

Translation of Liechtenstein Law

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Law
of 17 May 2006
on Insurance Mediation
(Insurance Mediation Act; VersVermG)

I hereby grant My consent to the following resolution adopted by Parliament:

I. General provisions

Article 1

Object and purpose

1) This Act governs the preconditions for taking up and pursuing insurance mediation activities and, in particular, aims to protect insured parties and confidence in the Liechtenstein financial system.

2) It also serves to implement Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 9, 15.1.2003, p. 3; EEA Compendium of Laws: Annex IX - 13b.01).

Article 2

Scope

1) Insurance intermediaries and their employees offering insurance mediation in or from Liechtenstein shall be subject to this Act.

2) This Act does not apply to:

a) insurance undertakings and their employees;

- b) The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract;
 - c) the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation;
 - d) persons who provide insurance part-time and
 1. the insurance contract only requires knowledge of the insurance cover that is provided,
 2. the insurance is not a life insurance and does not cover any liability risks,
 3. the insurance is complementary to the product or service supplied and covers either the risk of breakdown, loss of or damage to goods, damage to or loss of baggage, or other risks linked to booked travel, including liability and accident insurance risks, provided that the cover is ancillary to the main cover for the risks linked to that travel,
 4. the amount of the annual premium does not exceed the amount of 500 euros or the equivalent in Swiss francs, and
 5. the total duration of the insurance contract, including any renewals, does not exceed five years.
- 3) The scope of provisions relating to cross-border insurance mediation within the Contracting Parties to the EEA Agreement may be extended by an international treaty with a third State such that the third State is treated the same as a Contracting Party in relation to the Principality of Liechtenstein, provided that the legal order of the State concerned contains equivalent rules on insurance mediation.
- 4) Unless otherwise provided by this Act, the provisions on insurance mediation also apply to reinsurance mediation.

Article 3

Definitions

- 1) For the purpose of this Act, the following terms have the following meanings:
- a) insurance mediation: proposing, offering, concluding, and carrying out work preparatory to the conclusion of insurance contracts, or of

- assisting in the administration and performance of such contracts, in particular in the event of a claim;
- b) insurance intermediaries: natural or legal persons who, for remuneration, take up or pursue insurance mediation;
 - c) agents: insurance intermediaries entrusted with insurance mediation by an insurance undertaking or another agent;
 - d) brokers: insurance intermediaries entrusted with insurance mediation by a policyholder or another broker.

2) The terms designating persons and functions in this Act shall apply to both female and male genders.

Article 4

Impermissible insurance mediation

Insurance mediation for the benefit of insurance undertakings subject to the Insurance Supervision Act that are not authorised to conduct business in Liechtenstein is prohibited.

Article 4a¹

Business secrecy

1) Insurance intermediaries, the members of their governing bodies, their employees, and all other persons working for an insurance intermediary shall keep facts confidential that are not known to the public and that have been entrusted or made available to them pursuant to their business connections with clients. The duty of secrecy is not limited in time.

2) This provision is subject to the legal provisions governing the duty to give testimony or information to criminal courts, the Financial Intelligence Unit, and supervisory bodies as well as the provisions on cooperation with the Financial Intelligence Unit or other supervisory authorities.²

3) Policyholders may grant release from the duty of secrecy upon concluding a contract or at a later time; the declaration to this effect must be in writing and be provided with knowledge of the facts. In particular,

¹ Article 4a amended by LGBL 2015 No. 236.

² Article 4a(2) amended by LGBL 2016 No. 38.

the category of persons to whom the information or data may be transmitted must be clearly described.

II. Taking up and terminating mediation activities

A. Licence

Article 5

Licensing requirement

Subject to Article 9, taking up and pursuing activities as an insurance intermediary shall require a licence.

Article 6

Granting of licence

1) The licence to take up and pursue activities as an insurance intermediary shall be granted by the Financial Market Authority (FMA) upon application, if the applicant:

- a) has the required professional qualifications;
- b) has an impeccable reputation; and
- c) has concluded professional liability insurance or has rendered an equivalent financial guarantee.

2) The licence shall be granted for pursuing insurance mediation activities as an agent and/or a broker.

3) The Government shall provide further details by ordinance, in particular concerning:

- a) the licensing procedure;
- b) the required professional qualifications and, with respect to legal persons and insurance intermediaries employing workers, the category of persons that must meet these preconditions;
- c) proof of an impeccable reputation;
- d) the minimum insurance amount for professional liability insurance.

