



Luxembourg Insurance Law

May 2009

Table of contents

1.	The insurance business in Luxembourg: the statutory framework	3
2.	The Luxembourg Insurance Supervisory Authority (<i>Commissariat aux Assurances</i>)	3
3.	Authorisation to conduct insurance business in Luxembourg.....	3
4.	Freedom of establishment and freedom to provide services	3
5.	Additional requirements applicable to non-EU insurance companies	4
6.	Reinsurance undertakings in Luxembourg	4
7.	Reinsurance captives.....	5
8.	Insurance intermediaries	6
9.	Life insurance.....	6
10.	Investment (insurance) bonds	7
11.	Distance insurance policies.....	7
12.	Financial aspects of insurance products in Luxembourg	8
13.	Reinsurance securitisation vehicles.....	10
14.	Savings Directive	10
	Contact	11

1. The insurance business in Luxembourg: the statutory framework

The most important legislation in Luxembourg governing the insurance business is the Act of 6 December 1991 on the insurance sector as amended (the “1991 Insurance Act”), which sets out the statutory framework for the provision of insurance products in Luxembourg, the Grand Ducal Regulation of 14 December 1994 implementing the 1991 Insurance Act, and the Act of 27 July 1997 on insurance contracts (the “1997 Insurance Contracts Act”).

2. The Luxembourg Insurance Supervisory Authority (*Commissariat aux Assurances*)

The Luxembourg supervisory authority for the insurance sector is the Commissariat aux Assurances (the “Commissariat”). The Commissariat is responsible for supervising the insurance and reinsurance business in Luxembourg, including the licensing and supervision of insurance undertakings, reinsurance undertakings and insurance and reinsurance intermediaries.

All persons working for or who have worked for the Commissariat are bound by a duty of confidentiality and shall incur the penalties indicated in Article 458 of the Criminal Code for violation thereof. Pursuant to this duty, any confidential information they receive in connection with their work may not be disclosed to any person or authority whatsoever, except in those cases provided for by law.

3. Authorisation to conduct insurance business in Luxembourg

Article 27 of the 1991 Insurance Act states that in order to carry out insurance business in or from Luxembourg an insurer must be authorised to do so by the relevant ministry (namely, the Ministry of Treasury and the Budget).

In order to be licensed as an insurance undertaking, an insurance company must meet the following main requirements: (i) the company must have its registered office in Luxembourg; (ii) its corporate purpose must be exclusively limited to insurance activities; (iii) it must have minimum technical reserves as determined by the 1991 Insurance Act; (iv) it must be managed by professionals with a good reputation and adequate professional qualifications; and (v) the Commissariat must be informed of the identity of any shareholders whose stake in the company allows them to substantially influence the company’s business.

4. Freedom of establishment and freedom to provide services

4.1. Freedom of establishment

According to the principle of freedom of establishment, any insurance company with its registered office in another Member State which is authorised by the supervisory authority of that Member State to conduct insurance activities is entitled to establish a branch in Luxembourg once the competent authority of the home Member State has provided the following documents to the Commissariat: (i) the company’s programme of operations, (ii) the address of the branch in Luxembourg where documents may be

obtained from and delivered to the company, (iii) the name of the branch's permanent representative, and (iv) a certificate issued by the competent authorities of the place where the insurance company's registered office is located abroad, attesting to the fact that the company meets the minimum solvency margin for its activities overall, pursuant to the relevant Community legislation.

4.2. Free movement of services

According to the principle of the free movement of services, any insurance company authorised in another Member State may provide insurance services in Luxembourg without having to be established in this country and cover risks or make commitments for which it has obtained approval in its home Member State, once the competent authority of the home Member State has provided the following documents and information to the Commissariat: (i) a certificate attesting to the fact that the company meets the minimum solvency margin for its activities overall pursuant to the relevant community legislation, (ii) the classes of insurance in which the company is authorised to deal, and (iii) the nature of the risks that the company intends to cover or the commitments it intends to make in Luxembourg.

