

FMA Instruction 2017/26 – Formation of an insurance undertaking

This Instruction provides an overview of the procedure for establishing an insurance undertaking and the documents to be submitted. The legal assessment of individual cases is governed solely by the relevant provisions and the orders of the FMA. The Financial Market Authority (FMA) Liechtenstein, Landstrasse 109, P.O. Box 279, 9490 Vaduz, is happy to provide additional information.

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1. General provisions

- 1.1 Undertakings that operate direct insurance or reinsurance in Liechtenstein or from Liechtenstein (insurance undertakings) and special purpose vehicles are subject to insurance supervision (Article 2(1) of the Insurance Supervision Act, VersAG). Pursuant to Article 2(2) VersAG, insurance undertakings that operate direct insurance or reinsurance in the form of captives are also subject to insurance supervision. Risk location is determined in accordance with Article 10(1)(45) VersAG.
- 1.2 Insurance undertakings subject to supervision require a licence from the supervisory authority to take up business (Article 11(1) VersAG). The FMA is responsible for supervising insurance undertakings (Article 177 VersAG).
- 1.3 Activities outside the scope of insurance are not permitted (Article 24(1) VersAG).
- 1.4 The principle of separation of lines of business applies, i.e. insurance undertakings which operate direct life insurance may not, subject to Articles 25(2) and (3) VersAG, operate any other insurance classes in non-life insurance (Annex 1 VersAG) (Article 25(1) VersAG). According to Article 25(2), life insurance undertakings may obtain a licence for classes 1 and 2 in Annex 1 to the VersAG if, in particular, the requirements of Article 26 and Article 52 VersAG and Article 13 of the Insurance Supervision Ordinance (VersAV) are met. This exception to the principle of separation of lines of business also applies to non-life insurance undertakings which only have a licence for classes 1 and 2 in Annex 1 to the VersAG. These insurance undertakings may also, upon application, obtain a licence to carry out life insurance (Article 25(3) VersAG).
- 1.5 The licensing requirements pursuant to Articles 12 and 13 VersAG must be met at all times. According to Article 177(2) VersAG, the FMA supervises the entire business activity of the insurance undertakings and monitors that the laws are complied with and that the interests of the insured persons are safeguarded. Amendments to the licensing requirements require prior application as well as approval by the FMA (Article 19 VersAG). Article 20 VersAG sets out the licensing requirements that must be notified to the FMA.
- 1.6 An insurance activity without a licence constitutes a misdemeanour under Article 257(1)(a) VersAG.
- 1.7 Insurance undertakings belonging to a corporate group or a financial conglomerate are subject to additional provisions (Article 194 et seqq. VersAG; Financial Conglomerates Act, FKG).
- 1.8 Insurance undertakings domiciled in Liechtenstein may operate insurance in the Contracting Parties to the EEA Agreement (Article 107 et seqq. VersAG), in Switzerland (Agreement between the Principality of Liechtenstein and the Swiss Confederation on Direct Insurance and Insurance Mediation), and in third countries (Article 111 VersAG), provided that the relevant conditions are met.
- 1.9 Insurance undertakings domiciled in Liechtenstein that operate direct life insurance may carry out the business of occupational pension provision within the meaning of the Pension Funds Act (PFG) (Article 2(3) VersAG, Article 4 PFG).
- 1.10 According to Article 3(1)(d) of the Due Diligence Act (SPG), life insurance undertakings are subject to the scope of application of the SPG.
- 1.11 The approval of the business name of an insurance undertaking and the clarification of the availability of the business name are the responsibility of the Office of Justice (see Articles 1011 et seqq. PGR). Article 23 VersAG governs the protection of the designations of insurance undertakings pursuant to special legislation.

