

Insurance and Reinsurance in Austria: Overview

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A Q&A guide to insurance and reinsurance in Austria.

The Q&A gives a high level overview of: the regulatory framework for insurance and reinsurance activities; rules relating to authorisation of insurers and reinsurers and insurance intermediaries; ownership restrictions; ongoing requirements; penalties for non-compliance with regulatory requirements; sales and marketing of insurance/reinsurance services; transfer of risk; reinsurance contracts and risks; contracts and policies; claims; dispute resolution; insolvency; and tax.

Regulatory Framework

1. What is the main legislation and regulatory authorities for insurance and reinsurance activities in your jurisdiction?

Legislation

The national regulatory framework is primarily contained in:

- The Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) (VAG).
- Various EU directives and regulations.

There are various EU guidelines and recommendations, as well as advisory opinions from the national regulator. These are regularly updated and supplemented.

The VAG was updated in 2016 to comply with the *Solvency II Directive* (2009/138/EC) and governs most of the obligations of insurance and reinsurance companies.

Further obligations derive from the *Insurance Distribution Directive* ((EU) 2016/97) (IDD), which was implemented in 2018 and 2019 by the:

- VAG: the VAG primarily governs insurance and reinsurance companies and the organisational and regulatory framework regarding concession, legal form, capital and liquidity requirements, governance, and so on.

Insurance and reinsurance companies must:

- establish an effective governance system to ensure sound and prudent corporate governance that is appropriate to the nature, scale, and complexity of the business (Article 107, VAG); and
 - act honestly, fairly, and professionally in accordance with the best interests of their clients in their insurance distribution activities (Article 128, VAG).
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- Insurance Contracts Act (*Versicherungsvertragsgesetz*) (VersVG): this primarily focuses on insurance contracts but does not apply to reinsurance contracts and imposes obligations on both policyholders and insurers.
 - Industrial Code (*Gewerbeordnung*) (GewO): the GewO mainly governs the activities of intermediaries.

Capital and liquidity requirements are set by the Solvency II Directive and Delegated Regulation (EU) 2015/35.

Subsidiaries of foreign insurance companies require a licence from the FMA. This licence applies only to the subsidiary in Austria (Article 13, VAG).

Insurers domiciled in another EEA member state do not require any further authorisation to operate in Austria. However, they must register for business operations through their competent authority in the country of origin. After registration, they can operate in Austria through a branch or under the freedom to provide services.

Regulatory Bodies

The national regulatory body is the *Austrian Financial Market Authority* (FMA).

The EU regulator is the *European Insurance and Occupational Pensions Authority* (EIOPA).

The objectives of insurance supervision are to safeguard the interests of insured persons and to protect the insurance industry to function (which includes protecting the stability of the financial markets and system).

The FMA and the administrative courts have jurisdiction over disputes relating to supervisory issues. The civil and commercial courts hear disputes relating to contractual issues.

The *Austrian Insurance Association* (*Verband der Versicherungsunternehmen Österreichs*) (VVO) represents the interests of all private insurance companies operating in Austria and provides support to its members on legal, tax, economic, and international matters. The VVO also publishes conditions of insurance for different insurance segments, which can be used by its members.

Subsidiaries of companies or groups based in an EEA country are only subject to limited supervision by the FMA. Non-EEA insurance undertakings are subject to greater supervision.

2. Which types of insurance and reinsurance activities and insurers are regulated in your jurisdiction?

The VersVG and VAG cover a broad range of insurance. The main types of insurance are:

- Indemnity insurance.
- Property insurance.
- Personal insurance (such as life, health, and accident insurance).

Some activities may qualify as insurance business but do not fall within the scope of insurance regulation, such as litigation funding.

There are no special provisions on takaful insurance. Therefore, these contracts must comply with the general provisions of insurance law.

Authorisation

Insurers and Reinsurers

3. What authorisations are required to carry out insurance and reinsurance activities in your jurisdiction and how are they obtained?

Application

Domestic insurance and reinsurance companies domiciled in Austria must obtain a licence from the FMA (Article 6, VAG). The FMA provides information on the licensing process on its [website](#).

Licence fees are subject to the Austrian Financial Authority Fees Regulation (*FMA-Gebühren-Verordnung*) (FMA-GebV). Fees must be paid for each official action of the FMA. The amount of the fee varies depending on the legal form and size of the insurance company.

