

FMA Instructions 2018/17 – Cross-border activity under the freedom to provide services or the freedom of establishment

These Instructions provide an overview of the cross-border activity of an insurance intermediary licensed in Liechtenstein in accordance with the Insurance Distribution Act (VersVertG).

Reference:	FMA I 2018/17
Addressees:	Insurance intermediaries
Concerning:	Cross-border activity under the freedom to provide services or the freedom of establishment
Place of publication:	Website
Date of publication:	1 October 2018
Last amended on:	1 July 2021

1. General information

Insurance intermediaries, reinsurance intermediaries and ancillary insurance intermediaries are hereinafter referred to together as “intermediaries”. Should there be different requirements for the respective professional categories, this is explicitly stated in these Instructions.

An intermediary licensed in Liechtenstein has the possibility to work on a cross-border basis. The following two options are open to intermediaries for this purpose: The registration of the activity under the freedom to provide services (Article 25 et seq. VersVertG) or the freedom of establishment (Article 22 et seq. VersVertG) (branch office or permanent presence) in another EEA member state.

2. Freedom to provide services in another EEA member state

2.1

Intermediaries act within the scope of the freedom to provide services if they distribute an insurance contract for which the insured risk is located abroad. Intermediaries are also deemed to be acting on a cross-border basis if they actively seek or solicit business transactions with clients resident abroad. In particular, this is the case if:

- intermediaries organise a meeting with a client resident abroad on their own initiative;
- intermediaries transmit information about specific products, conditions, etc., to selected groups of clients resident in certain country or in a certain language.

If the content of the intermediary’s website is exclusively written in the national language of the country in which the intermediary is domiciled and it is not aimed at a certain group of clients or specific clients in particular countries, it cannot be assumed that the intermediary is actively seeking such clients or that the intermediary intends to become active in the corresponding countries. If the intermediary is contacted by such clients, it is not assumed that the intermediary will become active in the clients’ countries of domicile.

2.2

Intermediaries licensed in Liechtenstein who wish to become active for this first time under the freedom to provide services in another EEA member state within the meaning of Article 25 VersVertG must notify the FMA of this intention using the relevant form. This form can be accessed on the FMA website: www.fma-li.li/en / Supervision / Insurance and Pensions Funds Division / Insurance intermediaries / Licenses/authorisations.

The intermediary must provide the FMA with the following information using the form:

- a. the intermediary's or company's name, place of domicile, address and register number;
- b. the type of intermediary activity (broker or agent) and, in the case of agents, the name of the represented insurance or reinsurance undertaking(s);
- c. the name of the EEA member state in which the activity is to be performed;
- d. the intended insurance segments;
- e. the risks and obligations that are covered by the distributed insurance contracts.

The form submitted to the FMA must be completed in full and duly signed. After checking the form, the FMA will inform the responsible supervisory authority in the host country within one month.¹ After the confirmation of receipt by the responsible supervisory authority has been forwarded by the FMA, intermediaries can commence their activity in the country in question.² At the same time, the FMA informs the intermediary that, in the interest of the general good, conditions for the performance of the distribution activity must be observed in the host country. It also provides information as regards which regulations intermediaries must comply with in order to commence their business activity.³

3. Freedom of establishment in another EEA member state

Within the scope of the freedom of establishment, it is possible under Article 22 VersVertG to set up a branch office or a permanent presence in another EEA member state. A permanent presence is deemed equivalent to a branch office if such presence is maintained by the intermediary's own staff or an individual who is independent but authorised to act on behalf of the intermediary.

Intermediaries licensed in Liechtenstein who wish to set up a branch office or permanent presence for the first time under the freedom of establishment in another EEA member state in accordance with Article 22 VersVertG must notify the FMA of this using the relevant form. This form is available on the FMA website: www.fma-li.li/en / Supervision / Insurance and Pensions Funds Division / Insurance intermediaries / Licenses/authorisations.

The intermediary must provide the FMA with the following information using the form:

- a. the intermediary's or company's name, place of domicile, address and register number;
- b. the type of intermediary activity (broker or agent) and, in the case of agents, the name of the represented insurance or reinsurance undertaking(s);
- c. the intended insurance segments;
- d. the name of the EEA member state in which the branch office or permanent presence is to be set up;
- e. the name and address of the branch office or permanent presence under which documents and information can be requested in the host country;
- f. the name of the individual responsible for the management of the branch office or permanent presence.

¹ Article 26(1) VersVertG

² Article 26(2) VersVertG

³ Article 26(3) VersVertG

The form submitted to the FMA must be completed in full and duly signed. After receiving the notification, the FMA checks the following points:

- the legal permissibility of the plan;
- the appropriateness of the organisational structure;
- the financial circumstances.

If there are no objections, the FMA transfers the notification to the responsible supervisory authority in the host country within one month.

The intermediary is informed accordingly following confirmation of receipt of the supervisory authority in the host country.⁴ Should the FMA refuse to transfer the notification, it will inform the intermediary concerned of the reasons for this within one month of receipt of all information.⁵ After receipt of the provisions in the interest of the general good of the relevant host country, the FMA forwards these to the intermediary within a month.⁶ From the date on which this notification is received and no later than one month after it is transmitted to the responsible supervisory authority, the intermediary can set up the branch office or permanent presence and commence the activity.⁷

4. Changes

If intermediaries intend to change a piece of information provided in the notification form in accordance with Article 23(2) VersVertG or Article 25(2) VersVertG, they must inform the FMA accordingly by no later than one month before the intended change. The FMA will forward the change to the foreign supervisory authority within one month of receipt.⁸

5. Distribution activity in Switzerland

The assumption of an activity in Switzerland represents an exception, as this is governed in a state treaty in accordance with Article 27(2) VersVertG.⁹ This activity can be commenced as soon as the intermediary has notified the FMA of the intention to work on a cross-border basis in Switzerland.

6. Distribution agreement in third countries

Intermediaries must demonstrate to the FMA in advance that they are permitted to operate in the host country or do not require authorisation to do so. Intermediaries must also inform the FMA of which distribution activity they intend to perform.¹⁰ Supervision of the activity carried out in a third country is the responsibility of the supervisory authority in the respective host country.

Subject to state treaties.¹¹

7. Legal basis

- Insurance Distribution Act (VersVertG) of 5 December 2017 (LGBI. 2018 No. 9 in its current version);

⁴ Article 23(2) VersVertG

⁵ Article 23(3) VersVertG

⁶ Article 23(4) VersVertG

⁷ Article 23(5) VersVertG

⁸ Article 26(4) VersVertG

⁹ Agreement between the Principality of Liechtenstein and the Swiss Confederation concerning Direct Insurance

¹⁰ Article 27(1) VersVertG

¹¹ Article 27(2) VersVertG

- Insurance Distribution Ordinance (VersVertV) of 10 April 2018 (LGBl. 2018 No. 69 in its current version);
- Agreement between the Principality of Liechtenstein and the Swiss Confederation concerning Direct Insurance and Insurance Intermediation of 9 July 1998 (LGBl. 1998 No. 129 in its current version).

8. Information on data protection

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC) and in line with applicable data protection law.

Information regarding the processing of personal data, including details about the purpose of processing, the data controller and the rights of data subjects can be found in the FMA Privacy Policy: www.fma.li/en/fma/data-protection/fma-privacy-policy.html

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