2. Licensing procedure

- 2.1 In the licensing procedure, the FMA subjects the applicant's circumstances to a comprehensive legal and financial examination. First, a draft of the final licence application (preliminary application) must be submitted to the FMA without original documents. In general, the application for a preliminary examination must be structured in the same way as the final licence application, and the same information and documents (copies) must be provided (for the proper structure, see the explanations below under point 3). Enclosures shall be enumerated in a separate list and numbered accordingly. The documents submitted will be comprehensively examined in both formal and material terms. The applicant receives a written statement from the FMA regarding the soundness, form, and completeness of the content of the preliminary application. The FMA also provides information on any ambiguities and necessary corrections.
- 2.2 After the preliminary application has been corrected, if necessary, the final licence application may be submitted together with the original documents. This includes a letter of application including all the necessary information and documents relating to the licence application (Article 12(2) VersAG) as well as the scheme of operations (Article 13 VersAG). The application with the necessary information, the list of enclosures, and the required documents must be submitted in writing to the Financial Market Authority (FMA) Liechtenstein, Insurance and Pension Funds Division, Landstrasse 109, P.O. Box 109, 9490 Vaduz, Liechtenstein.
- 2.3 If facts relevant to licensing change during the licensing procedure, updated documents must be submitted without delay.
- 2.4 All information provided by the applicant will be treated confidentially and is subject to official secrecy under Article 183 VersAG.
- 2.5 The licensing procedure is subject to a fee. In this regard, please refer to point 5 of this Instruction.
- 2.6 The duration of the licensing procedure depends primarily on the soundness and completeness of the information and documentation provided in the application for preliminary examination.
- 2.7 Under Article 82(2) of the National Administration Act (LVG), it is possible for the applicant to waive the requirement for a formal decree to be drawn up when granting a licence for taking up business. The advantage of this is that the procedure can be completed more quickly. In that case, the FMA informs the applicant of its decision on the application with a simple written notification without reasons. If the FMA does not grant the application, the applicant shall in any case receive a formal decree with reasons. The licence application must state whether a formal decree is waived for the purpose of speeding up proceedings.

3. Licence application

The licence application and the documents to be submitted must in principle be in German. The FMA may allow exceptions (Article 180 VersAG), which is regularly the case with regard to the English language.

In addition to the general remarks, the application to be submitted must be structured in accordance with Articles 12(2) and 13 VersAG (Article 12(2)(a) on articles of association, Article 12(2)(b) on organisation and geographical area of activity, etc.). As appropriate, reference must be made to the respective documents (enclosures). The licence application must contain the following minimum content:

3.1 Application with power of attorney:

The licence application must be submitted by the founders or, if the application is not submitted by the founders themselves, with a corresponding power of attorney as follows:

"Application for grant of a licence to company X (in formation) for non-life/life insurance in classes Y according to Annex 1/Annex 2 VersAG (in the case of captives: as self-insurance of the XY Group and its subsidiaries)."

In the case of reinsurance undertakings, the licence must be applied for in respect of all classes of insurance.

3.2 General information:

Background: Information regarding the applicant itself (e.g. organisation, areas of activity, ownership structure, business figures, etc.) must be presented; organisational charts etc. must be enclosed.

Rationale and business idea: The motivation and rationale of the applicant for the formation of an insurance undertaking in Liechtenstein must be discussed in the introduction. In addition, the applicant must explain the business model or business idea (information on the planned insurance activity, the target markets or host countries, distribution of the products, any risks, etc.). The provisions on the inadmissibility of non-insurance business and the separation of lines of business must be observed (Article 14(3) VersAG; Article 25 VersAG).

In the case of captives, the existing insurance solution or risk hedging (current situation) must also be compared with the insurance solution planned for the future.

Further, the applicant must submit a declaration about prior formal or informal licence applications in other EEA Member States or third countries which had been rejected or withdrawn, together with the reasons for the rejection or withdrawal.

3.3 Information pursuant to Article 12(2) VersAG:

a) **The company's articles of association (Article 12(2)(a) VersAG).**

The undertaking must be established in the legal form of a company limited by shares, a European Company (SE), a cooperative society, or a European Cooperative Society (SCE) (Article 14(1) VersAG). In the companies limited by shares, only registered shares are permitted.

b) **The organisation and geographical area of activity of the undertaking, including, where appropriate, the insurance group or financial conglomerate to which the undertaking belongs (Article 12(2)(b) VersAG).**

With regard to the organisation, documents must be provided stating where the head office is situated and which administrative and insurance functions are performed at the registered office of the undertaking in Liechtenstein. It must be documented which functions of the insurance undertaking are performed by whom and where. The outsourcing agreements must be discussed in accordance with paragraph (m) below.

