



CHAMBERS
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Insurance

Liechtenstein – Law and Practice

Contributed by
Gasser Partner Attorneys at Law

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LIECHTENSTEIN

LAW AND PRACTICE:

p.3

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

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Gasser Partner Attorneys at Law provides general advice in the insurance sector to domestic insurance undertakings and supports them in the course of the development of new product documentation. We also advise on the set-up and establishment of new insurance undertakings in Liechtenstein, and here we assist with the aspects under corporate law and also with the procedure of obtaining the necessary licence. Furthermore, we are involved in different types of acquisitions of regulated insurance undertakings in Liech-

tenstein. In addition, we support insurance undertakings and brokers in various cross-border issues related to the Liechtenstein market and the regulatory framework. Our regulatory team, which is involved in all different aspects of insurance work, consists of five to six members, one senior partner, two senior associates and two to three associates. The key office location of our firm is Vaduz, Liechtenstein. A lot of our work has international impacts and relates to cross-border issues.

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1. Regulation

1.1 Regulation of Insurers and Reinsurers

For insurers and reinsurers the Liechtenstein Insurance Supervision Act (ISA) and the covering Insurance Supervision Ordinance (ISO) provide the regulatory framework for insurance undertakings in Liechtenstein. The legal provisions applicable earlier have been completely amended and revised and the ISA and the ISO came into force on 1 January 2016.

Following general provisions and definitions, the ISA starts in Section II (Article 11 to Article 22) and stipulates the requirements to provide insurance services in Liechtenstein, where basically the provisions of such services in Liechtenstein requires a licence issued by the Liechtenstein regulator, the Liechtenstein Financial Market Authority (FMA), and it is subsequently dealt with in detail how such a licence can be obtained. In Section III (Article 23 to Article 106) the requirements for the provision of insurance services in Liechtenstein are dealt with. This section covers stipulations on governance, compliance, solvency, delegation, shareholding and participation, reporting and auditing and on requirements for information and secrecy. Section IV (Article 107 to Article 122) contains the regulatory framework for the provision of cross-border services in all different aspects. Details on the termination of the provisions of insurance services in Liechtenstein are contained in Section V (Article 123 to Article 135). Section VI (Article 136 to Article 151) provides specific stipulations for different sectors of the insurance industry. Section VII (Articles 152 to 176) deals with the reorganisation, liquidation and insolvency of insurance undertakings in Liechtenstein and contains cross-

border provisions in this regard. Section VIII (Article 177 to Article 185) includes provisions on the regulator, measures of the regulator and remedies against such measures. In Section IX (Article 186 to Article 193) the co-operation between the different regulators to ensure and effect the cross-border supervision is dealt with. Section X (Article 194 to Article 256) stipulates provisions on the supervision of group companies and Section XI (Article 257 to Article 258) contains sanctions. Finally, Section XII (Article 259 to Article 275) provides the transitional and final provisions.

As already outlined, the purpose of the ISO is to further amplify the provisions of the ISA.

The paramount act covering domestic civil law issues related to insurance contracts is the Insurance Contract Act (ICA), which is supported for aspects of international contract law by the Act on International Insurance Contracts (IICA). Especially, the ICA has to be considered with regards to the content of the documentation of insurance contracts and specifically also in the process of negotiating and executing insurance contracts with customers in Liechtenstein.

The Liechtenstein Insurance Association furthermore issued a code of conduct, the current version of which is dated April 2015, stipulating certain obligations for its members. This code of conduct contains general obligations with regard to the business and its reputation and obligations with regard to the behaviour vis-à-vis clients, employees, agents, competitors, the authorities and finally the public.

1.2 Domestic Developments and Impact of Standards

Liechtenstein is a member state of the European Economic Area (EEA) and as such implements European legislation in the insurance sector. The implementation of the ISA and the ISO, the revision and amendment of the law, which was in place earlier, has basically been triggered by the implementation of EU acts in Liechtenstein. The basic reasoning for the revision and amendment of the old law was the full implementation of Solvency II (Directive 2009/138/EG) in Liechtenstein. Also, guideline 2014/51/EU with regards to the competencies of regulatory authorities, and cross-border, has been implemented with this law.