The purpose of these provisions is to ensure that companies providing insurance services in Luxembourg are managed by persons having the qualifications and reputation necessary to ensure adequate protection of those who buy insurance products.

5. Additional requirements applicable to non-EU insurance companies

Companies from non-EU countries can conduct insurance business in Luxembourg through a branch, provided they have obtained an authorisation from the Ministry of Treasury and the Budget. In order to apply for such an authorisation, the company must, in addition to the abovementioned requirements, be able to prove that it has been active for at least three years in the insurance sector.

The Commissariat is responsible for overseeing the business of non-EU insurance companies.

6. Reinsurance undertakings in Luxembourg

Reinsurance is a means by which an insurance company can protect itself with other insurance companies against the risk of losses and consists of accepting risks transferred by an insurer or another reinsurer. This procedure allows the transferor to reduce its risk, thus minimising the danger of a single large monetary loss.

The 1991 Insurance Act states that any reinsurance undertaking with its registered office in Luxembourg must be approved by the finance minister before it can commence activities in Luxembourg.

In Luxembourg, only reinsurance undertakings whose corporate purpose is limited to the acceptance of risks assigned by insurance undertakings may be authorised to do business. In other words, reinsurance companies in Luxembourg may not engage in direct insurance activities.

The finance minister's approval is subject to the following conditions: (i) the reinsurance company must take the form of a public limited company (*société anonyme*), a partnership limited by shares (*société en commandite par actions*), a cooperative company (*société cooperative*) or a European company (*société européenne*); (ii) it must have its registered office in Luxembourg; (iii) it must carry out exclusively

reinsurance business; (iv) it must have a minimum guarantee fund, as set out in the 1991 Insurance Act (for a reinsurance undertaking, the minimum guarantee fund is EUR 3,000,000), and, finally, (v) the reinsurance company must be effectively managed by a person with a good reputation and appropriate professional qualifications in the reinsurance business.

In order to obtain an authorisation from the Ministry of Treasury and the Budget to do business in Luxembourg, the undertaking in question must inform the Commissariat of the identity of any direct or indirect shareholders with a qualifying stake in the undertaking or one that would allow them to exercise significant influence over the undertaking's business. The undertaking's direct and indirect shareholders' base must be transparent.

Luxembourg reinsurance undertakings must have good administrative and accounting organisation and adequate internal audit procedures; they must also ensure that their books of account are well maintained and that other documents relating to their activities are permanently kept in Luxembourg, have a solvency margin commensurate with their commitments and, finally, establish adequate technical provisions.

The Commissariat is responsible for supervising fulfilment of the obligations incumbent on reinsurance undertakings pursuant to the 1991 Insurance Act and its implementing legislation.

A reinsurance undertaking with its registered office in another EU Member State may set up a branch in Luxembourg if it has been authorised to conduct reinsurance business in its home country.

A reinsurance undertaking with its registered office in another EU Member State may conduct reinsurance business in Luxembourg pursuant to the principle of the free movement of services if it has obtained approval to conduct reinsurance business in its home country.

If a reinsurance undertaking from a non-EU country wishes to establish a branch in Luxembourg, it must first obtain approval from the Ministry of Finance. The undertaking must demonstrate that it already been approved to conduct reinsurance business in its home country, that its business is limited to reinsurance only and that it is supervised in accordance with internationally recognised rules.

7. Reinsurance captives

A reinsurance captive is a reinsurance company established for the specific purpose of insuring risks emanating from its parent company or affiliated entities. Using a captive insurer is a risk management technique whereby a business forms its own insurance subsidiary in order to cover its business-related risks. The term "captive" refers to the fact that the policyholder owns the insurance company; i.e. the insurer is captive to the policyholder (the parent company or affiliated entity).