Article 7

Register

- 1) The FMA shall maintain a public register of insurance intermediaries. This register shall contain one division each for agents and for brokers.
- 2) All insurance intermediaries must be entered in the register *ex officio* who have a licence issued by the FMA. In the case of legal persons, the names of the members of the general management shall also be entered who are responsible for insurance mediation.
- 3) The entry must be deleted if the licence expires or is withdrawn by the FMA.
- 4) The FMA shall provide insurance intermediaries with an identity card. This identity card must be returned to the FMA if the entry is deleted.
- 5) The Government shall provide further details by ordinance, especially the content of the register.

B. Free movement of services and freedom of establishment

Article 8

Activities of Liechtenstein insurance intermediaries in other Contracting Parties to the EEA Agreement

- 1) Insurance intermediaries licensed in Liechtenstein intending to carry on business for the first time in another Contracting Party to the EEA Agreement under the freedom to provide services or the freedom of establishment shall inform the FMA. Subject to paragraph 2, they may take up activities in such States as soon as they have fulfilled the notification duty.
- 2) If the host Member State so demands, the FMA shall inform the competent authority of the host Member State within a period of one month after receipt of the notification under paragraph 1 of the intention of the insurance intermediary. At the same time, the insurance intermediaries shall be informed of the notification by the FMA to the authority of the host Member State. Upon expiry of one month after receipt of this notification by the FMA concerning the information provided to the foreign authority, the insurance intermediary may take up activities in the State concerned.

3) The FMA shall publish a list of the States requiring notification in advance of the competent authority under paragraph 2.

4) If the insurance intermediary permanently ceases to pursue notified activities in another Contracting Party to the EEA Agreement, it must notify the FMA accordingly.

Article 9

Activities of foreign insurance intermediaries in Liechtenstein

1) Insurance intermediaries whose residence or registered office is in another Contracting Party to the EEA Agreement may take up and pursue insurance mediation activities under the freedom to provide services or the freedom of establishment in Liechtenstein, if they have been entered in a State register or a register recognised by the State for insurance intermediaries in the home State and if they have notified the competent supervisory authority of their intention to pursue cross-border activities as insurance intermediaries in Liechtenstein.

2) Paragraph 1 also applies to insurance intermediaries whose residence or registered office is in a third State, provided that such insurance intermediaries are deemed equivalent pursuant to an international agreement and the legal order of the State concerned contains equivalent rules on insurance mediation.

C. Expiration and withdrawal of licence

Article 10

Expiration of licence

The licence shall expire if:

- a) the licence holder discontinues activities as an insurance intermediary; or
- b) the licence holder dies or bankruptcy proceedings are initiated the licence holder.

Article 11

Withdrawal of licence

1) The FMA shall withdraw the licence if:

- a) the preconditions for granting the licence are no longer met; or
- b) the licence holder seriously violates legal or contractual obligations.

2) In the case under paragraph 1(a), the FMA shall determine an appropriate deadline before withdrawing the licence to restore a lawful state of affairs, provided there is a reasonable prospect that the defect will be remedied.

III. Information and advisory duties; ensuring payment

Article 12

Scope

Articles 13 to 16 are not applicable to:

- a) mediation in insurance for large risks as defined in Article 10(1)(18) of the Insurance Supervision Act; and¹
- b) reinsurance mediation.

Article 13

Information duties

1) Prior to the conclusion of any initial insurance contact, the insurance intermediary must provide the policyholder with at least the following information:

- a) his identity and address;
- b) the designation of the register in which he has been included and the means for verifying register entries free of charge on the internet or for a fee by means of a register extract compiled by the FMA;
- c) whether he will work as a broker or as an agent;

¹ Article 12(a) amended by LGBl. 2015 No. 236.

- d) the methods for registering complaints concerning insurance mediation; and
- e) any economic links with insurance undertakings.

2) Upon amendment or renewal of the insurance contract or upon conclusion of additional insurance contracts, the information under paragraph 1 shall be provided again only if its content has changed in the meantime.

Article 14

Advisory duties

1) The insurance intermediary is obliged to advise the policyholder before concluding an insurance contract and to disclose on which basis this advice is provided.

2) Prior to the conclusion of any specific contract, the insurance intermediary must at least specify, in particular on the basis of information provided by the policyholder, the demands and the needs of that policyholder as well as the underlying reasons for any advice given to the policyholder on a given insurance product. These details must be modulated according to the complexity of the insurance contract being proposed.