Conditions

To obtain a licence, an insurance/reinsurance company must:

- Take the form of either of the following:
 - a joint-stock company, a European company (*societas europaea*), or a mutual insurance association; or
 - a branch of an insurance undertaking with its registered office in a third country (special rules apply to Switzerland).
- Calculate and meet the solvency capital requirements (Articles 174 to 192, VAG).
- Meet the applicable minimum capital requirement (MCR):
 - EUR2.7 million for non-life insurance undertakings, including captive insurance undertakings, except in certain cases;
 - EUR4 million for life insurance undertakings, including captive insurance undertakings;
 - the sum of the above amounts for composite undertakings; or
 - EUR3.9 million for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case an MCR of EUR1.3 million applies.

(Article 193, VAG.)

- Employ personnel with the skills, knowledge, and expertise necessary to carry out the responsibilities allocated to them properly and ensure that all persons who effectively run the undertaking or have governance or other key functions:
 - hold professional qualifications, knowledge and experience that are adequate to enable sound and prudent management; and
 - are of good repute and integrity.
- Ensure that the special rules and notification requirements for certain groups of persons regarding the expertise-based qualification and personal reputation are met; There are notification requirements to the FMA for:
 - members of the management board;
 - the Chairperson and other members of the supervisory board; and
 - governance and other key functions.

To check adequate theoretical knowledge, an appointment with the FMA for a fit and proper test is generally arranged by way of a follow-up to the notification regarding the person's appointment. The fit and proper test primarily contains questions about supervisory topics and standards.

- Set up an effective risk management system that includes all the necessary policies, processes, and reporting procedures (Article 110, VAG).
- The risk management system must be effective, integrated into the organisational structure and decision-making processes of the insurance undertaking and duly involve the persons who effectively run the insurance undertaking or hold other key functions. It must cover the risks to be included in the calculation of the Solvency Capital Requirement and any that are not fully included in this calculation, but at least the following areas:
 - underwriting and provisioning;
 - asset-liability management;
 - investments, in particular derivatives and similar obligations;
 - liquidity and concentration risk management;
 - risk management of operational risks; and
 - reinsurance and other risk mitigation techniques.
- Have an effective governance system that ensures sound and prudent corporate governance and that is commensurate with the nature, scale, and complexity of the business (Article 107, VAG).

The governance system must at least guarantee:

- an appropriate and transparent organisational structure with a clear allocation and appropriate separation of responsibilities;
- an effective system for the transmission of information; and
- compliance with the provisions of Articles 108 to 113, Articles 117 to 119 and Articles 120 to 123 of the VAG.

EEA insurance and reinsurance undertakings do not require a licence by the FMA to:

- Pursue contractual insurance activities through a branch in Austria.
- Provide services in Austria under the freedom to provide services.

Key Stages and Timing

After submission of all the application documents, the FMA must issue a decision within six months. The actual duration of the procedure varies depending on the:

- Nature, extent, and complexity of the business model to be assessed.
Applicant's shareholding and organisational structure.
- Financial soundness of the applicant.

Duration and Renewal

Licences issued by the FMA are generally permanent and only expire on certain grounds, for example, if the licensed entity does not start its business activity within 12 months after the licence is granted (Article 12, VAG).

Insurance Intermediaries

4. How are insurance intermediaries regulated? What authorisations do they require?

Insurance and reinsurance intermediary services are defined as:

- Offering, proposing, or performing other preparatory work to conclude insurance contracts.
- Concluding insurance contracts.
- Contributing to the administration and implementation of insurance contracts.
- Providing certain information on insurance contracts.

(Article 137, GewO.)

Insurance and reinsurance intermediaries must obtain a business licence to provide intermediary services (Article 94, item number 76, GewO). The applicant must file an application for business registration with the competent district administrative authority (Article 339, GewO).

One of the key requirements is to file a certificate of competence (*Befähigungsnachweis*) on behalf of the business. This requires the completion of the relevant qualifying examination, the details of which are laid down in the insurance broker qualification examination regulations (*Versicherungsmakler-Befähigungsprüfungsordnung*).

The district administrative authority then has three months to decide on the application (Article 340, GewO).

In general, the certificate of competence is valid indefinitely and does not require renewal. However, the business licence can be withdrawn for certain reasons.

In certain cases, intermediary services are considered complementary to services covered by an existing business licence, in which case no special business licence is required (Article 137(3), GewO).

