabit de facto or descendants of the policyholder are beneficiaries, then neither their beneficiary entitlement nor that of the policyholder may be pledged or included in the bankruptcy assets.

With a life insurance policy, it is essentially the case that in the event of the bankruptcy of, or execution against, the policyholder, the spouses, registered partners, or descendants shall enter into his rights and obligations that arise out of the insurance agreement.

Recent regulatory developments

The Insurance Distribution Directive (EU) No 2016/97 (IDD) was implemented in Liechtenstein through the total revision of the Insurance Mediation Act. The new Insurance Distribution Act (IDA) and the associated ordinance (IDO) came into force on October 1, 2018. The delegated legal acts and implementing ordinances, which the IDD has delegated to the Commission to enact, were brought into force by means of a government ordinance pursuant to Art. 90 IDA.

Taxes and fees for insurance companies according to the Tax Act

Domestic insurance companies are subject to the income tax, which amounts to 12.5% of net earnings (article 61 of the TA). Provided that the Swiss Stamp Duty Act, which applies to Liechtenstein in addition to further statutory instruments due to the 1923 customs union between Switzerland and Liechtenstein, does not fall to be applied in individual cases, domestic insurance companies are, as a rule, also subject to the tax on insurance premiums according to the articles 67 et seq. of the TA. The tax on insurance premiums amounts to 2.5% on cash premium revenues from life insurance policies and to 5% on all other cash premium revenues generated in Liechtenstein.

Premium payments to reinsurers are exempted from the tax on insurance premiums. The same also applies to premium payments to life insurers, where the insurance cannot be surrendered, where the premiums are paid periodically, or where the insurance serves occupational pension funds in line with the Act on Governing Occupational Pension Funds (Governing Occupational Pension Funds Act, GOPFA).

The fees and charges for insurance companies and insurance brokers are set out in the Financial Market Supervision Act (FMAA).

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Complaints Procedure

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