

Mandatory provisions of Austrian law for insurance intermediaries under the Industrial Code of 1994

The following text contains the national legal provisions protecting the general good which are applicable to the carrying on of insurance and reinsurance distribution by insurance intermediaries in Austria, including but not limited to the Industrial Code (GewO) and civil law provisions, including information about the extent to which Austria has chosen to apply, under Article 22 of Directive (EU) 2016/97 (IDD), stricter provisions than provided for in Chapter V and under Article 29 (3) of Directive (EU) 2016/97. These provisions are highlighted in grey and are completely printed and explained in line with the legal disclosure obligation under Section 137d (4) GewO 1994 (Article 11 IDD).

These provisions need to be complied with by Austrian intermediaries as well as all other insurance intermediaries operating in Austria in accordance with the freedom of establishment and the freedom to provide services.

It should be noted that the list of mandatory provisions of the Austrian law given here is not exhaustive.

1. Use of intermediary services and undertakings authorised to render such services

For rendering insurance and reinsurance distribution services through third parties, insurers and reinsurers may use only the services of registered insurance, reinsurance and ancillary insurance intermediaries pursuant to Article 3 of Directive (EU) 2016/97 or undertakings authorised under Section 1 (1) 1 to 5 of the Insurance Supervision Act (VAG).

Undertakings under Section 1 (1) 1 to 5 VAG which carry out insurance distribution activities via an ancillary insurance intermediary pursuant to Article 1 (3) of Directive (EU) 2016/97 must meet the prerequisites stated in Section 127d (2) VAG.

Section 137 (2) and (2a) GewO are as follows:

Section 137. (2) An insurance intermediary means a natural or legal person or registered partnership commencing or pursuing the activity of insurance mediation against payment. The activity of insurance intermediary may be exercised either as “insurance agent” or “insurance broker and adviser in insurance matters” subject to a business licence under Section 94 (75) or (76), as an ancillary intermediary business or ancillary intermediary (para 3), depending on the actual relationship with the insurer.

(2a) Any business licence of the other type named in Para (2) which is existent or newly registered upon registering the business shall be a dormant licence. Section 93 (2) shall be applied analogously, subject to the condition that filing for resuming the licence dormant pursuant to the first sentence shall be permissible and effective only if the other type of licence named in Para (2) was filed as being dormant or terminated at the time the licence was resumed.

2. Qualifications and organisational requirements: good repute and competence

Commercial financial advisory services

§ 136a. (1) The *Gewerblicher Vermögensberater* (commercial financial adviser) (Section 94 (75)) shall be authorised to render the following services:

1. advise on creating, safeguarding and maintaining wealth and financing, except investment advice with regard to financial instruments (Section 3 (2) 1 of the 2018 Securities and Investment Supervision Act (WAG));
2. mediation of:–
 - a) investments, except for financial instruments (Section 3 (2) 3 WAG 2018);
 - b) personal loans, mortgage loans and financing (presentation, offering and other preliminary work on loan contracts and their conclusion for the lender); and
 - c) life and accident insurance contracts.

(2) In mediating life and accident insurance contracts, the commercial financial adviser shall be governed by the provisions of Sections 137 to 138 and all other rules governing insurance mediation.

(3) Commercial financial advisers shall be authorised to carry out activities as set forth in Section 1 (45) WAG 2018 as securities intermediaries (Section 94 (77)). In such case, activities as a tied intermediary pursuant to Section 1 (44) WAG 2018 shall not be pursued.

(4) When registering as a commercial financial adviser (Section 94 (75)) and intending to operate as a securities intermediary, proof of an agency relationship shall be added to the papers

specified in Section 339 (3). Work as a securities intermediary may be started only upon registration in GISA.

