



**COUNTRY
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Austria

INSURANCE & REINSURANCE

Contributor

BPV Huegel



Ingo Braun

Partner | ingo.braun@bpv-huegel.com

This country-specific Q&A provides an overview of insurance & reinsurance laws and regulations applicable in Austria.

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AUSTRIA

INSURANCE & REINSURANCE



1. How is the writing of insurance contracts regulated in your jurisdiction?

The requirements for the insurance contract business in Austria are regulated in the Austrian Insurance Supervision Act 2016 (*Versicherungsaufsichtsgesetz 2016, VAG 2016*). By the VAG 2016 the EU Solvency II Directive 2009/138/EC has been implemented. In addition, the Commission Delegated Regulation (EU) 2015/35 is directly applicable. The VAG 2016 provides, *inter alia*, for the requirements of licenses. Of course, insurance undertakings in Austria also need to comply with a wide range of other relevant laws, such as corporate laws, business laws (e.g., regarding accounting), tax laws and AML/CTF laws.

In addition, many other Austrian (private) laws apply to the writing of insurance contracts. The most relevant are the Austrian General Civil Code (*Allgemeines bürgerliches Gesetzbuch, ABGB*), the Austrian Insurance Contract Act (*Versicherungsvertragsgesetz, VersVG*), the Austrian Consumer Protection Act (*Konsumentenschutzgesetz, KSchG*) and the Austrian Distance Financial Services Act (*Fern-Finanzdienstleistungs-Gesetz, FernFinG*). In addition, also the Austrian Data Protection Act (*Datenschutzgesetz, DSGVO*) and the EU General Data Protection Regulation (GDPR) apply. While the general rules for contracts are to be found in the General Civil Code, the Insurance Contract Act contains special provisions for insurance contracts, either generally applicable rules or specific rules for certain types of insurance contracts. In addition, mandatory motor vehicle liability insurance is regulated in the Austrian Motor Vehicle Liability Insurance Act 1994 (*Kraftfahrzeug-Haftpflichtversicherungsgesetz 1994, KHVG 1994*) and occupational-retirement-provision insurance is also regulated under the Occupational-Retirement-Provision Act (*Betriebspensionsgesetz, BPG*).

2. Are types of insurers regulated differently (i.e. life companies, reinsurers?)

The VAG 2016 applies to all insurance undertakings;

including life, non-life and reinsurance undertakings. Therefore, in general all insurance undertakings are subject to the same law, however, different specific requirements may apply.

All insurance undertakings in Austria are subject to supervision by the same Austrian regulatory authority, the Austrian Financial Market Authority (*Finanzmarktaufsicht, FMA*).

3. Are insurance brokers and other types of market intermediary subject to regulation?

Yes. Different rules apply to different types of insurance intermediaries. These include insurance brokers (*Versicherungsmakler*), insurance agents (*Versicherungsagenten*) and intermediaries employed by insurance undertakings. Therefore, different types of intermediaries must comply with different sets of regulations.

Directive (EU) 2016/97 on insurance distribution (IDD) has been implemented primarily by the Austrian Trade and Industry Act (*Gewerbeordnung, GewO*) and the VAG 2016. These laws include provisions generally applicable to insurance distribution. Further, insurance brokers and insurance agents have to obtain a license from the relevant authority for trade and industry matters (*Gewerbebehörde*). The GewO also allows insurance distribution services by the licensed businesses of commercial investment advisors (*Gewerbliche Vermögensberater*), credit institutions (to which also provisions of the Austrian Banking Act (*Bankwesengesetz, BWG*) apply) and mediation as auxiliary service (*Vermittler in Nebentätigkeit*).

In addition, different regulations apply for the different types of intermediaries: insurance brokers are also subject to the Austrian Brokerage Act (*Maklergesetz, MaklerG*), insurance agents are subject to the Austrian Commercial Agents Act (*Handelsvertretergesetz, HVertrG*) and employees are subject to the Austrian Employees Act (*Angestelltengesetz, AngG*).

4. Is authorisation or a licence required and if so how long does it take on average to obtain such permission? What are the key criteria for authorisation?

Yes, section 6 VAG 2016 requires insurance undertakings in Austria to obtain a license for the operation of an (re-)insurance business. The FMA grants this license if all requirements are fulfilled. Separate licenses need to be obtained for each class of insurance (which to some extent exclude each other). Insurance undertakings must not conduct any non-insurance business, other than business that is directly related to their insurance business (section 6(3) VAG 2016).

Key criteria for obtaining a license are (*inter alia*): (i) legal form of a stock corporation (*Aktiengesellschaft*), *societas europaea* (*Europäische Gesellschaft*) or mutual insurance association (*Versicherungsverein auf Gegenseitigkeit*); (ii) place of main administration in Austria; (iii) submission of articles; (iv) submission of a business plan demonstrating the ability to cover claims of insureds; (v) demonstrating eligible basic own funds to cover the minimum capital requirement; (vi) demonstrating ability to maintain eligible own funds to cover the solvency capital requirement on an ongoing basis; (vii) demonstrating compliance with governance rules; (viii) at least two members of the management board who also must meet the professional qualification and integrity requirements; etc. The business plan has to set out, *inter alia*, the nature of the risks intended to cover, the main features of the reinsurance policy, the composition of its own funds, estimates of the costs of setting up the administration and distribution and proof of their cover, and financial data for the first three financial years. This forecast for the first three years need to include balance sheets, estimates of the future capital requirements, and estimates of the financial resources expected to be required to cover provisions. For non-life insurers and reinsurers also anticipated expenses for commissions and other operating expenses, expected premium income and expected insurance payments need to be included. For life insurers also a plan setting out detailed estimates of income and expenditure for direct business and active and passive reinsurance business. Further requirements of establishing and maintenance of a governance and risk management function, and an internal control, compliance and internal audit function must be demonstrated. Persons performing the risk management, compliance, internal audit, actuarial or other key functions must have relevant professional experience.