Information on the purpose and organisation of the undertaking as well as evidence that both the registered office and the head office of the undertaking are situated in Liechtenstein (Article 14(2) VersAG).

c) **Opening balance sheet (in the case of the new formation of a company) (Article 12(2)(c) VersAG).**

The cut-off date of the opening balance sheet must be set as close as possible to the requested date of grant of the license. The provisions applicable to the annual financial statement shall be applied *mutatis mutandis* to the opening balance sheet, in particular also

the requirements of Annex 1 VersAV. The opening balance sheet must be certified by an auditor.

d) Annual financial statement of the last three business years of the members and, if applicable, the consolidated annual report (Article 12(2)(d) VersAG).

The annual accounts for the last three financial years shall be submitted only by legal persons with a qualifying holding in the insurance undertaking to be formed. The corresponding reports of the external auditor must also be submitted.

e) Evidence that there are sufficient basic own funds available to cover the absolute floor of the minimum capital requirement (Article 12(2)(e) VersAG).

See Article 49 et seqq. VersAG.

The minimum capital requirement may not be lower than the following amounts in accordance with Article 51(2) VersAG:

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| <ul style="list-style-type: none">▪ EUR 2,500,000 or the equivalent in Swiss francs for non-life insurance undertakings, including captive direct insurance undertakings;▪ EUR 3,700,000 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) are to be covered;▪ EUR 3,700,000 or the equivalent in Swiss francs for life insurance undertakings, including captive direct insurance undertakings;▪ EUR 3,600,000 or the equivalent in Swiss francs for reinsurance undertakings, with the exception of captive reinsurance undertakings, for which a minimum capital requirement of at least EUR 1,200,000 or the equivalent in Swiss francs applies. |
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The minimum capital requirement may not be less than 25% and not more than 45% of the solvency capital requirement laid down in Article 42, including capital add-ons imposed. As part of the licence application, evidence must be provided that this condition is met.

If life and non-life insurance are operated simultaneously pursuant to Articles 25-26 VersAG, the provisions relating to the notional minimum capital requirements pursuant to Article 52 VersAG in conjunction with Article 13 VersAV must be observed.

f) Evidence that the undertaking will be in a position to hold eligible own funds to cover the solvency capital requirement (Article 12(2)(f) VersAG).

See Articles 42 et seqq. VersAG.

A forecast of the future development of own funds, including classification (tiering), and the amount of the respective solvency capital requirement over a period of at least three full financial years must be submitted. Sufficient eligible own funds must be available for each year in order to cover the calculated amount of the solvency capital requirement. The calculation of the solvency capital requirement and the determination of eligible own funds must comply with the requirements of Article 42 et seqq. VersAG.

g) Evidence that the undertaking will be in a position to hold eligible basic own funds to cover the minimum capital requirement (Article 12(2)(g) VersAG).

See Article 49 et seqq. VersAG.

A forecast of the future development of own funds, including classification (tiering), and the amount of the respective minimum capital requirement over a period of at least three full financial years must be presented. Sufficient eligible own funds must be available for each year in order to cover the calculated amount of the minimum capital requirement. The calculation of the minimum capital requirement and the determination of eligible own funds must comply with the requirements of Articles 43 et seqq. and Articles 49 et seqq. VersAG.

h) The identity and level of holdings of direct and indirect shareholders, members of cooperatives, or members who, as natural or legal persons, have qualifying holdings (10%: Article 10(1)(36) VersAG) in the undertaking or are otherwise beneficial owners of the undertaking, as well as the existence of close links (Article 12(2)(h)).

The holding interests must be represented graphically (company structure). If the shares in the voting rights and the capital do not coincide, this must be disclosed. Shareholders, members of cooperatives, or members who have qualifying holdings in the undertaking must satisfy the qualifications to ensure the sound and prudent management of an insurance undertaking (Article 34 VersAG). The material assessment of direct and indirect shareholders is carried out analogously to Article 94 VersAG. In this context, the requirements set out in FMA Instruction 2017/20 – Prudential Assessment of Qualifying Holdings must be taken into account and the corresponding checklist (www.fma-li.li under Intermediaries / Insurance and Pension Funds Division / Insurance undertakings / Regulation/Legal basis / Instructions) must be submitted along with the formation documents.

i) The names of the governing bodies and all other bodies, including persons responsible for supervision and control or having other key functions (Article 12(2)(i)).

aa) Governing bodies (BD, GM) and key functions

The members of the governing bodies and all other persons who are responsible for supervision and control or who have other key functions (Article 30(3) VersAG) must be professionally qualified and of personal integrity (Article 33(1) VersAG). The persons having the functions mentioned above must, by reason of the location of their home or habitual residence, be in a position to actually and flawlessly perform their functions and duties.