(5) The operator shall inform the licensing authority promptly of the termination of the last agency relationship. Once the authority has been informed thus, it immediately launches a suspension procedure for the operator's activities as a securities intermediary and will suspend the licence within two months unless the operator promptly provides proof of a valid agency relationship. In this case the first sentence of Section 361 (2) shall not apply. A complaint against the suspension decision shall not have any delaying effect. The commencement of the suspension proceedings shall be registered in GISA.

(6) Commercial financial advisers shall satisfy the requirement of constant (further) professional training in order to maintain an adequate performance level that reflects the responsibilities and market in which they operate. To this end, advisers need to take training courses of at least 20 hours per year. For commercial financial advisers, this obligation shall replace the obligation under Section 137b (3). Proof of participation in training courses shall be kept at the workplace for at least five years accessible for inspection at any time by the authority. Commercial financial advisers may employ only such staff as meet the requirements of this paragraph.

(6a) Training within the meaning of Para 6 above shall mean relevant courses. The appropriate department at the Austrian Economic Chamber shall develop a curriculum which provides that the candidate must take at least half of the obligatory training at specified educational institutes. The curriculum may extend over several years and it shall be authorised by the Federal Minister for Digital and Economic Affairs. The Minister shall give the Financial Market Authority (FMA) adequate opportunity to comment before authorising it. The curriculum may provide for a lesser number of minimum hours of training for operators or their staff if their trade excludes some aspects of the licensing scope.

Section 137b. (1) The sole proprietor shall meet the requisite specialist qualification along the lines of minimum requirements set down in **Annex 9**. In the case of companies (Section 9 (1)), only persons who meet the criteria of this paragraph may be employed as executives principally responsible for insurance mediation. The same shall apply for all employees directly involved in insurance mediation. This may be complied with either by a certificate of competence for insurance mediation or commercial financial advice, or, under Section 19, by relevant training courses or adequate employment periods.

(2) For employees directly involved in insurance mediation, proof of internal training with regard to the distributed products or a comparable training shall suffice.

(3) Persons as defined in Paras 1 and 2 shall satisfy the requirements of continuous occupational training as set forth in **Annex 9** in order to maintain a suitable performance level corresponding to the responsibilities undertaken by them and the respective market. For this purpose, such persons shall take training courses of at least 15 hours per year, or, if they are ancillary insurance

intermediaries, at least five hours per year, starting in the calendar year next following GISA registration. Proof of their participation in the training courses shall be kept for inspection by the authority at any time at the domicile of the business for at least five years.

(3a) Training courses within the above meaning shall be pertinent courses. The responsible departments of the Austrian Economic Chamber shall develop curriculums for the content of such courses. For persons as defined in the first and second sentences of Para 1 above, the curriculum shall provide that at least half of the obligatory training may be taken only at specified independent educational institutions. The curriculum shall be confirmed by the Federal Minister for Digital and Economic Affairs.

(4) Detailed provisions regarding expert qualifications required from persons working in a subsidiary capacity, as ancillary intermediaries or as a restricted business and in the cases set forth in Paras 2 and 3 may be specified in an ordinance pursuant to Section 18. They shall acquire documented qualifications in the form of general insurance-specific basic knowledge reflecting the type of business they intend to pursue, and business-specific knowledge with regard to the permissible insurance lines of the subsidiary, ancillary or restricted business.

(5) Executives and employees working directly as insurance intermediaries must not be excluded from exercising a trade under Section 13 (1) to (4).

(6) The authority shall make regular checks of compliance with the requirements under Paras 1 to 5. Persons authorised to act as insurance intermediaries shall be obliged to keep the requisite records up to date and enable their inspection on request.

(7) Insurance intermediaries registered in another EU or EEC Member State may operate as insurance intermediaries in Austria within the scope of the freedom of establishment or the freedom to provide services. To do so, they require a notification by the competent authorities of their home state. They are then registered in the register of insurers and money brokers of GISA (Austrian Business Licence Information System). No procedure as provided for in Part VI shall be carried out unless the final part of Section 373a (1) with regard to prohibition and Section 373i2 are applied *mutatis mutandis*.