Furthermore, Liechtenstein declared itself to be an early adopter of the Automatic Exchange of Information (AIA). In light of this declaration the respective requirements for service providers in Liechtenstein, which do also have effect on the insurance business, have been implemented with a specific act, the AIA-Act, which came into force in January 2016. Based on this act, Liechtenstein insurance providers have already been obliged to disclose information on specific insurance contracts to the Liechtenstein tax authorities in September 2017.

2. Distribution

2.1 Insurance and Reinsurance Products

In any event, the distribution of insurance products in Liechtenstein is a regulated service. The licence of insurance undertakings, of course, includes the distribution of insurance products.

In addition, a specific law applies for the distribution of insurance products in Liechtenstein. Implementing directive 2002/92/EG, Liechtenstein enacted a specific law on insurance brokers in Liechtenstein with the Act on Insurance Brokers (IBA) and again an accordant ordinance (IBO), which both came into force in 2006. In compliance with the IBA the operation of insurance brokers in Liechtenstein basically again requires the approval of the FMA. As stipulated in Article 9 of the IBA, insurance brokers, licensed in any other EEA country can provide their services in Liechtenstein upon an accordant notification of the regulator of the home country.

In light of the size of the country there is quite a substantial number of insurance brokers (approximately 70), in the form of legal entities which hold a licence from the FMA as insurance brokers.

A regulated bank in Liechtenstein does not, based on its banking licence, have the chance to distribute insurance products, without the need to obtain an additional licence.

Consequently, a number of Liechtenstein banks applied for and are holding a specific licence under the IBA.

Also, direct sales through approved Liechtenstein insurance undertakings play an important role in Liechtenstein.

In implementation of directive (EU) 2016/97 Liechtenstein has already provided a first draft for quite a substantial revision of the IBA. This new law will increase the requirements for the distribution of insurance products and will, in light of the above, not only have effect on brokers, but also on insurance undertakings itself. The increased requirements will primarily include the necessary qualifications and also the organisation of applicants. The mentioned directive is not yet implemented in the EEA Agreement and also the Liechtenstein draft is not yet final. Basically, the directive should be implemented until 23 February 2018, but this deadline will presumably not be met in the EEA.

3. Overseas Firms Doing Business

3.1 Overseas-Based Insurers and Reinsurers

As already outlined above, the ISA and ISO provide the regulatory framework in Section IV. These provisions initially distinguish between activities of regulated undertakings in Liechtenstein abroad in part A. Part B covers the activities of insurance undertakings regulated within the EEA in Liechtenstein. Such insurance undertakings can establish either a branch in Liechtenstein or provide their services into Liechtenstein by making use of the passporting provisions as stipulated in the ISA. Article 114 of the ISA stipulates the requirements in this regard and also the extent of information, which needs to be provided by the home regulator to the Liechtenstein FMA prior to the provision of services in Liechtenstein.

According to Article 116 ISA insurance undertakings from third-state countries require approval for the provision of services into Liechtenstein in any case. The detailed requirements for such approval are stipulated in Article 117 ISA and encompass:

- that the insurance undertaking needs, according to the law of the home country, to be allowed to provide insurance services;
- that the insurance undertaking needs to establish a branch in Liechtenstein and appoint a fully authorised representative for this branch, which needs to be approved by the FMA;
- the insurance undertaking establishes separate bookkeeping for the branch and maintains all required books;
- that the insurance undertaking covenants meet the solvency and minimum capital requirements;

- that it disposes of assets, in Liechtenstein, amounting to at least half of the threshold stipulated in Article 51 Sec. 2 ISA for the minimum capital requirements and one quarter of this amount is deposited as a security guarantee;
- that it has to disclose the name and address of the representative for claims adjustments in all EEA countries;
- the provision of an activity plan in accordance with Article 118 ISA; and
- the meeting of the governance requirements.