Section 8 VAG 2016 allows the FMA to refuse a license if the conditions are not fulfilled. Among others, a refusal is

also possible if the structure of the group to which the insurance undertaking belongs would hinder effective supervision, or in case persons with a qualifying holding in the insurance undertaking do not meet the standards required in the interests of sound and prudent management.

The duration of a licensing procedure depends on the quality of the documents submitted with the license application and any queries of the FMA. Generally, the FMA must decide within 6 months, however, after having received all documentation and clarifications needed.

5. Are there restrictions or controls over who owns or controls insurers (including restrictions on foreign ownership)?

Yes. Sections 24 to 27 VAG 2016 provide for rules on ownership control. A person intending to acquire, directly or indirectly, a qualifying holding (i.e., 10% of voting rights or capital or other means of exercising significant influence), or to increase its holding to 20% or 30% or 50% or in such way that the (re)insurer would become a subsidiary, or to de-crease its holdings below these thresholds, in an (re)insurance undertaking with head offices in Austria, it must first notify the FMA thereof. The (re)insurance undertaking has the same obligations once it becomes aware of relevant circumstances.

The FMA has to confirm receipt of the notification once it is complete and issue a decision within 60 working days, although this time period may be prolonged to a limited extent due to additional information requests. The FMA must base its decision on in the interest of the sound and prudent management of the (re)insurance undertaking considering the influence of the potential acquirer. Relevant criteria are, in particular the reliability and the financial soundness of the potential acquirer, changes in the acquired (re)insurance undertaking, and the ability of the (re)insurance undertaking to carry out its activities in accordance with the law.

In addition, the Austrian Investment Control Act (*Investitionskontrollgesetz, InvKG*) may be applicable to acquisitions by foreign individuals/entities (i.e., non-EU, non-EEA and non-Swiss individuals/entities). FDI (Foreign Direct Investment) screening applies to any direct/indirect acquisition of 10%, 25% or 50% of the voting rights in, or a controlling influence over, an Austrian undertaking or the acquisition of essential assets of such an undertaking. As FDI screening applies only to certain sectors listed in an annex to the Investment Control Act which also includes "finance", (re)insurance undertakings may be included. If so, the

acquisition requires filing with the Austrian Federal Ministry for Labour and Economy (*Bundesministerium für Arbeit und Wirtschaft*). The FDI regime requires an assessment whether the investment leads to a threat to security or public order (including crisis management and services of general interest).

6. Is it possible to insure or reinsure risks in your jurisdiction without a licence or authorisation? (i.e. on a non-admitted basis)?

Generally, third country (re)insurers may operate in Austria only subject to having obtained a license which requires establishing a branch office in Austria (section 13 VAG 2016). However, section 13(4) VAG 2016 provides that these requirements for third country (re)insurers do not apply to that country reinsurers headquartered in a country of which the European Commission has determined that the solvency regime of that third country is equivalent in accordance with Art. 172(2) or (4) of Directive 2009/138/EC (Solvency II Directive). This currently applies to Switzerland.

Since 22 September 2019 a reinsurer which has its head office or is domiciled in the territory of the USA may operate in Austria if the requirements under Art. 3(4) and (8) of the bilateral agreement between the EU and the United States on prudential measures regarding insurance and reinsurance dated 22 September 2017 (the US-EU Covered Agreement) are fulfilled (section 19a VAG 2016). In this case the FMA is the host supervisory authority pursuant to Art. 2(i) of the US-EU Covered Agreement.

A (re)insurer headquartered and licensed in another EU/EEA member state does not need a license and may operate in Austria under the single license regime. This merely requires a notification to its home supervisory authority which has to notify the FMA. The insurance activity may commence two months after receipt of the information by the FMA. If the FMA informs the competent home supervisory authority before the expiry of the deadline under which conditions the insurance activity must be carried out in Austria for reasons of the general good, the activity may be taken up after receipt of this information by the home supervisory authority.

7. Is a branch of an overseas insurer, insurance broker and/or other types of market intermediary in your jurisdiction subject to a similar regulatory framework

as a locally incorporated entity?

A third-country insurance or third-country reinsurance undertaking may pursue insurance or reinsurance business in Austria only by way of an Austrian branch and requires a license from the FMA. This license for the branch of third-country (re)insurance undertakings is valid for Austria only (section 13 VAG 2016). Many provisions of the VAG 2016 apply to these branches.

Insurance intermediation by intermediaries domiciled and licensed within the EU do not require an Austrian license pursuant to section 137b(7) Trade and Industry Act (*Gewerbeordnung, GewO*). Intermediaries from third-countries must obtain a license for insurance mediation pursuant to section 138 GewO and require either a branch office or legal entity in Austria.

8. Are there any restrictions/substance limitations on branches established by overseas insurers?

As third-country insurance undertaking requires a license from the FMA, it is under supervision of the FMA (as to this aspect similar to Austrian insurance undertakings, and other than branches of EEA insurance undertakings).