3. Liability insurance:

Third-party liability coverage, procedural provisions

Section 137c. (1) In order to obtain a licence for the trade of insurance mediation, it is necessary to furnish proof of having taken out professional liability insurance coverage valid for the entire EU territory or another full-scale guarantee which covers liability in case of violation of the duty of care and is at least equivalent in economic and legal terms, amounting to at least € 1,250,000 per loss and € 1,850,000 for all losses within one year. The above minimum insured amounts shall rise or fall depending on the regulatory technical standards pursuant to Article 10 (7) of

Directive (EU) 2016/97 on insurance distribution (“Insurance Distribution Directive”), OJ L 26 of 2 January 2016, p. 19, as amended in OJ L 222 of 17 August 2016, p. 114, and Directive (EU) 2018/411 amending Directive (EU) 2016/97 as regards the date of application of Member States' transposition measures, OJ L 76 of 19 March 2018, p. 28. Professional liability insurance shall be obtained from an undertaking that is authorised to do business in Austria. The insurance contract shall be governed by Austrian law and the venue shall be in Austria. For insurance intermediaries who have a licence under Section 94 (76), the additional coverage from the insurer for professional liability insurance shall not be limited in time. Proof shall be furnished to the authorities that coverage of the minimum insured sums continues for the period of additional coverage.

(2) For activities of insurance mediation, professional liability insurance or coverage guarantee as set forth in Para 1 may be replaced by a declaration of unlimited liability issued by an insurer or reinsurer in whose name the insurance intermediary acts or is authorised to act and which is at least equivalent in economic and legal terms, provided that the insurance intermediary acts only for one or – if the insurance products do not compete with each other – several insurers. If several undertakings have issued a declaration of liability they shall be jointly and severally liable whenever direct assignment is not possible.

(3) When registering the trade of commercial financial advice (Section 94 (75)), except when insurance mediation is not excluded by the scope of the trade, and registering the trade of insurance mediation (Section 94 (76)), proof shall be furnished, in addition to the requirements under Section 339 (3), that a professional liability insurance or other liability guarantee pursuant to Para 1 or 2 has been taken out and, if money from customers is accepted, that customer accounts are separated within the meaning of Section 138 (2). If activities as an insurance agent are intended, each agency relationship, including the type(s) of insurance, shall be notified. The person filing the trade may commence his/her trade only upon entry in the register of insurers and money brokers GISA.

(4) When the insurer has no obligation to perform under the professional liability insurance vis-à-vis the insured person, the provisions of Section 92 Industrial Code (GewO) 1994 and the provisions of Sections 158b to 158i of the Act Governing Insurance Contracts (VersVG), Federal Law Gazette no. 2/1959 as amended shall apply to the insurer's notification to the authority which has local jurisdiction for the insurance intermediary and with regard to the insurer's third-party liability. Section 92 GewO 1994 and Sections 158b to 158i VersVG shall also apply in cases of other coverage for liability under Para 1 or 2. Section 158c (2) VersVG shall apply subject to the proviso that a fact which results in the non-existence or termination of the insurance relationship becomes effective only upon expiry of two months after the insurer has notified the authority of such fact.

(5) If a professional liability insurance or other liability coverage within the meaning of Para 1 or 2 is discontinued, the authority shall promptly initiate proceedings to suspend the licence

and shall terminate such licence within two months at the latest unless proof is promptly furnished that a new professional liability insurance or other liability coverage has been obtained. Section 361 (2) shall not apply in such event. Commencement of proceedings to suspend the licence shall be entered in the register of insurers and money brokers GISA. If activities in another EEC member state are filed in the register of insurers and money brokers GISA (Sections 365a (1) 13 and 365b (1) 10), the authority shall inform the requisite authorities of the other EEC member state of such suspension.

(6) Ongoing suspension proceedings for insurance intermediaries shall be filed in GISA.