In Luxembourg, a reinsurance captive must be approved by the Ministry of Treasury and the Budget in order to conduct business and is subject to the same rules applicable to reinsurance undertakings. However, since a reinsurance captive insures only the risks of its commercial or industrial parent company or affiliated entities, it has a different risk profile than a reinsurance undertaking. Consequently, under Luxembourg law, a reinsurance captive can have a lower guarantee fund than a reinsurance undertaking (EUR 1,225,000 rather than EUR 3,000,000).

8. Insurance intermediaries

According to the 1991 Insurance Act, insurance mediation consists of (i) presenting or proposing insurance contracts; (ii) carrying out other work preparatory to the conclusion of insurance contracts; or (iii) concluding insurance contracts or contributing to their management and execution. These activities are not deemed to constitute insurance mediation when they are carried out directly by an insurance company.

Luxembourg intermediaries that carry out insurance transactions on behalf of third parties must be approved by the Ministry of Treasury and the Budget. Approval may be granted to natural persons who serve as agents, insurance and reinsurance brokers or insurance sub-brokers and legal persons such as insurance agencies or insurance and reinsurance brokerage companies.

An agent is a natural or legal person engaged in insurance mediation that acts as the representative of an insurance company. Contractual relations between salaried agents and their insurance companies are governed by employment law. Contractual relations between non-salaried agents and the insurance companies which are their principals are governed by a written agency agreement between the parties.

An insurance broker is a natural person that manages an insurance brokerage company or who is established for his or her own account or a legal person which, without being linked to one or more insurance companies, acts as an intermediary between policyholders and authorized insurance companies. Insurance brokers are their clients' representatives. They may be approved only if they are not linked to one or more insurance companies. The functions of an insurance broker and a reinsurance broker may be performed concurrently, provided the broker informs the Commissariat in advance.

An intermediary shall be authorized to conduct business in Luxembourg under the principle of free movement of services, provided it has obtained an authorization to do so in its home country and the competent authority in that country has notified the Commissariat.

9. Life insurance

According to the 1997 Insurance Contracts Act, a life insurance policy is “[...] a contract according to which, after payment of a fixed or variable premium, one party, the insurer, undertakes towards another party, the insured, to provide a benefit determined in the contract [...] in which an uncertain event that affects the life, the physical integrity or the family situation of the insured is taken into consideration.”

The 1997 Insurance Contract Act provides for different types of life insurance policies, depending on the type of risk that is insured.

Thus, it is possible to have an insurance policy covering the death of the insured: under this type of policy, the risk covered is the death of the insured, and the insurer undertakes to pay the amount stipulated in the policy if the insured dies during the policy's period of validity.

It is also possible to take out an insurance policy covering the life of the insured: in this case, the risk covered is the survival of the insured for a determined period of time or until a particular age. If this condition is met, the insurer must pay the amount stipulated in the contract to the insured.

Finally, a so-called mixed policy covers both the risk of death and the risk of the insured still being alive at a certain point in time or at a given age.

10. Investment (insurance) bonds

An investment bond that takes the form of an insurance contract based on the capitalization (accumulation) principle and which includes a beneficiary clause is considered a type of insurance policy.

An investment (or insurance) bond is based on the capitalization principle and provides for a unique or periodic payments, as well as fixed undertakings with respect to the duration and amount of these payments. Upon maturity, the accrued capital is paid out to investors.

The insurance company undertakes to pay the investor a fixed amount at a determined date to be set off against the investor's payments. The performance of the contract is not linked to the length of the investor's life, and the investor does not insure his or her own life. According to the 1997 Insurance Contracts Act, an insurance bond is only considered an insurance policy if it includes a beneficiary clause.

11. Distance insurance policies

According to the 1997 Insurance Contracts Act, a distance insurance policy is a contract between an insurer and a policyholder concluded within the framework of a distance sale or the provision of services organised by the insurer.