For the application of some provisions, the business of the branch must be considered separately from the rest of the business of an overseas insurance undertaking, because it would be excessive to require the whole undertaking (in the third country) to comply with the Solvency II provisions. On the other hand, branches of overseas insurance undertaking cannot be exempted from the application of the main provisions of Solvency II, as they would otherwise be favoured over EEA insurance undertaking and have a competitive advantage. In some cases, from the wording of the VAG 2016 it is not clear whether certain requirements have to be fulfilled only by the branch or by the company itself (e.g., prohibition of non-insurance business, governance). In case of doubt, it will have to be assumed that only the branch is subject to the relevant provision.

On branches of overseas insurance undertakings the provisions on certain types of insurance, the provisions on portfolio transfer, insurance mediation, governance, prevention of money laundering and terrorist financing, accounting, solvency, publication, reporting and information requirements, auditors, cover pool and trustees, dissolution and insolvency of a company shall apply. Also all relevant provisions of section XI of the VAG 2016 regarding supervision and rules of procedures apply. Further, as branches are subject to supervision by the FMA, they also must contribute to the costs of

insurance supervision. Also, the management of the branch are treated as if they would be the management of an Austrian insurance undertaking.

Overseas reinsurance undertakings are treated more favourably as these requirements do not apply on them if they are headquartered in a country of which the European Commission has determined that the solvency regime of that third country is equivalent in accordance with Art. 172(2) or (4) of Directive 2009/138/EC (Solvency II Directive) (section 13(4) VAG 2016).

9. What penalty is available for those who operate in your jurisdiction without appropriate permission?

Section 329(1) VAG 2016 provides for fines of up to EUR 100,000 by the FMA for operating an insurance business without having the required license.

10. How rigorous is the supervisory and enforcement environment? What are the key areas of its focus?

The FMA has comprehensive supervisory powers which are regulated, among other things, in the VAG 2016. In order to provide guidance on their supervisory practice, FMA Circular Letters (*Rundschreiben*), Minimum Standards (*Mindeststandards*) and other Guidelines. Even if they are not legally binding, especially Circular Letters, they will reflect the expectations of the supervisory authority, which practically leads to an obligation.

According to the priorities for supervision and inspections for 2023 of the FMA as published in its “Facts and Figures, Trends and Strategies 2023” and on FMA’s website, its focus of the authority will be on resilience and stability, digital transformation, crypto assets, the new supervisory framework for investment firms, consumer protection, sustainability and the prevention of fraudulent business practices and money laundering. In particular:

The FMA will focus on the practical application of the internal models, and its ongoing supervision will be expanded in terms of risk-specific content. In the area of digitalization, this includes building up resilience to cyber risks by insurers. The FMA will conduct cyber maturity level assessments, focus on cyber risks in its supervision and roll out cyber security exercises. In order to ensure preparation of the insurance sector for the Digital Operational Resilience Act (DORA), the FMA will identify risks connected with IT service providers, IT

interdependencies and focus on IT related risks in the course of its supervision activities. The FMA enquires about such incidents and is thereby preparing insurance undertakings for future binding reporting requirements on ICT-related incidents and continues an ongoing exchange with the sector about digitalization issues.

In the course of common supervisory actions the FMA will focus on the fair presentation of opportunities and risks, rights and obligations, particularly concerning “green products”. The FMA will continue asset screenings in order to identify those assets in the portfolios that would be exposed to potentially higher fluctuations in price during a transition to a more CO2-neutral economy. On the product side, a focus of the FMA is on the integration of ESG topics in underwriting, a forward-looking price structure and risk mitigating behaviour.

The FMA points to the insurability against risks arising from natural catastrophes and the affordability of the corresponding insurance cover and will focus on increasing insurance penetration and measures regarding vulnerability, the localisation of properties at risk and optimised insurance coverage. The FMA will also conduct stress tests to analyse the risks and vulnerabilities in the insurance sector especially with regard to the current economic climate as well as for assessing the risk capacity of the individual insurance undertakings, taking into account impacts of future climate policy, the advent of low-carbon technologies, the economy’s level of adaptation or the occurrence of extreme events.

As regards greenwashing, the FMA conducted analyses with a focus on product-specific disclosures Austrian life insurers for the first time in accordance with Delegated Regulation (EU) 2022/1288. So far, disclosures are only made pursuant to Art. 8 SFDR (products promoting environmental or social characteristics), but not in accordance with Art. 9 SFDR (products, that pursue a sustainable investment). As difficulties exist regarding the advertising with sustainability aspects, the FMA intensified its dialogue with the industry on ESG related products.

A further focus of the FMA will be on balanced information and marketing messages on providers’ websites, and the FMA stressed that violations will be punished accordingly. It will also focus on information and transparency in the case of premium increases.

11. How is the solvency of insurers (and reinsurers where relevant) supervised?

The solvency regime for (re)insurers is stipulated in

section VIII of the VAG 2016, which transposes the regulation of the Solvency II Directive. (Re)Insurance undertakings shall hold eligible own funds (based on a solvency balance sheet) covering the solvency capital requirement. The solvency capital requirement is calculated either using a predefined standard formula or by an internal model developed by the (re)insurance undertaking. The minimum capital requirement constitutes a floor below which would trigger an intervention by the supervisor.