4. Types of communication

Section 1 of the Rules of Conduct specifies how information required to be given to insured persons.

Rules of Conduct

Section 1. (1) Insurance intermediaries must always act honestly, fairly and professionally vis-à-vis their clients and must have their best interests in mind.

(2) Without prejudice to Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) no 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive), OJ 149 of 11 June 2005, p. 22, all information regarding insurance mediation, including marketing information, which the insurance intermediary furnishes to clients or potential clients must be fair, unequivocal and not misleading. Marketing information must always be clearly recognisable as such.

(3) Insurance intermediaries must not accept any remuneration nor remunerate or evaluate their employees' performance in a way that collides with their duty to act in their clients' best interests. In particular, insurance intermediaries must not take any action to recommend to a client a given insurance product by remuneration, sales target or in another way which might generate incentives for themselves or their employees even though the insurance intermediary might offer another insurance product which better corresponds to the client's needs.

(4) Insurance intermediaries acting as insurance agents must make this clear in their business dealings. The papers and documents used for insurance mediation must clearly show the name, address, GISA number and identification as "insurance agent" in their heading or footer and list all agency relationships.

(5) Insurance intermediaries acting as insurance brokers and advisers in insurance matters must make this clear in their business dealings. The papers and documents used for insurance mediation must clearly show the name, address, GISA number and identification as “insurance broker and adviser in insurance matters” in their heading or footer.

(6) Persons who are authorised to act as insurance intermediaries due to a licence for commercial financial advice (Section 94 (75)) must clearly show in their business dealings and on the papers and documents in the heading or footer that they are authorised to act as insurance intermediaries for life and accident insurance contracts. Such information must include a clarification of whether the persons act as insurance agents or as insurance brokers and advisers in insurance matters.

(7) Persons who are registered as insurance intermediaries working in a subsidiary capacity, as a restricted business or as ancillary insurance intermediaries must clearly show in their business dealings and on the papers and documents in the heading or footer that they are working in a subsidiary capacity, as a restricted business or as ancillary insurance intermediaries. Such information must include a clarification whether the persons act as insurance agents or as insurance brokers and advisers in insurance matters.

(8) If an insurance intermediary is authorised to receive premiums for the insurer or amounts to be paid to clients, this must be clearly shown in the papers and documents used.

Advice

Section 3. (1) Prior to filing the insured person’s contractual statement the insurance intermediary must clarify the client’s wishes and needs based on information given by the client and furnish the client with objective information on the insurance products in a comprehensible form so that the client can make his/her decision in an informed way. All contracts offered must correspond to the client’s wishes and needs regarding the insurance.

(2) The insurance intermediary is obliged to advise the client by giving a personal recommendation and explaining why a given product best corresponds to the client’s wishes and needs.

(3) If the insurance intermediary works as an insurance agent and mediation is just for one insurer or several insurers provided that their insurance products do not compete with each other, the obligation set forth in Para 2 does not apply when the person wishing to take out a specified insurance contract, being warned, demonstrably in a separate declaration waives obtaining advice. The insurance intermediary must not make the potential client waive his/her right to be advised.

(4) Information pursuant to Paras 1 and 2 must be matched to the complexity of the insurance product offered and the type of client.

(5) If an insurance intermediary informs the client that his/her advice is based on a balanced and personal analysis, he/she is obliged to underpin his/her advice by analysing, within the meaning of Section 28 (3) of the Brokers Act, Federal Law Gazette no. 262/1996 as amended in Federal Law Gazette I no. 112/2018, the insurance contracts at that time offered on the market. In the event of Section 1 (9) 8 (c), this applies, with limitations, for insurance contracts offered by insurers for which the insurance intermediary is permitted to carry out and actually carries out insurance transactions.

(6) Prior to filing of the insured person's contractual statement – regardless of whether or not advice is given and of whether the insurance product is part of a package pursuant to Section 6 – the insurance intermediary must furnish the client with comprehensible relevant information on the insurance product in order to enable the client to make an informed decision, giving due regard to the complexity of the insurance product and the type of client involved.