3) In addition, the insurance intermediary shall inform the policyholder whether he:

- a) gives advice based on the obligation in paragraph 5 to provide a fair analysis; or
- b) is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, he shall, at the policyholder's request, also provide the names of those insurance undertakings; or
- c) is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice based on the obligation in paragraph 5 to provide a fair analysis. In that case, he shall, at the policyholder's request, provide the names of the insurance undertakings with which he may and does conduct business.

4) In those cases where information is to be provided solely at the policyholder's request, the policyholder must be informed that he has the right to request such information.

5) When the insurance intermediary informs the policyholder that he gives his advice on the basis of a fair analysis, he is obliged to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable him to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the policyholder's needs.

Article 15

Form of the information

1) The insurance intermediary shall provide the information under Articles 13 and 14 to the policyholder:

- a) on paper in writing or on any other durable medium available and accessible to the policyholder;
- b) in clear and accurate language and presentation, comprehensible to the policyholder; and
- c) in German or in another language agreed with the policyholder.

2) The information may be provided orally if the policyholder requests it, or where and to the extent that the insurance mediation refers to a contract for provisional cover. In those cases, the information must be provided to the customer in writing immediately after the conclusion of the insurance contact.

3) In the case of telephone selling, the information provided to the policyholder before conclusion of the contract must comply with the provisions of the Distance Financial Services Act. The information must be provided in writing immediately after the conclusion of the insurance contract.

Article 16

Compensation for damages

The insurance intermediary shall be liable for compensation for damages incurred by the policyholder due to culpable violation of the information and advisory duties.

Article 17

Ensuring payment for the benefit of the policyholder

1) The insurance intermediary is required to ensure by appropriate measures that he is always able to forward payments made to him by a party to the insurance contract for the benefit of the other contracting party to such contracting party.

2) Appropriate measures for purposes of paragraph 1 shall be:

- a) a contractual agreement pursuant to which satisfaction of a demand of the insurance undertaking is made through payment by the policyholder to the insurance intermediary with discharging effect and satisfaction of a demand of the policyholder is made through payment by the insurance undertaking to the insurance intermediary without discharging effect;
- b) proof of sufficient financial capacity. Such capacity exists if the insurance intermediary has, on a permanent basis, financial means amounting to 4% of the sum of annual premiums received, subject to a minimum of 18,760 euros or the equivalent in Swiss francs; or¹
- c) payment transactions conducted via strictly segregated client accounts, provided that such accounts are shielded from access by creditors in the event of bankruptcy.

3) The euro amount indicated in paragraph 2(b) shall be adjusted periodically on the basis of the consumer price index published by Eurostat. The FMA shall publish the currently valid amount.²

IV. Supervision

Article 18

Supervisory authority

1) The FMA shall be responsible for the supervision of insurance intermediaries and their employees. By means of regular inspections, it shall ensure that the licensing conditions are met on a permanent basis and it shall protect insured parties from abuses.

2) In particular, the FMA shall be responsible for:

¹ Article 17(2)(b) amended by LGBl. 2015 No. 236.

² Article 17(3) inserted by LGBl. 2015 No. 236.

- a) granting and withdrawing licences;
- b) maintaining the register of insurance intermediaries;
- c) cooperating with foreign authorities;
- d) receiving complaints from policyholders.

3) The FMA may take the measures necessary to fulfil its supervision responsibilities that are adequate to prevent or eliminate abuses.

4) With respect to insurance intermediaries whose registered office or residence is in another Contracting Party to the EEA Agreement and who are entered in a State register or a register recognised by the State for insurance intermediaries in their home State, the FMA may take measures adequate to prevent or punish violations of Liechtenstein provisions enacted in the public interest. In particular, the FMA may prohibit an insurance intermediary from pursuing further activities in Liechtenstein.

Article 19

Information and notification duties

1) Insurance intermediaries shall provide the FMA with all information necessary for it to perform its responsibilities. Third parties are required to provide information to the FMA to the extent necessary for its supervisory activities.

2) Insurance intermediaries shall immediately notify the FMA of any changes to information contained in the licence application.

Article 20

Supervision taxes and fees

Supervision taxes and fees shall be levied in accordance with the financial market supervision legislation.

Article 21¹

Official secrecy

1) The bodies mandated to implement this Act, any other persons consulted by these bodies, and all representatives of public authorities

¹ Article 21 amended by LGBL 2009 No. 329.

shall be subject to official secrecy without any time limits with respect to the confidential information that they gain knowledge of in the course of their official activities.