In so-called supervisory review and evaluation processes pursuant to section 273 VAG 2016 the FMA supervises and reviews compliance with the capital and liquidity requirements. Furthermore, the FMA has the supervisory powers of sections 272 seq. VAG 2016

12. What are the minimum capital requirements?

Section 193 VAG 2016 requires (re)insurance undertakings to hold eligible basic own funds (excess of assets over liabilities and subordinated liabilities) to cover the minimum capital requirement. The calculation used to determine the minimum capital requirement is set out in the Delegated Regulation 2015/35/EU. The absolute floor is EUR 2.7 million for non-life insurance undertakings, EUR 4 million for life insurance undertakings, EUR 3.9 million for reinsurance undertakings and the sum of the amounts of non-life and life insurance undertakings for composite undertakings.

The FMA can take supervisory measures if the minimum capital requirement are not met and, in the worst case, withdraw the license (section 285 VAG 2016).

13. Is there a policyholder protection scheme in your jurisdiction?

The IDD sets higher requirements for insurance distribution, which has been implemented in numerous Austrian laws. In addition, the Consumer Protection Act (*Konsumentenschutzgesetz, KSchG*) and the Distance Financial Services Act (*Fern-Finanzdienstleistungsgesetz, FernFinG*) apply if the policyholder is a consumer. These provide for consumer-friendly general terms and conditions, information obligations and a 14-day right of withdrawal. Likewise, the Insurance Contract Act (*Versicherungsvertragsgesetz, VersVG*) contains numerous provisions that serve to protect the policyholder and may only be deviated from in favour of the policyholder.

14. How are groups supervised if at all?

In order to avoid group-wide risks, sections 195 seqq. VAG 2016 provides for the relevant requirements to be complied with by insurance undertakings that are part of a group. Group supervision takes place at the level of the ultimate parent level. If the (re)insurance undertaking is headquartered in Austria, it is subject to supervision by the FMA as a group supervisor.

The VAG 2016 sets out special provisions for group supervision. In particular, on centralised risk management, solvency and governance provisions at group level. For this purpose, the FMA is granted corresponding supervisory powers. Furthermore, there is a duty to notify the FMA in the event of a significant risk concentration at group level (section 220 VAG 2016).

15. Do senior managers have to meet fit and proper requirements and/or be approved?

According to section 120 VAG 2016 (re)insurance undertakings shall ensure that all persons who effectively run the undertaking or have governance or other key functions have at all times sufficient professional qualifications, knowledge and experience to enable sound and prudent management (fit) and are of good repute and integrity (proper). The fit and proper requirements are also a condition to obtain a license.

In addition, pursuant to section 122 VAG 2016 insurance and reinsurance undertakings shall notify the FMA of any intended appointment of members of the management board or administrative board and of managing directors no later than one month prior to their appointment. They are also obliged to notify the actual appointment of persons who effectively run the undertaking or are responsible for governance or other key functions immediately following the appointment.

16. To what extent might senior managers be held personally liable for regulatory breaches in your jurisdiction?

Each member of the executive board (i.e., senior management) as person appointed to represent the company externally is liable for compliance with the regulatory requirements pursuant to section 9 of the Austrian Administrative Penal Act (*Verwaltungsstrafgesetz, VStG*). However, instead section 9 VStG allows to appoint persons as responsible representatives, who are responsible for compliance with the regulatory requirements for the entire or

distinguishable parts of the undertaking (which requires prior notification to the FMA pursuant to section 122 VAG 2016. Please see also Question 15.

VAG 2016 also explicitly imposes administrative fines on persons appointed under section 9 VStG, e.g., in sections 319, 322 and 326 VAG 2016.

In addition, corporate laws typically require members of the executive board to act diligently and in the interest of the company, and, if they breach their duties, may become liable to pay damages to the company.

17. Are there minimum presence requirements in order to undertake insurance activities in your jurisdiction (and obtain and maintain relevant licenses and authorisations)?

For insurance undertakings with their registered office in Austria, the basic requirements (*inter alia*) are that the undertaking has its main place of administration in Austria and a specific legal form of a stock corporation, European Company or mutual association. The FMA may grant the license also on conditions which enable it to effectively exercise its supervisory obligation. In addition, the criteria of capital requirements, establishment and maintenance of a governance and risk management function as well as internal control, compliance and internal audit function must be ensured. Furthermore, the persons who actually run the company shall maintain professional competence and integrity on an ongoing basis. Moreover, persons performing the risk management, compliance, internal audit, actuarial or other key functions shall have specific experience in the relevant area (please see answer to question 3).

Branches EEA insurance and reinsurance undertakings in Austria do not need a license and are permitted to operate in Austria under a passported license. They are allowed to operate if they have notified the undertaking to the competent home supervisory authority, which then provides the relevant information to the FMA. The insurance activities may be started two months after receipt of the information by the FMA. Branch offices require a general representative (*Hauptbevollmächtigter*), an address in Austria, a business plan and confirmation of covering the solvency and minimum capital requirements which must be notified by the home supervisory authority to the FMA.

Third-country undertakings, on the other hand, must obtain a license directly from the FMA and establish an Austrian branch office.

18. Are there restrictions on outsourcing services, third party risk management and/or operational resilience requirements relating to the business?

Outsourcing of functions is restricted by section 109 VAG 2016 and (re)insurance undertakings remain responsible for fulfilling all supervisory requirements when outsourcing any functions or business activities to service providers. Besides general restrictions under corporate laws (e.g., no outsourcing of decision making in core areas and of risk management decisions, keeping control functions etc.), section 109 VAG 2016 contains some general requirements for outsourcing. This includes that service providers must cooperate with the FMA, and access to relevant data is ensured for the outsourcing undertaking itself, their statutory auditors and the FMA and to the business premises of the service provider.