(7) When selling non-life products as listed in Annex I of Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II), OJ L 351 of 17 December 2009, p. 1, the information specified in Para 6 must be provided by way of a standardised information sheet on insurance products pursuant to Section 133 (3) of the Insurance Supervision Act of 2016 (VAG 2016), Federal Law Gazette I no. 34/2015, as amended in Federal Law Gazette I no. 112/2018, on paper or another permanent data carrier. When selling life products pursuant to Section 5 (63) b VAG 2016, the information specified in Para 6 must be provided by way of a standardised information sheet on life insurance products pursuant to Section 135c (3) VAG 2016, on paper or another permanent data carrier.

5. Provisions of the Federal Act Governing Brokers' Legal Relations (MaklerG), Federal Law Gazette no. 262/1996

Definition

Section 1. A broker shall mean a person who mediates transactions for a customer with a third party based on a private law agreement (brokerage contract), without being permanently charged with such transactions.

Broker's competences

Section 2. (1) Except upon an express agreement, the broker shall not be authorised to conclude a mediated transaction or accept payments by third parties on behalf of his/her customer.

(2) For as long as the third party is neither known nor needs to be known to the customer, the customer may make declarations to the broker to protect his/her rights provided that the broker is authorised to accept declarations of legal effectiveness for a third party which may lead to the conclusion of a contract with such third party.

Rights and duties under a brokerage contract

Safeguarding of interests and support

Section 3. (1) The broker shall safeguard the customer's interest with due care and diligence. This shall also apply when the broker acts simultaneously for a third party.

(2) The customer shall support the broker in good faith in rendering the broker's mediation and shall keep confidential any business matters of which the customer is informed.

(3) The broker and his/her customer undertake to exchange all necessary information.

(4) Damages may be claimed if any obligation under Paras 1 to 3 is infringed. If the broker is entitled to a commission, the customer may request a reduction for infringement of critical obligations proportionate to the broker's lesser merits caused by the infringement.

Mediation; conclusion

Section 4. (1) Unless otherwise agreed, the broker shall not be obliged to make efforts to achieve a mediation.

(2) The customer shall not be obliged to enter into the initiated transaction.

Dual activity

Section 5. (1) Except with the customer's express consent, the broker shall not work simultaneously for a third party or accept a reward from such third party, unless a divergent practice has been established for the relevant business line.

(2) In case of an infringement, the customer may request that the broker hand over the unlawfully received reward and compensate any loss in excess of such amount. This shall be without prejudice to the second sentence of Section 3 (4).

(3) Once the broker acts as dual broker he/she shall inform both customers thereof. This notification obligation is waived when the broker can assume, given the circumstances, that his/her dual activity is known to both customers.

Commission

Section 6. (1) The customer shall be obliged to pay a commission if the transaction to be mediated with a third party is brought about due to the broker's contractual merital activity.

(2) Merely naming a third party shall not give rise to a claim for a commission, unless a divergent practice has been established for the relevant business line.

(3) The broker shall be entitled to a commission even if, due to his/her activities, the transaction to be brought about, while not the one to be contractually mediated, is still equivalent in its economic purpose.

(4) The broker shall not be entitled to a commission if he/she becomes a contracting party to the transaction. This shall also apply if the transaction concluded with the third party is the economic equivalent of the transaction concluded by the broker him-/herself. In the event of close family or economic ties between the broker and the third party which might impair the safeguarding of the customer's interests the broker shall be entitled to a commission when he/she promptly informs the customer of such close relationship.

(5) If two or more brokers fulfil the requirements for a commission for a brokered transaction, the customer nevertheless shall owe just one such commission.