The board of directors of an insurance undertaking must consist of at least three members (Article 344(2) PGR) and the general management of at least two members. At least one member of the board of directors and one member of the general management must have the citizenship of Liechtenstein, another Contracting Party to the EEA Agreement, or Switzerland or be deemed equivalent to such persons on the basis of treaty arrangements (Article 33(2) VersAG).

According to Article 4(1) VersAV, at least one member of the aforementioned governing bodies of the undertaking must have sufficient theoretical and practical knowledge of insurance matters as well as management experience. Such knowledge shall regularly be presumed if evidence of a three-year management position with an insurance undertaking of the same size and type of business is provided. According to Article 4(2) VersAG, governing bodies and persons with key functions must be of personal integrity. Personal integrity does not exist if one of the points set out in Article 4(3)(a) to (d) VersAV is fulfilled.

For the members of the governing bodies (board of directors, general management, key functions), the information and documents set out in FMA Instruction 2017/18: Professional Qualification and Personal Integrity of Members of Bodies and Persons Performing Functions must be submitted along with the checklist and declaration of personal integrity (www.fma-li.li)

under Intermediaries / Insurance and Pension Funds Division / Insurance undertakings / Regulation/Legal basis / Instructions).

Where dual functions are envisaged for individual persons, the application must specify how conflicts of interest are identified and what measures are taken to avoid conflicts of interest.

In the event of outsourcing of key functions, the function outsourcing agreement must meet the requirements of the FMA (Instruction on Requirements for the Outsourcing of Functions on the Basis of Supervisory Law, see discussion of Article 12(2)(m) VersAG below).

bb) Responsible actuary

According to Article 41, insurance undertakings must appoint a responsible actuary who is professionally qualified and of personal integrity. The responsible actuary is responsible for actuarial matters relating to the commercial balance sheet (Article 8(1) VersAV). The duties of the responsible actuary are set out in detail in Article 41(2) VersAG.

Professional suitability requires sufficient knowledge of actuarial and financial mathematics and professional experience; professional experience shall regularly be presumed if evidence of at least three years of relevant professional experience is provided. As a rule, sufficient knowledge of actuarial and financial mathematics shall be presumed if the person to be appointed has the actuarial title of a fully qualified actuary of a recognised actuary association (e.g. SAV, DAV, AVÖ).

The responsible actuary may be appointed by employment contract or as part of an outsourcing of functions (Article 8(6) VersAG). In the event of an outsourcing of functions, the function outsourcing agreement must meet the requirements of the FMA (Instruction on Requirements for the Outsourcing of Functions on the Basis of Supervisory Law, see discussion of Article 12(2)(m) VersAG below).

For the responsible actuary, the information and documents set out in FMA Instruction 2017/18: Professional Qualification and Personal Integrity of Members of Bodies and Persons Performing Functions must be submitted along with the checklist and declaration of personal integrity (www.fma-li.li under Intermediaries / Insurance and Pension Funds Division / Insurance undertakings / Regulation/Legal basis / Instructions).

Where a dual function is envisaged, the application must specify how conflicts of interest are identified and what measures are taken to avoid conflicts of interest.

k) Evidence that the undertaking will be in a position to ensure the necessary governance (Article 12(2)(k)).

According to Article 30 VersAG, insurance undertakings must have effective governance. Effective governance is the assurance of sound and prudent management, taking into account all risks. It must be appropriate in view of the nature, scope, and complexity of the business of an insurance undertaking (Article 31(1) VersAG).

According to Article 31(2), the individual functions of governance must be presented in a transparent organisational structure with clear allocations or segregations of responsibilities. Insurance undertakings must issue and implement written policies on governance (Article 31(4) VersAG in conjunction with Article 2 VersAV). According to Article 31(5), appropriate, necessary, and proportionate systems, resources, and procedures must be provided for to ensure the continuity and regularity of activities, including the development of contingency plans, in order to be able to take the necessary measures in the event of significant changes in the business area or the systems. Further governance requirements or special provisions on functions are set out in Articles 258 et seqq. of Commission Delegated Regulation (EU)

2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) (hereinafter referred to as Commission Delegated Regulation (EU) 2015/35). Further details can also be found in the EIOPA Guidelines on System of Governance (EIOPA-BoS-14/253 EN) and the accompanying explanations.