The main exemptions from the requirement to obtain a business licence apply when:

- Information that is considered an intermediary service is only provided incidentally and is related to any other professional activity that is not intended to assist the client in concluding or managing an insurance contract.
- The administration of an insurance contract only involves the professional management of claims or claim settlement, and expert work related to claims.

(Article 137(6), GewO)

There are also exemptions for:

- The incidental provision of information in connection with another professional activity as long as the provider does not take any further steps to support the customer in concluding or implementing an insurance contract.
- The professional administration of insurance/reinsurance claims.
- The settlement of claims and the expert appraisal of claims.
- The pure transfer of data and information from potential policyholders.

(Article 137a, GewO).

Exemptions and Foreign Insurers

5. Are there exemptions or exclusions from authorisation or licensing? Are there specific exemptions or exclusions for foreign entities to carry on insurance or reinsurance business in your jurisdiction?

Some insurance services do not fall under the VAG regime and do not require a licence. Examples include pension funds under the Pension Funds Act (*Pensionskassengesetz*) (PKG) and certain non-life insurance activities (Articles 2 to 4, VAG).

The rules applicable to foreign insurers are as follows:

- Foreign insurance and reinsurance undertakings domiciled in the EEA do not require any further authorisation or licence to operate in Austria. Under the freedom of services and freedom of establishment principles, they can operate in Austria on the basis of their home country's authorisation (Articles 20, 22 and 23, VAG).
- Foreign insurance and reinsurance entities that have their headquarters outside the EEA must obtain a licence from the FMA (Article 6, VAG) (see [Question 4](#)). Accordingly, these entities can only operate in Austria through a branch (Articles 13 to 18, VAG). The licensing process may be quicker for non-EEA entities that have already been granted, or have applied for, a licence in an EEA member state (Article 15, VAG).
- Special rules apply to insurance and reinsurance companies domiciled in Switzerland.
- Foreign insurance, reinsurance and ancillary intermediaries established or resident in the EEA can operate in Austria on the basis of the freedom of establishment or freedom of services principles (Articles 4 and 6, IDD).

The competent authority in Austria must, on the (re)insurance intermediary's request, recognise the effective exercise of activities in another EEA state as a sufficient certificate of competence (Article 373c, GewO).

Under the freedom of services regime, intermediary services can be exercised temporarily in Austria. In this case, a separate certificate of competence is not required (Article 373a, GewO).

Before providing intermediary services in Austria, the entity or person must notify their intention to the competent authority of the home member state (Articles 4 and 6, IDD).

- Foreign insurance, reinsurance and ancillary intermediaries established or resident outside the EEA cannot rely on the freedom of establishment or the freedom to provide services. These intermediaries must apply to the competent authority for the appropriate business licence (see [Question 5](#)).
- Non-EEA natural persons who provide intermediary insurance or reinsurance services can trade in Austria under the same conditions as residents, if this is provided for in international treaties. If there is no such treaty, the person must hold or apply for a residence permit that allows the pursuit of self-employment (Article 14, GewO).
- Non-EEA legal providers of intermediary insurance or reinsurance services must have a domicile or a branch in Austria to carry on their business, unless otherwise provided in international treaties (Article 14, GewO).

For more information on the licensing process, see the relevant pages on the [FMA's website](#).

Fronting

6. Is fronting prohibited or are there any limitations to such an insurance arrangement?

The FMA takes a restrictive approach to fronting and does not usually allow insurers to pass on the entire risk of an insurance contract to a reinsurer. It argues that fronting conflicts with the nature of insurance business.

Legal Forms

7. What legal forms are generally used for insurance and reinsurance business? Does a specific corporate form have to be used?

Insurance and reinsurance companies must take one of the following corporate forms:

- Joint-stock company (Aktiengesellschaft).
- European company (Societas europaea).
- Mutual insurance association (Versicherungsverein auf Gegenseitigkeit).

(Article 8, VAG.)

Most insurance companies are established as a stock company or mutual insurance association. Large insurance companies are usually established as stock companies.

Restrictions on Insurance Activities

8. Are there restrictions on the types of insurance activities that authorised entities can carry out? Can insurers and reinsurers carry on non-insurance business?

In principle, insurance providers can only enter into transactions that are within the scope of their licence. A licence is granted for each type of insurance (for example, personal and property insurance). However, certain licence combinations are not permitted. For example, life insurers cannot carry on other types of insurance activities, except for accident, health, and reinsurance (Article 7, VAG).