Contracts by which critical or important functions or activities are outsourced must be notified to the FMA in good time before the outsourcing. They require prior approval by the FMA if the service provider is not an (re)insurance undertaking. The outsourcing of critical or important operational functions or activities may not take place if it leads to an impairment of the supervision of the FMA and to an impairment of the continuous and proper fulfilment of services for policyholders and beneficiaries.

19. Are there restrictions on the types of assets which insurers or reinsurers can invest in or capital requirements which may influence the type of investments held?

Section 124 VAG 2016 requires (re)insurance undertakings to invest all their assets in accordance with certain principles. This includes that they may only invest in assets and instruments of which they can adequately identify, measure, monitor, manage and control risks, adequately report risks and adequately take into account risks when assessing overall solvency requirements. Investments must also ensure the safety, quality, liquidity and profitability of the portfolio as a whole, and assets must be located ensuring their availability. For assets covering technical provisions, these must be appropriate for the nature and duration of the covered (re)insurance liabilities.

The use of derivatives is permitted under conditions, provided that they contribute to risk mitigation or facilitate efficient portfolio management.

20. Are there requirements or regulatory expectations regarding the management of an insurer's reinsurance risk, including any restrictions on the level / type of reinsurance utilised?

The risk transfer of insurers to reinsurers is part of the business plan which is required in order to obtain a license in Austria. Consequently, insurance undertakings are obliged to notify the FMA of changes in reinsurance relationships that are relevant for the capital requirement (section 142 VAG 2016). Also section 87 VAG 2016 provides that the ability of an insurer to meet its own obligations under insurance contracts is determined by the type of risks insured (loss frequency, average loss, accumulation probability, etc.), its risk limitation measures (sums insured, exclusions, obligations) and its capital resources. In this context reinsurance contracts must be suitable in terms of type (proportional reinsurance, excess of loss or aggregate insurance, etc.) and scope to relieve the company of the (residual) risk that it cannot bear itself. No further guidance is offered by the FMA in relation thereto.

21. How are sales of insurance supervised or controlled?

The Directive 2016/97/EU (IDD), which came into force in February 2016, regulates the commencement and exercise of the whole insurance distribution activity, in particular insurance mediation.

Particularly relevant laws for insurance mediation are sections 137 to 138 of the Austrian Trade and Industry Act (*Gewerbeordnung, GewO*), the Insurance Contract Act (*Versicherungsvertragsgesetz, VersVG*) and the VAG 2016. In addition, the Austrian Brokerage Act (*Maklergesetz, MaklerG*) has a significant role for insurance mediation by brokers. See also Question 3 above.

Insurance distribution may be undertaken by insurance agents, insurance brokers and advisors in insurance matters and commercial investment advisors limited to life and accident insurance.

The competent trade authority (*Gewerbebehörde*) is responsible for the supervision of intermediaries and the FMA is responsible for the supervision of insurers.

22. To what extent is it possible to actively market the sale of insurance into your jurisdiction on a cross border basis and are

there specific or additional rules pertaining to distance selling or online sales of insurance?

Insurers domiciled in another EU/EEA member state does not need a license and may operate in Austria under the single license regime. This merely requires a notification to its home supervisory authority which has to notify the FMA. After this notification they may carry out insurance business in Austria either by establishing a branch office or under the freedom to provide services. The insurance activity may commence two months after receipt of the information by the FMA. If the FMA informs the competent home supervisory authority before the expiry of the deadline under which conditions the insurance activity must be carried out in Austria for reasons of the general good, the activity may be taken up after receipt of this information by the home supervisory authority.

Insurers domiciled in third countries require a license from the FMA to conduct business in Austria. After having been granted a license, third-country insurers are only allowed to conduct business in Austria by establishing a branch office. The business activities of the domestic branch office are supervised by the FMA. Please see also Questions 3 and 6 above.

In addition, insurers must comply with applicable Austrian laws. This includes the Insurance Contract Act (*Versicherungsvertragsgesetz, VersVG*), which regulates the conditions for all classes of insurance. Furthermore, the Consumer Protection Act (*Konsumentenschutzgesetz, KSchG*) and the Distance Financial Services Act (*Fern-Finanzdienstleistungsgesetz, FernFinG*), which are consumer protection laws and determine the content of insurance contracts for consumers. Please see also Question 13 above.

23. Are insurers in your jurisdiction subject to additional requirements or duties in respect of consumers? Are consumer policies subject to restrictions, including any pricing restrictions? If so briefly describe the range of protections offered to consumer policyholders

Generally, the provisions of the Insurance Contract Act (*Versicherungsvertragsgesetz, VersVG*) are often directed at protection of customers, irrespective of the customer being a consumer or not.

However, in addition also consumer specific protection rules apply. When concluding insurance contracts with consumers, there are general protection laws, namely

the generally applicable Austrian consumer protection provisions (Consumer Protection Act (*Konsumentenschutzgesetz, KSchG*) and the Distance Financial Services Act (*Fern-Finanzdienstleistungs-Gesetz, FernFinG*)). Please see also Question 13 above.

Accordingly, a consumer has a 14-day right of withdrawal according to section 3 KSchG and section 8 FernFinG. However, section VersVG allows a withdrawal irrespective of being a consumer. If an insurance policy is concluded for a period of more than three years, section 8(3) VersVG allows consumers to terminate the contract at the end of the third year or at the end of each subsequent year.