Article 10(1) of the 1997 Insurance Contracts Act states that before the policy is entered into, the insurer must provide the policyholder with information about the insurer itself, the relevant supervisory authority and the policy, such as the right to cancel it. Communications between the insurer and the policyholder must be in the language in which the contract is drafted.

Special provisions of the 1997 Insurance Contracts Act apply to distance insurance policies where the policyholder is a natural person who did not enter into the contract for purposes related to his or her professional or commercial activity.

In addition to the information mentioned above, the policyholder must also be provided with the following information before entering into the policy: (i) the special and general terms and conditions of the policy; (ii) a description of the principal elements of the policy; (iii) the mode of payment and implementation of the policy; (iv) any additional cost to the policyholder linked to use of the distance communication mechanism; (v) an indication of the Member State's law on which the insurer based its relationship with the policyholder before entering into the distance insurance policy; and (vi) the existence or absence of any guarantee fund or other compensation mechanism.

All information provided to the policyholder must be clear and easily understandable. Obligations arising from the policy must be in accordance with the information provided to the prospective insured before entering into the contract.

The policyholder has a 14-day period within which to cancel the policy without penalty and without having to provide any reason for doing so. This period starts to run on the day the contract is entered into or on which the policyholder receives the special and general conditions, if these are received after entering into the contract.

12. Financial aspects of insurance products in Luxembourg

12.1. The premium

Under Luxembourg law, it is possible to distinguish between insurance policies with a fixed premium and those with a variable premium.

A fixed-premium policy can provide for a single premium paid by the insured upon signing the contract: the insured has thus fulfilled its obligations under the contract from the outset.

A fixed-premium policy can also provide for the payment of premiums on a regular basis in accordance with a predetermined schedule. In this case, the amount and periodicity of the premiums, as well as the return guaranteed by the insurer upon maturity, must be determined at the outset. The insurer bears the risk if the insured fails to pay the premium. Conversely, under a variable-premium policy the insured determines the amount and periodicity of the premium. The insured invests in the policy to the extent and as often as his or her savings allow him or her to do so, and the term of the contract is normally not determined at the outset.

Consequently, variable-premium policies are quite flexible.

12.2. Unit-linked insurance products (ULIPs)

A unit-linked insurance product (ULIP) is a long-term insurance contract between a policyholder (insured) and an insurance company. The policyholder commits to pay regular contributions, and the insurance company invests the money on the policyholder's behalf. The profits that can be generated by a unit-linked insurance product are expressed in terms of units and unit price. A ULIP can be viewed as a combination of an insurance policy and a mutual fund, with the basic principle that the insured invests his or her money which grows over time: the insured then has life cover while generating a return on his or her investment. In short, the insured pays a premium and receives insurance cover in return, while a portion of the premium is invested in the fund of the insured's choosing. The secured capital and benefits depend on the unit price, which is determined at the outset of the policy and which fluctuates along with the financial markets. The risk inherent in a ULIP is typically borne solely by the insured.

The statutory basis for unit-linked insurance products is found in Article 12 of the Grand Ducal Regulation of 14 December 1994 implementing the 1991 Insurance Act.

This article states that:

- For the classes described in Annex II of the law, when the performance foreseen by a contract is linked directly to the value of shares in an undertaking for collective investment or to the value of assets held by an internal fund held by the insurance company, which is usually divided into several parts, the technical reserves related to such performance must be represented insofar as possible by those same shares or, if the shares are not determinable, by those same assets.

- When the performance foreseen by a contract is directly linked to a shares index or to a reference value other than that mentioned in the preceding paragraph, the technical reserves with respect to such performance must be represented, insofar as possible, by the shares thought to represent the reference value or, if such shares are not determinable, by assets having credibility and negotiability corresponding, insofar as possible, to the credibility and negotiability on which that particular reference value is based.
- For assets held by an insurance company representing obligations directly linked to the performance mentioned in the two preceding paragraphs, the insurance company may depart from the amounts provided stipulated in Article 11 within the scope of an asset investment policy approved by the Luxembourg Insurance Supervisory Authority.