Insurers and reinsurers can only carry on non-insurance business that is directly related to their contractual insurance business (Article 6, VAG). This may include the:

- Brokerage of home savings contracts, leasing contracts, and investment fund units.
- Provision of services in the field of automatic data processing.
- Distribution of credit cards.

(Article 6(3), VAG)

These transactions are deemed to be automatically covered by the initial licence and do not require specific approval by the FMA.

In any case, insurance/reinsurance providers cannot carry on banking or financial activities that are not related to their insurance business.

Ownership Restrictions

9. Are there restrictions on the ownership or control of insurance-related entities in your jurisdiction?

There are no specific restrictions or requirements on the ownership or control of insurers and reinsurer. Setting up an insurance company is not subject to nationality or qualification requirements. However, persons who own or control insurance or reinsurance entities must have unrestricted business capacity, that is, they must be at least 18.

Managing directors must conduct the business with due care and the diligence of a prudent and conscientious manager in accordance with Article 84 of the [Stock Corporation Act \(Aktiengesetz\)](#) (AktG) (Article 49(6), VAG).

10. Must owners or controllers notify or obtain approval before taking, increasing, or reducing their control or ownership of an insurance-related entity?

Anyone wishing to purchase a qualifying holding in an insurance or reinsurance entity must notify the FMA (Article 24, VAG).

A "qualifying holding" is defined as 10% or more of the entity's voting rights or share capital.

A qualified shareholder that wishes to increase its shareholding to 20%, 30% or 50% or more of the entity's voting rights or capital must notify the FMA (Article 24, VAG). The acquisition is deemed approved if the FMA does not prohibit it within 60 working days of the notification.

If the insurance company is established as a stock company and listed on the stock exchange, Article 130 of the [Stock Exchange Act](#) (*Börsegesetz 2018*) (*BörseG*) also applies. This means that if the percentage of voting rights in the listed company reaches, exceeds or falls below 4%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 75% or 90% as the result of the acquisition or sale of shares, the acquirer or seller must report the change to the FMA, the exchange operating company and the issuer of the shares.

Ongoing Requirements

11. What are the key ongoing requirements for an authorised entity?

Governance. Insurance and reinsurance providers must:

- Set up:
 - an effective risk management system that includes all the required strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report certain risks (Article 110, VAG)(including a risk assessment regarding money laundering and terrorist financing; and
 - an effective governance system that ensures sound and prudent corporate governance, and is commensurate with the nature, scale, and complexity of the business (Article 107, VAG).
- Comply with the solvency and liquidity requirements set out in the Solvency II Directive and Delegated Regulation ((EU) 2015/35), as implemented by Articles 157 to 194 of the VAG. Significantly important financial institutions (SIFIs) must comply with increased capital and solvency requirements. For the minimum capital requirements, see also Question 3, [Conditions](#).
- Establish a cover pool (*Deckungsstock*) for certain insurance undertakings (Article 300, VAG) equal to the sum of the related technical provisions. The assets of this fund are used for the preferential satisfaction of insurance claims and, in the event of a dissolution or the insolvency of an insurance or reinsurance undertaking, form a separate estate.

- Pass the stress tests regularly performed by the FMA in which undertakings are required to simulate their business performance in particularly unfavourable scenarios, including sharp declines in the capital markets, (natural) catastrophes or significantly increased costs. Where applicable, the supervisor may require individual undertakings to take measures to increase their resilience.
- Ensure that the members of the executive board, the chair of the supervisory board and the holders of key functions meet the fit and proper requirements on an ongoing basis. Appointments and any subsequent changes relevant to fitness and propriety must be notified to the competent authority, which can reassess the suitability at any time, in particular where doubts arise.

Business conduct. Insurance and reinsurance undertakings must comply with the information requirements and conduct of business rules for insurance distribution listed in Articles 128 to 135e of the VAG. Consumers can submit complaints about insurance companies to the Federal Ministry of Labour, Social Affairs, Health, Care and Consumer Protection. An office for complaints concerning insurance intermediaries is established at the Federal Ministry for Economy, Energy and Tourism. In addition, many insurance companies have their own ombudsman's office.

Transfer of portfolio. The portfolio of insurance and reinsurance contracts concluded based on a licence under the VAG can be transferred in whole or in part without the consent of the policyholders in accordance with Articles 28 to 32 of the VAG. Such outsourcing agreements require the approval of the FMA.