Furthermore, there are contractual provisions that may not be formulated or used to the disadvantage of the consumer. These are listed in a catalogue in section 6 KSchG.

In addition, the consumer must be provided with certain information, the commercial purpose of which must be unambiguous, in a clear and comprehensible manner, in accordance with section 5a KSchG and section 5 FernFinG in good time before submitting his contractual declaration. Sections 128 et seqq. VAG 2016 contain information obligations with regard to insurance contracts and good conduct rules.

Generally, the protection granted by various provisions of the VersVG applies to all customers and not merely to consumers. However, some provisions of the VersVG and the VAG 2016 allow for large risks less legal requirements (e.g., regarding the right of withdrawal under section 5c VersVG and product governance requirements under section 128 VAG 2016).

24. Is there a legal or regulatory resolution regime applicable to insurers in your jurisdiction?

In Austria a single resolution tool is envisaged under the VAG 2016, this is insolvency. While insurance undertakings are generally subject to insolvency proceedings, special provisions exist under the VAG 2016. Section 309 VAG 2016 does not allow the option of restructuring proceedings under the Austrian Insolvency Act (*Insolvenzordnung; IO*). Also, applications for opening insolvency proceedings over insurance undertakings are permissible for the FMA only. While the general concept under the IO requires opening of insolvency proceedings in case of a debtor being insolvent (i.e., inability to pay debts when they fall due under section 66 IO or over indebtedness under section 67 IO), insolvency proceedings may not be opened over insurance

undertakings pursuant to section 316 VAG 2016 if avoiding insolvency proceedings is in the interest of the insureds. In that case, the FMA must prohibit payments and surrenders in life insurance to the extent necessary or reduce benefit obligations from life insurance in accordance with the available assets (section 316 VAG 2016).

Insurance undertakings in Austria have to establish a premium reserve fund (*Deckungsstock*) for life and health business. This fund shall be administered separately from other assets and constitutes a special fund (*Sondermasse*) in case of insolvency. Insurance claims shall have priority over the remaining claims in bankruptcy. Assets of this fund may only be subject to execution for the benefit of insurance claims. Specific provisions for covering claims under this fund in case of insolvency exists (cf. section 312 VAG 2016).

25. Are the courts adept at handling complex commercial claims?

Disputes on civil law matters may be submitted to and are to be decided by courts in Austria. Generally, the Austrian court system provides for district courts (*Bezirksgerichte*), state courts (*Landesgerichte*), higher state courts (*Oberlandesgerichte*) and the supreme court (*Oberster Gerichtshof*). These civil law courts deal with all civil law disputes, including commercial matters. No specific courts for insurance disputes exist.

Judges in Austria have the constitutional duty to rule independently and without regard to the interests of the parties. Judges have received profound legal training and have a high degree of professionalism. Many cases are decided swiftly and cost-efficiently; only very complex cases can lead to longer court proceedings. The courts of the Austrian capital, Vienna, are usually most experienced in complex commercial claims because many of the larger companies are domiciled in Vienna and, thus, companies are typically sued in the courts of their domicile. Only in Vienna commercial courts, which are separate from other civil courts, exist which leads to more practice of the judges in handling complex commercial claims.

26. Is alternative dispute resolution well established in your jurisdictions?

Arbitration clauses in (re)insurance agreements are generally enforceable in Austria. Also, arbitral awards are usually enforced in Austria on the basis of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. Austria is also a member of the European Convention on International Commercial

Arbitration of 1961.

For arbitration clauses, Austrian law requires the parties to agree in writing on arbitration for existing and/or future claims arising out of or in connection with a specific legal relationship. If the clause is valid, the Austrian courts will enforce it. Arbitration in consumer and employment-related matters would require that the parties agreed on arbitration after the dispute arose.

Austria has a modern and effective legal framework for arbitration proceedings in Austria. Among other bodies, the Austrian Chamber of Commerce (*Wirtschaftskammer Österreich, WKÖ*) provides for an effective administration body for international arbitral proceedings, the Vienna International Arbitral Centre (VIAC). The VIAC is an experienced and highly respected institution which also provides for well accepted and frequently updated arbitration rules (Vienna Rules). The VIAC is competent to administer disputes, when the parties have agreed the Vienna Rules concerning arbitration, its Rules of Mediation or otherwise the jurisdiction of the VIAC. However, arbitration proceedings in insurance cases are still relatively rare in Austria.

Also an Alternative Dispute Resolution Act (*Alternative-Streitbeilegung-Gesetz, ASStG*) exists in Austria which provides for rules on alternative settlement of disputes arising from a contract against consideration between a company domiciled in Austria and a consumer resident in the EU. Insurance contracts are not excluded from its application.

The Austrian Chamber of Commerce also hosts a legal service and conciliation board (RSS) (*Rechtsservice- und Schlichtungsstelle, RSS*) which handles insurance disputes between policyholder, broker and insurer, however, any findings or recommendations of the RSS are non-binding.