Such commission shall be due to the broker with the greatest merit in the brokered transaction. If none predominates the commission shall be shared proportionately to the merits, or equally in cases of doubt. If the customer has, without any gross negligence, paid too much in commission to one of several brokers involved, he/she shall be released of his/her debt vis-à-vis the other brokers with merit in the transaction to the amount of overpayment. Brokers thereby reduced in their pay may request compensation from the other brokers.

Creation of an entitlement to a commission

Section 7. (1) Entitlement to a commission shall come into being when the transaction becomes legally effective. The broker shall not be entitled to an advance.

(2) The broker shall not be entitled to a commission if and when it becomes clear that the contract between the third party and the customer does not come about for reasons beyond the customer's control. If the third party is in default, the customer shall be obliged to prove that he/she has taken all reasonable steps to make the third party perform.

Amount of commission

Section 8. (1) If not otherwise agreed, the broker shall be due a commission in line with the local custom for mediation services rendered. If it is impossible or unreasonably difficult to determine its amount, a reasonable commission shall be owed.

(2) Discounts granted by the customer to a third party shall reduce the base for computing the commission only if they have been agreed upon conclusion of the transaction.

(3) The commission shall be computed without considering non-permissible remunerations.

Reimbursement of expenditures

Section 9. The broker shall not charge any reimbursement of general overheads and expenditures arising from his/her business operation. Expenditures by the broker arising from additional orders shall be reimbursed only when expressly agreed. This shall also apply when the desired legal transaction does not come about.

Due date

Section 10. Entitlement to a commission and for reimbursement of additional expenditures shall become due upon their incurrence.

Lapse of time

Section 11. Claims from the brokerage contract relationship shall become statute-barred three years after their due date. Statute-barring shall be interrupted for as long as the broker has been unable to obtain knowledge that the brokered transaction has come about.

Termination of the contractual relationship

Expiry of time limit; early termination

Section 12. (1) A brokerage contract concluded for a specified time limit shall terminate upon expiry of such time limit.

(2) Each contracting party may advance termination of the contract without notice for important reason.

Notice

Section 13. If the contract runs for an unlimited term each contracting party may terminate it at any time with immediate effect.

Special arrangements

Sole agent

Section 14. (1) If the customer undertakes not to use any other broker for the transaction to be brokered the broker acts as his/her sole agent. In such event, the broker shall use his/her best efforts to broker the transaction.

(2) A sole agency contract may be concluded only subject to a reasonable time limit. The same shall apply for any extension.

Commission arrangements in the event brokerage is not successful

Section 15. (1) An arrangement by which the customer must make a contribution, e.g. as compensation or reimbursement for expenditures and efforts made, without any success resulting from the broker's activities, shall be permissible only up to the amount agreed or in line with local custom and only on condition that:–

1. the transaction described in the brokerage contract fails in bad faith only because the customer contrary to previous negotiations and without good cause fails to perform a legal act required for the transaction to come about;
2. another transaction than is equivalent in purpose comes about with the third party procured by the broker, provided that the brokered transaction comes within the broker's sphere of activities;

3. the transaction described in the brokerage contract is made with another person than the customer because the customer has informed such person of the option made known to the customer by the broker, or the transaction is made with another person than the procured third party because such procured third party has informed such person of the opportunity; or
4. the transaction does not come about with the procured third party because a statutory or contractual right of first refusal, resale or subrogation has been exercised.

(2) In the case of a sole agency contract, such payment may be agreed if:–

1. the customer advances termination of the sole agency contract without cause;
2. the transaction has come about in breach of contract during the term of the sole agency contract by the mediation of another broker instructed by the customer; or
3. the transaction has come about during the term of the sole agency contract by other ways than the mediation of another broker instructed by the customer.

(3) Payments under Paras 1 and 2 shall be deemed to be remuneration within the meaning of Section 1336 of the Austrian Civil Code (ABGB).

Special provisions for insurance brokers

Definition

Section 26. (1) An insurance broker shall be a person mediating insurance contracts in his/her capacity of commercial broker. A framework commission agreement with an insurer shall not affect such person's standing as an insurance broker, and neither shall it be affected by being permanently charged as a broker by the customer.