As part of the new formation of an insurance undertaking, evidence must be provided that, taking into account the business activities and the risk situation, the insurance undertaking to be set up has effective governance which ensures sound and prudent management.

According to Article 30(3), the functions of governance include in detail:

aa) Risk-management function

According to Article 35(1) and (2) VersAG, insurance undertakings must have in place effective risk management that comprises strategies, processes, and reporting procedures necessary to identify, measure, monitor, manage, and report on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies. Risk management must be integrated into the organisational structure and the decision-making processes, with proper consideration of the persons who effectively run the undertaking or have other key functions. Further details on the risk management requirements are set out in Article 35(3) to (10) VersAG. In addition, further provisions on risk management can be found especially in Article 269 of Commission Delegated Regulation (EU) 2015/35. Supplemental provisions and further information on risk management can be found in Guidelines 17 to 26 of the EIOPA Guidelines on System of Governance and the accompanying explanations.

bb) Internal control function (compliance)

According to Article 38 VersAG, insurance undertakings must have in place an effective internal control system. This system must include – in addition to administrative and accounting procedures, an internal control framework, and appropriate reporting arrangements at all levels of the undertaking – a compliance function for monitoring compliance with legal and business requirements.

The internal control function includes informing and advising governing bodies on compliance with insurance law. It must also include an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking concerned and the identification and assessment of compliance risk. The control activities should be appropriate to the risks resulting from the activities and processes to be controlled.

Further provisions on the internal control function can be found, in particular, in Article 270 of Commission Delegated Regulation (EU) 2015/35, Article 2 VersAV, and Guidelines 38 and 39 of the EIOPA Guidelines on System of Governance and the accompanying explanations.

cc) Internal audit function

According to Article 39(1), insurance undertakings shall provide for an effective internal audit function which must assess whether the other elements of governance are adequate and effective. In principle, the internal audit function must be independent from the other operational functions. The exception to this principle is set out in Article 271(2) of Commission Delegated Regulation (EU) 2015/35. If this exception is claimed, fulfilment of these conditions (proportionality, no conflicts of interest, cost aspects) must be demonstrated. Further provisions on the internal audit function can be found, in particular, in Article 2 VersAV, Article

271(3) of Commission Delegated Regulation (EU) 2015/35, and Guidelines 43 to 48 of the EIOPA Guidelines on System of Governance and the accompanying explanations.

dd) Actuarial function

Article 40(1) VersAG stipulates that an insurance undertaking must provide an effective actuarial function. In addition to personal integrity, evidence of sufficient knowledge of actuarial and financial mathematics must be provided for the actuarial function (Article 40(2) VersAG in conjunction with Article 4 VersAV). The duties of the actuarial function are set out in Article 40(1)(a) to (i) VersAG and in Article 272 of Commission Delegated Regulation (EU) 2015/35.

Where dual functions are envisaged for individual persons, the application must specify how conflicts of interest are identified and what measures are taken to avoid conflicts of interest.

- l) Designation of the external auditors and the persons responsible for the mandate and, if the undertaking is part of an insurance group or a financial conglomerate, the organisation of the mandate of the external auditors of the insurance group or financial conglomerate (Article 12(2)(l)).**

A declaration of acceptance must be submitted by the auditing company recognised under insurance supervision law. This auditing company must be entered in the Commercial Register of the insurance undertaking after approval has been granted. The auditor responsible for the mandate must also be disclosed.

The list of external auditors recognised under insurance supervision law can be found at www.fma-li.li under Intermediaries / Insurance and Pension Funds Division / Insurance undertakings / Register / Register of insurance undertakings / Recognised external auditors under the VersAG.

- m) Contracts or other arrangements by which functions or activities are to be outsourced (outsourcing of functions) (Article 12(2)(m)).**

According to Article 10(1)(14) VersAG, outsourcing means an arrangement between an insurance undertaking and a service provider, whether a supervised entity or not. By virtue of this arrangement, the service provider assumes, whether directly or by sub-outsourcing, a process, service, or an activity which would be performed by the insurance undertaking itself without this arrangement. According to Article 12(2)(m) VersAG, contracts or other arrangements by which the functions or activities of an insurance undertaking are outsourced (outsourcing of functions) form part of the licence application. For further information on outsourcing of functions and the relevant provisions and rules as well as the documents to be submitted, please refer to the Instruction: Outsourcing of functions (Solvency II) at www.fma-li.li under Intermediaries / Insurance and Pension Funds Division / Insurance undertakings / Regulation/Legal basis / Instructions.