27. Is there a statutory transfer mechanism available for sales or transfers of books of (re)insurance? If so briefly describe the process

Section 28 VAG 2016 also the transfer of portfolios in whole or in part without the consent of policyholders. Such portfolio transfers may take place from an Austrian (re)insurance undertaking to another Austrian (re)insurance undertaking or an EEA insurer or, if transferred risks are limited to those situated in the country of that branch, an EEA branch of a non-EEA insurer, provided that the. Portfolio transfers require the approval of the FMA pursuant to section 29(1) VAG 2016 and, if risks in other EEA countries are affected, may

require approval of the regulatory authority of that country. If a (re)insurance undertaking of another EEA member state wishes to transfer a portfolio including risks situated in Austria, the FMA shall comment on the transfer to the home state regulatory authority and may also reject to give an approval if rights of policyholders in Austria are not sufficiently warranted.

The rights and obligations arising from the insurance contracts belonging to the transferred portfolio shall pass to the accepting undertaking upon entry in the companies register or, if such entry is not to be made, upon approval of the portfolio transfer (section 31(1) VAG 2016). In case of insurance contracts for risks located in Austria, the accepting company or branch office must notify the policyholders concerned of the transfer of the portfolio immediately after approval by the FMA (section 31(2) VAG 2016). The policyholders are entitled to terminate the insurance contract at the end of the insurance period during which they have become aware of the transfer of the portfolio and to claim back the part of the premium attributable to the period after the termination of the insurance relationship, deducting the costs incurred for this period, and the policyholders must be notified of this right. The right of termination is not applicable in the case of legal transactions that result in a transfer of the portfolio by way of universal succession (i.e., in the case of a merger, conversion or contribution of the entire insurance business).

28. What are the primary challenges to new market entrants? Are regulators supportive (or not) of new market entrants?

The situation may be seen as neutral to positive. The number of insurance companies in Austria is not changing drastically. More movement may be seen with intermediaries which feel more need to grow into bigger groups or alliances in order to manage the increased costs of regulations.

In our experience, however, hindrances for (re)insurers wishing to enter the market are to a certain extent mitigated by the cooperation and support of the FMA as supervisory authority.

29. To what extent is the market being challenged by digital innovation?

Digitalisation is a key focus of the FMA for years. Apart from big data which drives the insurance business, also cyber risks are now on the top of FMA's agenda.

Digitalisation is also a key issue for the business of insurers in Austria. Concluding insurance policies online or by app is offered by almost all insurers in Austria. This often makes it easier for insurers to comply with information and documentation requirements. Outsourcing and cooperation with or acquisition of modern technology and InsurTechs has been an important topic in the Austrian insurance market. Insurance intermediaries seem to have also difficulties with digitalisation, in particular in their distribution efforts, which may often be due to their smaller size. Given the continued focus of the FMA in this field, one may assume that Austrian insurers are not as digitalized as they should be and increased digitalisation efforts are to be expected.

30. How is the digitization of insurance sales and/or claims handling treated in your jurisdiction, for example is the regulator in support (are there concessions to rules being made) or are there additional requirements that need to be met?

In principle, insurance law is designed to be neutral from a legal perspective. The FMA strongly supports digitalisation efforts of the sector. Since 2016 the FMA offers a FinTech contact point as a pool of know-how and experts (also for InsurTechs).

Since a change of law in 2020 the FMA offers a “regulatory sandbox” as an incubator in order to help developing new business models to regulatory maturity in a protected environment. Interested parties may apply with the FMA but must meet specific requirements: (i) The business model must be based on information and communication technology. (ii) The business model must be accessible to a supervisory assessment, have an innovative value, and not be expected to endanger financial market stability or consumer protection. (iii) The business model must be ready for testing. (iv) Evidence needs to be provided that the sandbox can be expected to accelerate market maturity. (v) The sandbox must be expected to clarify open regulatory issues which must be expressly described. Subsequently, a regulatory sandbox advisory board at the Ministry of Finance comments on the economic interest as well as the test and market maturity. The advisory board is under a confidentiality duty. Projects may be in the regulatory sandbox for up to 2 years. If the business model requires a license, approval, admission or registration, the FMA may also grant a limited license, approval, admission or registration within the scope of its responsibilities, which may be under additional requirements, conditions and

time limits.

Generally, Austrian law allows entering into contracts by electronic means. Section 12 E-Commerce Act (*E-Commerce-Gesetz, ECG*) provides for contract statements (i.e., offer and acceptance) and other contractual declarations of a party by electronic means are received by the other party, when they can be accessed by that other party according to the usual course of business. For insurers section 5a(1) Insurance Contract Act (*Versicherungsvertragsgesetz, VersVG*) that electronic communication needs to be agreed between the parties, and either party may withdraw the consent to electronic communication at any time (of which the insurer must inform the policyholder). An additional separate consent of the policyholder is needed pursuant to section 5a(2) VersVG (which may be withdrawn any time), if the party wish to communicate electronically regarding the existence and the contents of the insurance policy (provided that this is objectively justified and is not grossly disadvantageous for the policyholder). Further, section 5a(4) VersVG entitles each party to still send relevant declarations and information in paper form if they so wish and irrespective of any agreement or consent concerning electronic communication. Also, the policyholder may always require the insurer to provide the policy also in paper form (section 5a(5) VersVG). Section 5a VersVG provides also for addition rules on how to provide and keep providing relevant information, but also that such communication has been effectively received.

Insurers also use digital means for signing new policies and providing pre-contractual mandatory information. However, as qualified electronic signatures (within the meaning of the eIDAS VO (EU) No. 910/2014) are not yet broadly used (outside certain business sectors), still insurance contracts are still often physically signed. Also other requirements might make it easier to meet in person, such as discussing and documenting the needs of customers. However, overall many insurance contracts are now entered into electronically and communication between insurer and policyholder is often (also) by electronic means. Also claims reports of policyholders may often be provided electronically.