(2) The provisions of this Federal Act applicable to insurance brokers shall apply also to persons who occasionally act as non-gratuitous insurance intermediaries. They shall also be applied for as long as the customer has not been informed by the insurance intermediary that he/she is not acting as insurance broker.

(3) To the extent that Sections 43 ff of the Act Governing Insurance Contracts (Versicherungsvertragsgesetz) of 1958, Federal Law Gazette no. 2/1959, must be applied, this Federal Act shall not be applied to the issues regulated in such sections.

(4) The provisions regarding final bills and diaries shall not apply to insurance brokers.

Dual activities with predominant safeguarding of interests; mediation obligation

Section 27. (1) In spite of being active for both parties of the insurance contract, the insurance broker shall predominantly safeguard the customer's interests.

(2) The insurance broker shall be obliged to furnish the customer with the information and advice, including documentation, provided for in the Rules of Conduct for the customer's protection and to use his/her best efforts to mediate the transaction.

(3) Unless any divergent arrangement has been made with the insurer, the insurance broker shall not be authorised to accept on behalf of the insurer, with legally binding effect, statements and payments made by the customer. This shall be without prejudice to Section 2 (2). The insurance broker shall not be entitled to offset or retain payments accepted by on behalf of the customer or insurer.

Safeguarding the customer's interests

Section 28. Safeguarding of the customer's interest pursuant to Section 3 (1) and (3) and Section 27 (1) shall comprise information and advice given to the customer on the insurance protection to be provided and, specifically, the following obligations by the insurance broker:

1. preparing an adequate risk analysis and reasonable coverage concept, and compliance with the documentation obligation provided for in the Rules of Conduct to protect the insurance customer;
2. assessing the insurer's solvency within the scope of accessible expert information to the extent necessary on a case-to-case basis to select the insurer for the diligent safeguarding of the customer's interests;
3. mediating the best possible insurance protection on a case-to-case basis, where safeguarding may, on objectively justified grounds, be restricted to certain local markets or insurance products, provided that the insurance broker expressly informs the customer thereof;
4. notifying the legal transactions carried out for the customer and provision of a copy of the customer's contractual statement if it was made in writing; provision of the insurance policy and the terms underlying the contract, including the provisions on determining the premium;
5. checking the insurance policy;
6. assisting the customer in handling the insurance relationship before and after an insured event; including in particular in observing all deadlines of importance for the customer;
7. checking insurance contracts on an ongoing basis and, if necessary, furnishing suitable proposals for improving insurance coverage.

Safeguarding the insurer's interests

Section 29. In his/her relationship with the insurer, the insurance broker shall primarily safeguard those interests that the customer has to consider vis-à-vis the insurer before and after concluding an insurance contract. Specifically, the insurance broker shall be obliged to inform the insurer of special risks known or discernible to the insurance broker upon initiation of the contract.

Commission

Section 30. (1) Unless expressly agreed otherwise in writing, the insurance broker shall not be entitled to a commission, other remuneration or expense allowance from the brokerage contract with the customer. Upon successful mediation, the insurance broker shall be entitled a

commission from the brokerage contract with the insurer as defined in Sections 6, 7 (2) and 8 (1) and (3).

(2) Entitlement to a commission shall arise upon the legal effectiveness of the mediated transaction if and to the extent the customer has paid the premium owed or should have paid if the insurer had met its obligations. If the insurer has justified grounds for terminating the insurance contract or for reducing the amount of the insurance premium, the entitlement to a commission shall be reduced.

(3) Predominant merit within the meaning of Section 6 (5) shall be accorded to the insurance broker who has passed on the customer-signed application to the insurer.

(4) If the brokerage contract with the insurer states that upon termination of the contractual relationship the insurance broker is not entitled to any further acquisition commissions for successfully mediated insurance contracts, such arrangement shall be ineffective inasmuch as the insurer has unilaterally terminated the brokerage contract without any important cause for which the insurance broker would have been responsible.

