

# HOW TO SET UP

## AN INSURANCE COMPANY

### DESCRIPTION

An insurance company is a company that protects the policyholder, and more widely, the insured persons, against the cost of potential loss or financial hardship. The policyholder, the insured persons and the insurance company are bound by a contract called insurance policy. The policyholder commits to pay to the insurance company a certain amount of money, known as the premium, to gain access to the services of the company. The insurance company commits to compensate the financial loss incurred by the insured and/or offers certain type of services in case the insured persons face certain specific situations set out in advance in the insurance policy (*see article 1 of the law of 27 July 1997 on the insurance contract for a full definition*).

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 starting its operations, a Luxembourg insurance company must be authorised by the Minister of Finance via the local supervisory authority (see below).

### SUPERVISORY AUTHORITY

The *Commissariat aux Assurances* (CAA) is in charge of the prudential supervision of Luxembourg based insurance companies. Any substantial modification to the business 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 (*article 49 (2) of the law on the insurance sector*).

- the law of 27 July 1997 on insurance contracts;

As well as by implementing regulations:

- 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 CAA Regulation No 15/03 of 7 December 2015 on insurance and reinsurance companies;
- Circular letters concerning the insurance industry issued by the CAA, such as: Circular letter 15/03 on investment rules for life-insurance products linked to investment funds.

All insurance related regulations are available on the website of the CAA: [www.caa.lu](http://www.caa.lu)

### CAPITAL BASE

In order to obtain authorisation an insurance company must have a capital computed in accordance with the requirements of Regulation (UE) 2015/35. This minimum capital requirement is EUR 2,500,000 for non-life businesses, and EUR 3,700,000 for life businesses (*articles 49 & 112 of the law on the insurance sector; article 52 of the CAA Regulation of 7 December 2015*).

### LEGAL FORM

Article 47 of the law of 7 December 2015, as modified, identifies the legal forms that can be adopted by an insurance company. These include most usual forms of corporate entities as well as mutual insurance associations.

### LEGAL AND REGULATORY FRAMEWORK

The legal framework of insurance companies is governed by:

- the law of 7 December 2015 on the insurance sector, as modified – *this law is up-to-date regarding the transposition of the Solvency II Directive, and of the Insurance Distribution Directive (14/01/2019)*;

### HEAD OFFICE AND CENTRAL ADMINISTRATION

A Luxembourg domiciled insurance company must have its central administration in Luxembourg (*article 51 of the law of 7 December 2015*). In addition, it must comply with robust administrative and accounting organisation and adequate internal auditing procedures (*articles 71 et seq. of the law of 7 December 2015*).

## SHAREHOLDERS

The suitability of shareholders, both direct and 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 (*articles 53, 87, 89 & 91 of the law on the insurance sector*).

In the case of a change in the shareholder structure, information relating to the proposed shareholders must be submitted to the CAA, such as (*see articles 87 and 89 of the law on the insurance sector for the full list of information to provide*):

- Proof of good repute of the proposed acquirer;
- Proof of good repute of any person who will be in charge of supervising the company's operations after acquisition;
- Financial soundness of the proposed acquirer considering the type of operations foreseen;
- Capacity of the insurance company to comply with prudential requirements, especially with regards to the structure of the acquiring group: exchange of information between prudential authorities should be made possible so to ensure a proper prudential supervision of the company;
- Anti-money-laundering considerations.

## BOARD OF DIRECTORS

The company must be managed by a board of directors. The proficiency and professional standing of the members of the board are established by means of a curriculum vitae and a copy of their police record (*articles 274 et seq. of the law on the insurance sector*). There is no requirement for the members of the Board of Directors to be Luxembourg residents, even though the presence of at least one Luxembourg resident director can be helpful in dealings with local authorities.

## 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 approved manager must receive prior approval from the Minister of Finance (*article 273 of the law on the insurance sector*).

In order to be authorised as approved manager 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 (*see articles 274 et seq. of the law on the insurance sector*).

## DEPOSIT AGREEMENT

Assets covering the technical provisions of the insurance undertaking must be deposited with a custodian bank

approved by the CAA (*Article 117 (2) of the law on the insurance sector and Circular letter 16/9*). These assets are pledged in favour of the policyholders and other beneficiaries of insurance contracts who benefit from an absolute priority on these assets (*Article 118 of the law on the insurance sector*).

## 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 CAA (*articles 94 & 95 of the law on the insurance sector*).

## AUTHORISATION PROCEDURE

Prior to starting activities, an application must be submitted to the CAA for examination and approval (*see articles 44 et seq. of the law on the insurance sector and Regulation 15/3 of the CAA*).

The application should include a number of documents, such as:

- The Articles of incorporation
- Information about the directors
- Information about the direct and indirect shareholders
- Information about the person proposed for the function of the approved manager
- Information about the persons in charge of the key functions
- The name of the approved auditor
- Proof of the minimum required capital as set out in article 112 of the law on the insurance sector.
- A business plan containing, in particular, the following:
  - The type of risks the company plans to insure
  - The distribution strategy of the company
  - The reinsurance policy of the company
  - A statement regarding its eligible own funds and eligible basic own fund which will cover the solvency capital and minimum capital requirements
  - The system of governance foreseen for the first three years
  - Forecast of administrative services and production installation costs
  - A set of forecast accounts regarding the first three years: forecast balance sheet, forecast on future minimum capital requirement, on financial means to cover the technical provisions, the minimum capital and the solvency capital requirements, on management and overhead costs, on premiums and claims.

### Useful information sources

[www.cssf.lu](http://www.cssf.lu)

Commission de Surveillance du Secteur Financier  
(Luxembourg financial supervisory authority)

[www.alfi.lu](http://www.alfi.lu)

Association of the Luxembourg Fund Industry