Climate change and sustainable finance. Several insurance undertakings sell sustainable insurance products. Apart from the EU requirements, there is no additional national legislation on climate change and sustainable finance in Austria.

However, the FMA generally encourages sustainable investments in accordance with the European Commission's Action Plan on Sustainable Finance and the Green Deal. See also [Practice Note: Hot topics: EU regulation of sustainable finance](#).

Technology, digitisation of products and services. In recent years, an increasing number of insurance companies have been investing in the digitisation of products and services. Based on the FMA's analysis of digital developments in the insurance market, the FMA may:

- Take preventative measures.
- Initiate improvements in the legal framework.
- Improve the supervision of individual undertakings to minimise security risks.

Disclosure, notification, and transparency requirements. Under the Solvency II regime, the FMA must identify and update provisions and guidelines applicable to insurance supervision. It also publishes information at least annually on the supervisory review process.

The disclosure obligations for the FMA are defined in Article 256 of the VAG.

Insurance and reinsurance intermediaries must comply with the relevant regulations in the:

- GewO.

- VersVG.
- IDD.Austrian Brokers Act ([Maklergesetz](#)) (MaklerG).

Key transactions. Significant transactions within the same group of companies require notification to the FMA (Article 221, VAG). The FMA determines which intra-group transactions must be reported, taking into account the specific group and the risk-management structure of the group.

The reporting obligation to the FMA arises if certain thresholds (set by the FMA) are exceeded. Intra-group transactions must be reported at least once a year. Very significant intra-group transactions require immediate reporting.

The issuance of equity or debt security does not require regulatory approval.

Penalties for Non-Compliance

12. What are the penalties for non-compliance with the regulatory requirements?

Conducting insurance business without the required authorisation constitutes an administrative offence and can be punished by the FMA with a fine of up to EUR100,000 (Article 329, VAG).

Operating as an insurance or reinsurance intermediary without the required business licence constitutes an administrative penalty and can be punished with a fine of up to EUR3,600 for each individual offence (Article 366, GewO).

Criminal liability (for example, for fraud) and civil liability of the persons involved and the company may also apply. In such cases, policyholders may have claims against the unauthorised or unlicensed entities, for example, claiming back premiums paid and damages if they can prove that the loss was caused by unlawful behaviour of the persons involved.

The FMA has extensive supervisory and enforcement powers and can initiate investigations into compliance with the legal provisions (Articles 267 to 299, VAG).

The FMA's main objective in exercising its supervisory powers is to protect the interests of policyholders and beneficiaries. For this purpose, the FMA can, at any time:

- Require insurance and reinsurance undertakings to provide information on any business activity and to submit corresponding documents.
- Audit the business conduct of insurance and reinsurance undertakings on site.

In the event of non-compliance with regulatory requirements, the FMA can withdraw the licence of an insurance or reinsurance provider (Article 285, VAG). Similarly, the district administrative authority can withdraw the business licence of insurance and reinsurance intermediaries (Article 87, GewO).

Chapter 13 of the VAG sets out the administrative fines applicable to insurance/reinsurance providers and their management. For example, individuals and entities that violate disclosure and information requirements, distribution restrictions, and organisational duties, are subject to fines of:

- Up to EU700.000 for individuals, if they are authorised to represent the company.
- Up to EUR5 million or 5% of the entity's annual turnover for entities.

Policyholders can bring claims against providers or intermediaries under the general provisions of tort law.

Sales and Marketing

13. Are there any requirements or restrictions on how insurance/reinsurance services are sold and marketed?

There are no special restrictions on the persons to whom insurance/reinsurance services and contracts can be marketed or sold. The Consumer Protection Act ([Konsumenschutzgesetz](#)) (KSchG) applies to contracts between insurers and consumers (see [Question 23](#)).

Transfer of Risk

14. Are there any restrictions on the transfer of insurance or reinsurance business and risk? Is there a specific mechanism for this?

The VAG applies to both insurance companies and to reinsurance undertakings.

Reinsurance is defined as the assumption of risks ceded by an Austrian insurance undertaking, a third-country insurance undertaking or by another reinsurance undertaking or third-country reinsurance undertaking.

Most of the legal provisions that apply to insurance companies also apply to reinsurance companies. In particular, reinsurance undertakings are also supervised by the FMA.

Risk must be transferred to a licensed insurer or reinsurer. In certain cases, securitisation is possible. Reinsurance is mandatory if the insurer will not otherwise be able to meet its obligations (Article 87, VAG).