Tallying and due date

Section 31. The insurer shall tally commission claims not later than one month after the entitlement has arisen. It shall be due on the day on which the tally is made or should, at the latest, have been made.

Section 31a. Amounts payable by the customer to the insurer or by the insurer to the customer shall always be passed on through strictly separate accounts held with a bank (open trust accounts, escrow accounts). Such accounts are subject to the right of opposition pursuant to Section 37 Enforcement Code (EO) and the right of separation pursuant to Section 44 Insolvency Act (IO). Any cash amounts accepted by the broker shall be promptly paid into these customer accounts.

Mandatory provisions

Section 32. Sections 4 (2), 13, 27 and the first sentence and items 1 to 3 of Section 28 may not be waived to the customer's detriment.

6. Insurance agents (Act Governing Insurance Contracts VersVG, Federal Law Gazette no. 2/1959 as amended)

Insurance agent

Section 43. An insurance agent within the meaning of the provisions below shall be a person who acts as insurance intermediary (Section 137 (1) Industrial Code (GewO) 1994) in a self-employed capacity or as insurance distributor (Section 5 (59) Insurance Supervision Act VAG) in the capacity of the insurer's employee. An insurance agent within the meaning of the provisions

below may also be a person who acts as such with the insurer's consent provided that such consent can be assumed from the relevant circumstances.

Section 44. (1) If the insurance broker is in such a close economic relationship with the insurer that it is doubtful whether he/she is able to safeguard the insured party's interest (pseudo broker) then the insurer shall be liable vis-à-vis the insured party for any fault of such intermediary same as if it were the insurer's own.

(2) The insurer shall be liable vis-à-vis the insured party for any fault of an insurance agent or pseudo broker concerning compliance with an obligation to inform or advise to be met solely by the latter, same as if it were the insurer's own fault.

Authorisation

Section 45. (1) An insurance agent, even if charged only with mediating insurance transactions, shall be deemed to be authorised for the insurance line for which he/she is appointed:

1. to accept applications for the conclusion, extensions or amendment of an insurance contract and the revocation of such applications;
2. to accept from the insured party notifications to be made during the term of an insurance relationship as well as notices of termination and rescission or other notifications relating to the insurance relationship;
3. to pass on the policies or renewal policies executed by the insurer;
4. to accept premiums plus interest and cost provided that the insurance agent holds a premium notice signed by the insurer; a facsimile of the personal signature shall suffice as signature.

(2) If the insured party has paid the insurance agent an amount dedicated to the insurer such payment shall be deemed to have been made directly to the insurer. Any amounts paid by the insurer to the insurance agent for passing on to the insured party shall be deemed paid to the insured party only when the latter has actually received them.

(3) If an insurance agent is authorised to conclude insurance contracts he/she shall also be authorised to agree amendments or extensions to such contracts and issue termination and rescission notices.

Section 47. A third party shall be obliged to accept any restriction of the authorisation due to the insurance agent under Section 45 only if he/she was aware of such restriction at the time the transaction or legal act was performed or did not know about it due to gross negligence. The insurer shall not be allowed to plead any divergent agreement. Section 10 Consumer Protection Act (KSchG) shall remain unaffected.

Section 48. (1) If the contract was mediated or concluded by an insurance agent, any disputes arising from it regarding the insurance relationship with the insurer shall be settled by the court in the district of which the insurance agent was established or, if no establishment existed, domiciled at the time of mediation or conclusion of the contract.

(2) Jurisdiction under Para 1 shall not be excluded by an agreement.

For further information please contact:

Owner and publisher:

Federal Ministry for Labour and Economy, Stubenring 1, A-1010 Vienna

Vienna, Status as of 19/07/2022

Stefan Trojer

Telephone: +43 1 711 00-805782

E-mail: stefan.trojer@bmaw.gv.at