

HOW TO SET UP

AN INSURANCE COMPANY

DESCRIPTION

An insurance company is a company that protects the insured against the cost of potential loss or financial hardship, in exchange for monetary compensation, known as the premium.

In Luxembourg, the law distinguishes between life insurance business and non life insurance business. These businesses must not be exercised simultaneously by one legal entity.

AUTHORISATION REQUIREMENT

Before commencing activity, a Luxembourg insurance company must be authorised by the Minister of Finance.

SUPERVISORY AUTHORITY

The *Commissariat aux Assurances* (CAA) is in charge of the prudential supervision of insurance companies. Any substantial modification to the action plan, change to the Articles of incorporation or other alteration to the information communicated at the time authorisation was requested, must be brought to the prior attention of the supervisory authority.

LEGAL AND REGULATORY FRAMEWORK

The legal framework of insurance companies is governed by:

- the law of 6 December 1991 on the insurance sector, as modified, and implementing regulation, in particular the Grand Ducal Regulation of 14 December 1994 specifying the conditions for approval and the practice of insurance companies, and the Grand Ducal Regulation of 5 December 2007 establishing the terms and conditions of the supplementary supervision of insurance and reinsurance undertakings that are part of an insurance or reinsurance group;
- the law of 8 December 1994 relating to annual accounts and consolidated accounts, as modified;

- Circular letters concerning the insurance industry issued by the *Commissariat aux Assurances*.

These texts are available on the website of the *Commissariat aux Assurances*: www.commassu.lu

LEGAL FORM

Article 30 point 1 of the law of 6 December 1991, as modified, identifies the legal forms that can be adopted by an insurance company.

HEAD OFFICE AND CENTRAL ADMINISTRATION

A Luxembourg domiciled insurance company must have its central administration in the Grand Duchy. In addition, it must comply with robust administrative and accounting organisation and adequate internal auditing procedures.

SHAREHOLDERS

The suitability of shareholders, whether direct or indirect, who hold a qualifying holding or who are in a position to exercise a significant influence over the conduct of business, must be satisfactory, taken into consideration the need to ensure the sound and prudent management of the company.

In the case of a change in the shareholder structure, information relating to shareholders must be submitted to the *Commissariat aux Assurances*, in particular:

- the motivation for the planned transaction;
- an organisational chart of the group that owns the company, containing all parent companies and related companies and linked financial institutions;
- the most recent audited annual accounts of the shareholder;

CAPITAL BASE

In order to obtain authorisation an insurance company must have a fully paid up capital of at least EUR 5,700,000 covering inter alia the minimum guarantee fund prescribed by the relevant European legislation which amounts to EUR 2,500,000 for non life business and EUR 3,700,000 for life insurance activities.

- a calculation of the solvency margin of the shareholder.

The company will not be authorised unless the structure of its direct and indirect shareholders is transparent.

BOARD OF DIRECTORS

The company must be managed by a board of directors comprising at least 3 members, whose proficiency and professional standing are established by means of a curriculum vitae and a copy of their police record. A reasonable number of board members must be insurance professionals.

PROFESSIONAL STANDING AND EXPERIENCE OF THE APPROVED MANAGER

The day to day management of an insurance company is undertaken by a natural person who has been appointed to the role of *dirigeant agréé* (approved manager). The *dirigeant* must receive prior approval from the Minister of Finance. In order to be authorised as *dirigeant* of an insurance company, a person must have the required professional knowledge, professional morality and integrity and must be domiciled in or near the Grand Duchy of Luxembourg.

DEPOSIT AGREEMENT

Assets covering the technical provisions of the insurance undertaking must be deposited with a custodian bank approved by the *Commissariat*. These assets are pledged in favour of the policyholders and other beneficiaries of insurance contracts who benefit from an absolute priority on these assets.

EXTERNAL AUDITING

The annual accounts must be submitted for auditing by an independent auditor. The auditor must be selected from a list authorised by the *Commissariat aux Assurances*.

AUTHORISATION PROCEDURE

Prior to starting activities, an application file must be submitted to the *Commissariat aux Assurances* for examination and approval.

This file contains the following principal documents:

- the Articles of incorporation;
- information about the direct and indirect shareholders;
- information about the directors;
- information about the person proposed for the function of the *dirigeant agréé* (approved manager);
- the name of the approved auditor;
- a business plan containing, in particular, the following:
 - the risks assured by the company, broken down by class of insurance;
 - the reinsurance policy;
 - a qualitative description of the internal organisation, internal control, geographical markets and distribution network;
 - the structure of the minimum guarantee fund;
 - a set of provisional accounts;
 - a calculation of the margin of solvency over a three year period.

Useful information sources

www.commassu.lu

Commissariat aux Assurances
(Luxembourg insurance supervisory authority)

www.aca.lu

Association des Compagnies d'Assurances
(Luxembourg insurance companies association)