The entire portfolio of insurance and reinsurance contracts can be transferred without the consent of policyholders with approval by the FMA (Article 28, VAG). See also [Question 11](#).

A transfer of the entire insurance activities is permitted with approval by the FMA (Article 29, VAG). The FMA will only give its approval if compliance with the provisions applicable to the operation of the insurance business by the acquiring company is guaranteed.

Reinsurance Contracts and Risks

15. Is facultative or treaty reinsurance more common? What are the most common clauses in reinsurance policies?

Facultative/Treaty Reinsurance

The use of facultative or treaty reinsurance depends on the nature of the insurance and insured risk. It is very common in Austria to conclude reinsurance contracts concerning individual risks on a case-by-case basis rather than as a bundle.

Common Clauses

Reinsurance contracts vary widely as they are not regulated by the VersVG. Common clauses include:

- Follow the form clauses.
- Proxy clauses.
- Index clauses.
- Stop-loss clauses.

16. Can insurers cede risks without limitation to foreign reinsurers?

The insurer must ensure that the reinsurer will be able to perform its obligation duly and without delay.

If the reinsurer is domiciled in the EEA, this ability is assumed provided the reinsurer's supervising authority does not state otherwise.

If the reinsurer is domiciled outside the EEA, the ability to perform its obligations is assumed if the European Commission has issued a finding of equivalence.

17. Does a reinsurance company typically monitor the claims, settlements and underwriting of the cedant company?

There are no specific provisions on the monitoring of claims, settlements and underwriting of the cedant company. This is matter for agreement between the parties.

18. Does the cedant company have disclosure/notification obligations to the reinsurance company?

There are no provisions imposing disclosure/notification obligations on the cedant.

However, the agreements in the individual contracts between the reinsurance company and the cedant apply.

Contracts and Policies

Content Requirements and Common Clauses

19. What is a contract of insurance for the purposes of the law and regulation? How does it differ from a contract of reinsurance?

A contract of insurance is a civil law contract under which the insurer must cover a certain range of risks relating to the insured (or third persons), and the insured must pay insurance premiums (Article 1, VersVG).

Generally, any risk can be insured, except for risks that are unlawful or immoral within the meaning of Article 879(1) of the Civil Code (*Allgemeines bürgerliches Gesetzbuch*). Most insurance contracts exclude risk created by intentional and/or grossly negligent behaviour.

The scope of the exclusions (including elements of fortuity) depends on the type of insurance.

In the past, Austrian and German insurance contracts laws were very similar in many respects. This has changed significantly over the past few years and foreign insurers are advised to check their contracts in detail before using them in the Austrian market.

Under a contract of reinsurance, only the primary insurer has a right to coverage, not the insured party under the primary insurance contract. Contracts of reinsurance are not specifically regulated by Austrian law and are only partly covered by the VAG. Reinsurance contracts are expressly excluded from the scope of the VersVG (Article 186, VersVG).

20. What are the main general form and content requirements for insurance policies? What are the most common clauses?

Form and Content Requirements

The VersVG does not impose formal requirements for insurance policies. Therefore, insurance policies can be concluded orally or in writing. However, there are cases in which a legal act must be in writing, for example, when a policyholder withdraws from an insurance contract.

There are no specific content requirements for insurance policies. The parties are free to agree on the content of policies, subject to the general civil law rules. Under these, an insurance policy must contain the following minimum information:

- Nature of the insurance (for example, personal or property insurance).
- Insured risk.
- Insurance fee.

There are no special provisions on takaful insurance.

Common Clauses

There are sets of general conditions available for almost any type of insurance, including glass insurance, fire business interruption insurance, and car passenger accident insurance, among others.

In practice, most insurers use their own general conditions and there are no specific content requirements applicable to insurance policies (see above, [Form and Content Requirements](#)). This means that it is hard to generalise about common clauses in insurance contracts in Austria.

Indemnity insurance contracts typically include an obligation to notify the insurer within a short period about claims brought against the insured.

Insurance coverage in indemnity insurance (unlike US and UK contracts) usually follows the principle of violation of duty (*Verstoßprinzip*) rather than the claims-made principle. Therefore, claims can be made to the insurer when a duty is being violated during the insured period. The time of the relevant violation of duty is the point of reference (and not the date when the claims are made). The insurance cover is therefore provided more or less indefinitely for insured events, as long as they have occurred during the insurance period. These contracts usually include very broad risk exclusions and serial damages clauses. The interaction of these clauses can be very complex in certain cases.