- n) Declaration of accession to the national insurers' bureau and to the national guarantee fund, accompanied by simultaneous notification of the claims representatives, and specification of the name and address of the claims representatives in other Contracting Parties to the EEA Agreement, if the risks to be covered fall within the class of insurance "Motor vehicle liability", excluding carriers' liability (Article 12(2)(n)).**

In this regard, please refer to Article 28 VersAG.

- o) **Information on the means of fulfilment of the benefits under the class of insurance "Tourist assistance" (Article 12(2)(o)).**

In this regard, please refer to Article 29 VersAG.

- p) **Scheme of operations in accordance with Article 13 VersAG (Article 12(2)(p)).**

In this regard, please refer to the remarks below (point 3.4).

- q) **Further information and documents necessary for assessing the application (Article 12(2)(q)).**

Further information and documents necessary for assessing the application must be submitted to the FMA upon request.

3.4 Information pursuant to Article 13 VersAG (scheme of operations):

The scheme of operations must contain information and evidence regarding:

- a) **The planned classes of insurance and the nature of the risks or commitments which the undertaking proposes to cover in direct insurance and reinsurance (Article 13(1)(a) VersAG).**

All classes of insurance to be covered in accordance with Annex 1 or Annex 2 of the Insurance Supervision Act must be indicated. The nature of the risks or commitments to be assumed and whether these risks are to be assumed directly or indirectly (reinsurance) must be specified for each class of insurance.

- b) **The reinsurance envisaged and, for reinsurance undertakings, the kind of reinsurance arrangements which the undertaking proposes to make with ceding undertakings and the guiding principles as to retrocession (retrocession plan) (Article 13(1)(b) VersAG).**

A list of all reinsurance arrangements must be provided with corresponding information on the respective coverages and conditions. In addition to the explanations regarding the envisaged reinsurance, the name and registered office of the reinsurance undertaking must also be disclosed. The planned reinsurance strategy must furthermore be explained in detail.

- c) **The basic own-fund items constituting the absolute floor of the minimum capital requirement (Article 13(1)(c) VersAG).**

The legal requirements regarding the basic own funds set out in Article 44 VersAG and the minimum capital requirements set out in Articles 49 to 52 VersAG must be observed in this regard.

- d) **Estimates of the costs of setting up the administrative services and the distribution network as well as the financial resources intended to meet those costs (Article 13(1)(d) VersAG).**

It must be disclosed how the distribution of the insurance solutions is to be carried out or with which distribution networks a cooperation is planned. In addition, possible conflicts of interest must be addressed. The costs of setting up the administrative services and the distribution network must also be explained in detail.

Furthermore, the scheme of operations must contain the following information and documents for the first three financial years (paragraph 2):

a) A forecast balance sheet and income statement (Article 13(2)(a) VersAG).

A forecast balance sheet and income statement must be submitted for a future period of at least three years. They must show an adequate degree of detail corresponding to the nature, scope, and complexity of the insurance undertaking.

b) Estimates of the future solvency capital requirement to be made on the basis of the forecast balance sheet and the calculation method used to derive those estimates (Article 13(2)(b) VersAG).

The calculation of the future solvency capital requirement must cover a period of three years and meet the requirements set out in Articles 42 et seqq. VersAG. A description of the calculation method and underlying assumptions must be provided for all material components of the solvency capital requirement. Furthermore, the main drivers of the individual risk components must be presented and described.

c) Estimates of the minimum capital requirement to be made on the basis of the forecast balance sheets and the calculation method used to derive those estimates (Article 13(2)(c) VersAG).

The calculation of the future minimum capital requirement must cover a period of three years and meet the requirements set out in Article 49 et seqq. VersAG.

d) The financial resources intended to cover the solvency capital requirement, the minimum capital requirement, and the technical provisions (Article 13(2)(d) VersAG).

The information on financial resources must cover a period of at least three years and must meet the requirements set out in Article 43 et seqq. VersAG.

e) For non-life insurance and reinsurance (Article 13(2)(e) VersAG):

1. estimates of management expenses other than installation costs, in particular current general expenses and commissions
2. estimates of premiums or contributions and claims

f) For life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct insurance business, reinsurance acceptances, and reinsurance cessions (Article 13(2)(f) VersAG).