31. To what extent is insurers' use of customer data subject to rules or regulation?

Data protection rules are set forth in the General Data Protection Regulation (GDPR) and the Austrian Data Protection Act (*Datenschutzgesetz, DSG*). In addition, section 11a seqq. Insurance Contract Act (*Versicherungsvertragsgesetz, VersVG*) provides

additional rules for insurers with regard to processing health data.

32. To what extent are there additional restrictions or requirements on sharing customer data overseas/on a cross-border basis?

There are no insurance-specific rules for this restriction. Data transfers must be assessed General Data Protection Regulation (GDPR). A transfer of data to a non-EU state is only permitted under certain conditions (e.g., adequacy decision of the European Commission, binding corporate rules, adequate safeguards) according to Artt. 44 et seqq. GDPR.

33. To what extent are insurers subject to ESG regulation or oversight? Are there regulations/requirements, including in connection with managing climate change and climate change related financial risks specific to insurers? If so, briefly describe the range of measures imposed.

So far no insurance specific ESG regulation evolved in Austria, however, the FMA highlights ESG risks as a supervisory focus since 2021 and is active against greenwashing.

The implementation of Directive 2014/95/EU (Non-Financial Reporting Directive (NFRD)) lead to a non-financial reporting obligation in section 243b of the Austrian Business Code (*Unternehmensgesetzbuch, UGB*). This requires large companies to publish information related to environmental matters, social matters and treatment of employees, respect for human rights, and anti-corruption and bribery. It is expected that the proposed Corporate Sustainability Reporting Directive (CSRD) will extent the scope and applicability of these reporting obligations.

As the necessary legal framework of ESG regulation is not yet in place, the FMA expects that the regulatory framework will be amended in order to implement the European Commission's Action Plan on Sustainable Finance. This includes an EU Regulation amending Solvency II (EU) for integration of sustainability risks into risk management, including the ORSA, investment and remuneration; the Disclosure Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector; the Benchmark Regulation (EU) 2019/2089 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-

aligned Benchmarks and sustainability-related disclosures for benchmarks, the Taxonomy Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, revision of the Corporate Sustainability Reporting Directive (CSRD), which is intended to replace the Non-Financial Reporting Directive (NFRD), and the Regulation amending the Insurance Distribution Directive (IDD).

In this context, the FMA aims at accompanying supervised entities in the transition process and has already intensified the dialogue with the insurance sector. It has also set relevant priorities for supervision, including:

- asset screenings to identify those assets in the portfolios that would be exposed to potentially higher fluctuations in price during a transition to a more CO2-neutral economy, and to analyse portfolios ;
- on product design it focuses on the integration of ESG topics in underwriting (Impact Underwriting Link), a forward-looking price structure, promotion of risk mitigating behaviour and risk advice for preventative purposes;
- the protection gap: the insurability against risks arising from natural catastrophes and the affordability of the corresponding insurance cover, whereby the funding gap is analysed in a first step, and a separate risk map drawn up regarding the protection gap on climate related risks; but its attention is on proactive measures regarding vulnerability, the localisation of properties at risk and optimised insurance coverage;
- climate stress tests will be conducted regularly to analyse risks and vulnerabilities in the insurance sector with regard to assessing the risk capacity of the individual insurance undertakings;
- to prevent greenwashing the FMA has conducted analyses on product-specific disclosures Austrian life insurers conducted for the first time in accordance with Delegated Regulation (EU) 2022/1288, which showed disclosures were only made pursuant to Art. 8 SFDR (products promoting environmental or social characteristics), but not in accordance with Art. 9 SFDR (products, that pursue a sustainable investment); and
- an ESG dialogue with insurance undertakings in order to accompany them in the transition process to achieve the objectives of the European "Green Deal".

34. Is there a legal or regulatory framework in respect of diversity and inclusion to which (re)insurers in your jurisdiction are subject?

So far the implementation of Directive 2014/95/EU (Non-Financial Reporting Directive (NFRD)) lead to a non-financial reporting obligation in section 243b of the Austrian Business Code (*Unternehmensgesetzbuch, UGB*). This requires large companies (typically including (re)insurance undertakings) to publish information related to environmental matters, social matters and treatment of employees, respect for human rights, and anti-corruption and bribery. This includes some reporting on diversity, although this is not expressly mentioned in section 243b UGB. It is expected that the proposed Corporate Sustainability Reporting Directive (CSRD) will extent the scope and applicability of these reporting obligations.

Section 87(2a) Stock Corporation Act (*Aktiengesetz, AktG*) requires that aspects of the diversity of the supervisory board with regard to the representation of both genders and the age structure and, in the case of listed companies, with regard to the internationality of

the members shall be adequately taken into account. Also the Austrian Code of Corporate Governance provides in its L-Rule 52 for certain diversity requirements.

35. Over the next five years what type of business do you see taking a market lead?

Although more changes will occur in the following years due to increased digitalisation and the consequential changes in business models, we currently see no big changes among the number of established insurance companies covering all lines of business.

More changes will follow from the increased competition due to digitalisation in the insurance distribution. This may lead to bigger intermediary companies, groups or alliances which can make better use of digitalisation of their business models and digital distribution structures. Thus, consolidation activities are expected to occur due to the existing market pressure.

Consumers will increasingly demand more digitalisation of insurance products and their handling.

Contributors

Ingo Braun
Partner

ingo.braun@bpv-huegel.com