Furthermore, according Article 119 ISA, there are increased requirements for the accordant reserves of third-state insurance undertakings.

4. Transaction Activity

4.1 Mergers and Acquisitions Activities

There are no limitations, under corporate as well as under civil law, which would have an effect on mergers and acquisitions activities for both inward and outward activities. Of course, in light of the small size of the country, the number of such transactions is not comparable to other jurisdictions.

There is, however, an increased interest for both inward and outward transactions. The investors taking an interest in acquisitions are both strategical and financial investors.

Only recently two mid-size Liechtenstein banks have been acquired in Liechtenstein through Chinese investors. Of course, when it comes to the acquisition of regulated services providers in Liechtenstein, the FMA thoroughly tests and reviews the potential acquirer, prior to approving the transaction. In this course, the potential acquirer needs to provide substantial information, including information on the controlling natural persons (as directors as well as shareholders) for the review process. The approval of the FMA is compulsory for the closing of such transactions.

5. Insurtech

5.1 Insurtech Development and Collaborations

Insurtech developments in Liechtenstein are, so far, not too extensive. Basically, the life insurance with fund and share linked products is still the most important insurance sector in Liechtenstein with approximately 90% of shares in the market.

In 2017, a Liechtenstein insurance undertaking admitted a micro finance fund set up by an Austrian investment firm with the purpose of providing micro financing in developing countries in order to support the development of the respective economies to its portfolio.

5.2 Regulator's Response to Insurtech Issues

In light of the fact that there obviously has not been too much consideration in this field of business in Liechtenstein so far, the government wants to support further developments. Consequently, the Liechtenstein government and also the FMA have a very open approach to all various aspects of fintech and thus also with regards to insurtech. Meanwhile, a vibrant fintech scene in Liechtenstein is in development, blockchain technology and related business are especially emerging.

6. Emerging Risks and New Products

6.1 Risks and Regulator's Reponse to Risks

As mentioned above, the Liechtenstein insurance sector is at this stage still primarily focusing on all aspects of life insurance. Based on our experience the most important risk which is emerging and has effects on Liechtenstein is cyber-crime. The other issues mentioned are so far not developing in Liechtenstein.

Liechtenstein is in close exchange with the European authorities and will, as an EEA member, of course implement any and all responses which may be issued on a European level.

Liechtenstein certainly has one of the strictest KYC/AML laws in Europe and this, already in the past, has been an initial response of Liechtenstein in order to address such risks.

6.2 Addressing the Emerging Risks

At this stage, there are no new products or alternative solutions which have been developed to address the risks mentioned above.

7. Recent and Forthcoming Legal Developments

7.1 Legal Developments and Impact

It has already been mentioned that Liechtenstein implemented the CRS standards, which affect the insurance sector as well. Furthermore, Liechtenstein so far partially implemented the fourth EU Anti Money Laundering Directive. The full implementation could have effects on the insurance sector which can, at this stage, not be assessed, as details of the full implementation of this directive are still under discussion.

There has been case law from both the Liechtenstein courts, as well as the EFTA court, which dealt with Liechtenstein insurance products. These court decisions primarily dealt with the obligation of insurance undertakings for information to customers, and especially the details on who needs to provide information and in which form the information

needs to be available. However, the basic statements deriving from these court decisions have already been implemented in the law and thus we are actually not aware of any case law which would affect the insurance sector in Liechtenstein.

8. Other Developments

8.1 Promoting Alternative Risk Transfer

There are no significant legislative or regulatory developments as yet. As already mentioned, Liechtenstein as an EEA member implements all legislative acts issued by the European Union. This covers the protection of consumers,

which meets the European standards in Liechtenstein. It is not conceivable that any new complaints bodies should be implemented.

Also, the provisions on insolvency and resolution measures for insurance undertakings have been implemented in Liechtenstein in accordance with European law.

There does not appear to be any new developments in Liechtenstein on compulsory insurances, compensation schemes or new legislation promoting alternative risk transfers such as ILS, whereas already some funds have been established focusing on insurance linked securities.

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