Estimates of income and expenditure must cover a period of at least three years.

3.5 Product approval process in accordance with Art. 57 VersVertG in conjunction with POG DeIVO 2017/2358

In addition to the provisions of VersAG, several provisions of the Insurance Distribution Act (Vers-VertG) of 5 December 2017 also apply to insurance undertakings. In particular, insurance undertakings must comply with Art. 57 ff. VersVertAG (internal product approval process and information requirements vis-à-vis distributors) in conjunction with POG DeIVO 2017/2358.

This means that insurance undertakings have to maintain, operate and review a product approval process for newly developed insurance products and for significant adaptations of existing insurance products before the product is marketed or distributed to customers. This process also includes measures and procedures for designing, monitoring, reviewing and distributing insurance products, as well as corrective actions for insurance products that are detrimental to the customer.

For the above mentioned legal requirements, it must be specified and described as part of the approval process how these standards respectively the specific POG processes will be implemented by the insurance undertaking in the future.

4. Grant of licence

Insofar as all the necessary information and documents are available and have been examined positively by the FMA, the FMA grants approval to take up business under the condition precedent that the insurance undertaking is established and the envisaged bodies are entered in the Commercial Register in accordance with the application and that proof of payment of the share or cooperative capital is provided.

After the establishment and entry of the insurance undertaking in the commercial register, the following documents must be submitted to the FMA:

- a) extract from the Commercial Register, certified;
- b) minutes of the founding meeting, certified;
- c) articles of association, certified;
- d) confirmation of payment of the share capital or cooperative capital and the organisational fund.

The FMA may request further documents (Article 12(2)(q) VersAG).

5. Costs

5.1 Licensing fee:

The fee for granting the licence amounts to CHF 80,000 for insurance undertakings, CHF 40,000 for captives, and CHF 30,000 for small insurance undertakings and special purpose vehicles (Article 30 in conjunction with Annex 1(D)(1) FMAG).

5.2 Taxes:

General information on the taxation of insurance undertakings may be obtained from the Liechtenstein Fiscal Authority (www.stv.llv.li).

5.3 Fee for entry in the Commercial Register:

The fees for entry in the Commercial Register and public authentication are governed by the Ordinance on Land and Commercial Register Fees.

6. Legal foundations

- Law of 12 June 2015 on the Supervision of Insurance Undertakings (Insurance Supervision Act, VersAG);
- Ordinance of 25 August 2015 on the Supervision of Insurance Undertakings (Insurance Supervision Ordinance, VersAV);
- Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II);
- EIOPA Guidelines on System of Governance (EIOPA-BoS-14/253 EN) and explanatory text;
- FMA Communication 2013/1: Overview of the EIOPA Guidelines issued by the European Insurance and Occupational Pensions Authority (EIOPA) for which the FMA has declared "comply or explain" or "comply or intend to comply";
- Law on Persons and Companies (PGR);

- Law of 11 December 2008 on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism (SPG);
- Ordinance of 17 February 2009 on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism (SPV);
- Law of 24 November 2006 on the Supervision of Institutions for Occupational Retirement Provision (PFG);
- Ordinance of 12 December 2006 on the Law on the Supervision of Institutions for Occupational Retirement Provision (Pension Funds Ordinance, PFV);
- Law of 20 September 2007 on the Supplementary Supervision of Undertakings in a Financial Conglomerate (FKG);
- Ordinance of 23 October 2007 on the Law on the Supplementary Supervision of Undertakings in a Financial Conglomerate (FKV);
- Agreement between the Principality of Liechtenstein and the Swiss Confederation on Direct Insurance and Insurance Mediation of 9 July 1998 (Direct Insurance Agreement);
- Law of 18 June 2004 on the Financial Market Authority (Financial Market Authority Act, FMAG);
- Insurance Distribution Act (VersVertG) of 5 December 2017;
- Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors;
- Commission Delegated Regulation (EU) 2021/1257 of 21 April 2021 amending Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 as regards the integration of sustainability factors, risks and preferences into the product oversight and governance requirements for insurance undertakings and insurance distributors and into the rules on conduct of business and investment advice for insurance-based investment products;
- Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products.

7. Data protection

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) 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) as well as in line with the Liechtenstein data protection law.

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

8. Entry into force

This instructions enters into force on 29 December 2017.



Financial Market Authority (FMA) Liechtenstein

Insurance and Pension Funds Division

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