2) The information subject to official secrecy may not be transmitted to others, subject to other special legal provisions.

3) If liquidation or bankruptcy proceedings have been initiated by a court decision against an insurance intermediary, then confidential information that does not relate to third parties may be used in civil or commercial proceedings, as long as it is necessary for the proceedings in question.

Article 22

Cooperation with other authorities

1) The FMA shall work together with other domestic and foreign authorities, in particular to ensure proper supervision of cross-border activities of insurance intermediaries.

2) The FMA shall inform the competent authorities of other Contracting Parties to the EEA Agreement if:

- a) an insurance intermediary notifies the FMA under Article 8(4) that it is permanently refraining from activities in a State that must be informed in accordance with Article 8(2);
- b) a domestic insurance intermediary operating in the State concerned has been punished pursuant to Article 26 or if measures pursuant to Article 18(3) have been ordered against him; or
- c) the FMA has ordered measures pursuant to Article 18(4) against an insurance intermediary whose residence or registered office is in the State concerned.

3) The FMA may exchange information with the competent authorities of other Contracting Parties to the EEA Agreement to the extent necessary for its supervisory activities.

Article 23

Processing of personal data

The bodies entrusted with implementation and monitoring or supervision of implementation of this Act shall be authorised to process or arrange for the processing of personal data, including particularly sensitive data concerning administrative or criminal prosecutions and penalties as well as personality profiles, that it requires to fulfil the responsibilities assigned to them under this Act, in particular in order to:

- a) maintain the register provided for in Article 7;
- b) carry out supervision of implementation of this Act;
- c) keep statistics.

V. Legal remedies

Article 24

Complaints concerning insurance intermediaries

1) The FMA must receive complaints by policyholders and other affected parties, in particular consumer protection organisations, concerning insurance intermediaries.

2) Such complaints must in all cases be dealt with and answered. Mediation must be pursued where possible.

Article 25

Legal remedies and procedures

1) Decisions and decrees of the FMA subject to complaint may be contested within 14 days of service before the FMA Complaints Commission.

2) Decisions and decrees of the FMA Complaints Commission may be appealed within 14 days of service to the Administrative Court.

3) To the extent not otherwise specified by this Act, the National Administration Act applies.

VI. Penal provisions

Article 26

Misdemeanours and contraventions

1) The Court of Justice shall punish with a custodial sentence of up to one year or with a monetary penalty of up to 360 daily penalty units for committing a misdemeanour anyone who:¹

- a) violates business secrecy or induces or attempts to induce such a violation;²
- b) pursues insurance mediation activities within the scope of this Act without a licence.

2) The FMA shall punish with a fine of up to 50,000 francs for committing a contravention anyone who:

- a) carries out insurance mediation for the benefit of insurance undertakings subject to the Insurance Supervision Act that are not licensed to conduct business in Liechtenstein;
- b) contravenes his obligation to ensure by means of a measure referred to in Article 17(2) that he is always able to forward payments to the entitled party that have been made to him by a party to the insurance contract for the benefit of the other contracting party;
- c) fails to submit a notification to the FMA required by this Act;
- d) fails to comply with a demand to restore a lawful state of affairs or any other decree of the FMA issued in the course of execution of this Act.

3) Where violations are committed in the business operations of a legal person, a general or limited partnership, or a sole proprietorship, then the penal provisions shall apply to the persons who acted or should have acted on their behalf; the legal person, partnership, or sole proprietorship shall, however, be jointly and severally liable for monetary penalties and costs.

¹ Article 26(1) introductory sentence amended by LGBL 2015 No. 236.

² Article 26(1)(a) amended by LGBL 2015 No. 236.

VII. Transitional and final provisions

Article 27

Implementing ordinances

The Government shall issue the ordinances necessary to implement this Act.

Article 28

Transitional provision

1) Persons pursuing insurance mediation activities at the time of entry into force of this Act may continue to pursue such activities in accordance with paragraphs 2 and 3.

2) At the latest one year after entry into force of this Act, such persons must meet all licensing conditions (Article 6) and submit a licence application to the FMA.

3) The other duties under this Act remain unaffected.

Article 29

Entry into force

This Act shall enter into force on 1 July 2006.

On behalf of the Reigning Prince:

signed *Alois*

Hereditary Prince

signed *Otmar Hasler*

Prime Minister