This article is directed at either products linked to a dedicated fund (fonds dédié), i.e. a special fund established for a particular contract, or products linked to special funds established for several different investors (fonds collectifs).

More specifically, a unit-linked insurance policy may be linked to external funds or to dedicated collective internal funds (contrat lié à des fonds d'investissement). The insurer does not guarantee any particular return.

A mixed policy (contrat mixte) is one linked, in part, to collective or dedicated external or internal funds with no guaranteed return by the insurer and, in part, to internal funds with a guaranteed return.

A dedicated policy (contrat dédié) is a policy linked, in whole or in part, to a dedicated fund. If it is only linked in part to a dedicated fund, the dedicated policy may also be linked to external or internal collective funds, with or without a guaranteed return from the insurer. A dedicated policy may consequently also be a mixed policy.

External funds are undertakings for collective investment, unconnected with an insurance undertaking, which are subject to the approval of and supervision by a national financial supervisory authority. Internal funds, on the other hand, are restricted groups of assets of an insurance undertaking. Collective internal funds are internal funds open to a large number of investors.

Modified Circular 01/8 of the Commissariat sets forth the investment rules applicable to the assets representing unit-linked insurance products in Luxembourg.

The assets representing a unit-linked insurance policy may consist solely of:

- shares in external funds;
- shares in internal funds without a guaranteed return;
- liquid assets.

The general conditions must stipulate that the insured has the right to receive annually, free of charge, an evaluation of his or her contract and an updated list of all assets linked to the policy. Annex II to the circular sets forth limits on the use of external funds approved by the Commissariat.

In order to make Luxembourg insurance companies more competitive, they are allowed to apply higher limits insofar as the legislation of the country where the funds are located allows the insured to invest more ("level playing field"). If a Luxembourg insurance company wishes to apply this rule, however, it must be able to prove that these higher limits are actually authorised by local law.

13. Reinsurance securitisation vehicles

A reinsurance securitisation vehicle is a legal entity, distinct from an insurance or reinsurance undertaking, that bears the risk transferred from an insurance or reinsurance undertaking and that finances this exposure by issuing securities or through another financing mechanism. The rights of creditors of a reinsurance securitisation vehicle are subordinated to the vehicle's reinsurance obligations.

In Luxembourg, reinsurance securitisation vehicles are supervised by the Commissariat. Reinsurance securitisation companies with their registered office in Luxembourg and reinsurance securitisation funds whose management company has its registered office in Luxembourg are considered to be located in Luxembourg.

A forthcoming grand ducal regulation is expected to establish supplementary or rules or derogations for reinsurance securitisation vehicles, in particular with respect to the level of exposure, solvability requirements, auditing and financing conditions.

14. Savings Directive

The EU Savings Directive (2003/48/ EC) of 3 June 2003 (the "Savings Directive") provides for an automatic exchange of information between EU Member States in relation to savings income earned by individuals or certain unincorporated bodies/entities resident or established in another EU Member State or certain dependant or associated territories of EU Member States. As an exception to this rule, Luxembourg is allowed to apply withholding tax on savings income covered by the Savings Directive.

Savings income is defined in Article 6 as interest payments relating to debt claims of every kind and as certain income derived from investment funds. Income from insurance products does not currently fall within the scope of the Savings Directive. According to a report issued by the European Commission in September 2008, it is considering extending the scope of the Savings Directive to cover at least the benefits of life insurance contracts providing no significant biometric risk coverage whose performance is strictly linked to income from debt claims or equivalent income covered by Article 6 and which have characteristics allowing them to be marketed as substitutes for undertakings for collective investment. Thus, depending on the Commission's findings, income from insurance products may soon fall within the scope of the Savings Directive.

Contact

We hope you found this publication useful and welcome the opportunity to answer any questions you may have with respect to its contents.

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