Implied Terms

21. Are any terms implied by law or regulation (even if not included in an insurance or reinsurance contract)?

The main laws applicable to insurance policies are the:

- VersVG.
- Civil Code.
- KSchG.
- Motor Third Party Insurance Act ([Kraftfahrzeug-Haftpflichtversicherungsgesetz](#)).
- Road Casualty Compensation Act ([Verkehrsopfer-Entschädigungsgesetz](#)).

These laws provide for various implied terms, for example, that damages must be compensated in cash by the insurer under an indemnity contract (Article 49, VersVG).

The duty of utmost good faith under Article 914 of the Civil Code is also implied in insurance policies. This may lead to additional obligations for the insurer/insured.

Customer Protections

22. How do customer protections in general law affect insurance contracts? What customer protections are generally included in insurance policies to supplement this?

General Law

Austrian law distinguishes between customers and consumers:

- A customer is the person who enters into a contract with the insurer and thereby assumes certain rights and obligations.
- A consumer is a person who makes a transaction which is not made in the course of carrying out business.

A customer may or may not be a consumer.

Consumers are protected by the KSchG, the Civil Code, and the VersVG. Customers who are not at the same time consumers are only protected by the Civil Code and the VersVG.

The implementation and content of insurance policies is regulated under the Civil Code and the KSchG. For example:

- Terms and conditions must be clear and unambiguous (Article 6(3), KSchG).
- Certain contract terms are always invalid, even if they were negotiated in detail with the consumer (Article 6(1), KSchG). Examples include the following:
 - Terms that impose a stricter form for declarations of intention than the written form (Article 6(1)(iv), KSchG).
 - Terms providing that certain actions of the consumer are deemed a declaration of intention (Article 6(1)(ii), KSchG).
 - Indexation clauses, if they do not fulfil the conditions of objectivity, non-influenceability and bilateralism (Article 6(1)(v), KSchG).
- Certain contract terms are only valid if the business can prove that they have been individually negotiated with the consumer (Article 6(2), KSchG). Consumers can claim that these terms and conditions are invalid unless they have been expressly negotiated with them. For example, the insurer can only withdraw from the contract without objective justification if this was expressly negotiated with the consumer (Article 6(2)(i), KSchG).

The VersVG grants consumers the right to terminate fixed-term contracts with a term of more than three years at the end of the third year (Article 8(3), VersVG).

General customer protections are set out in the VersVG. These include the following:

- The customer can withdraw from the insurance contract within 14 days from conclusion of the contract (30 days for life insurance contracts) without giving reasons (Article 5c, VersVG).
- The processing and transfer of customer data in connection with the insurance contract is limited and only permitted in certain cases (Article 11a, VersVG).
- The insurer must still compensate the customer if the customer breaches its obligations but without fault (Article 6, VersVG).
- The insurer cannot withdraw from the contract if the customer breaches an obligation (Article 6(4), VersVG).

Under the Civil Code:

- Contracts that are immoral are invalid (Article 879(1), Civil Code).
- Secondary conditions in contracts are invalid if they grossly disadvantage the customer, taking into account all the relevant circumstances (Article 879(3), Civil Code).

Insurance Policies

As most customer protection rules are set out in legislation, insurance policies do not generally include additional customer protections. Typically, insurance policies refer to the consumer's right to withdraw from the contract in accordance with the KSchG (see also Article 8(3), VersVG).

Standard Policies or Terms

23. What are the main standard policies or terms produced by trade associations or relevant authorities?

The VVO produces standard policies that are available online. Standard terms cover the following:

- Health, accident, and nursing care insurance (for personal insurance).

- General liability, building, business interruption, burglary, fire, glass, household, motor vehicle, water damage, aviation, machine, legal expenses, safeguard, storm, and transport insurance (for property insurance).

There are many other standard terms policies. For example, the professional associations of the [Austrian Economic Chamber](#) (*Österreichische Wirtschaftskammer*) (WKO) regularly publishes standard terms for insurance policies.

Claims

Establishing a Claim

24. What must be established to trigger coverage under an insurance policy?

This depends on the insurance policy and the nature of the contract (personal insurance or property insurance), for example:

- For property insurance, the policyholder must usually prove the occurrence of the insured event and the amount of the damage.
- In indemnity cases, coverage is usually triggered by claims brought against an insured person. Liability cover is triggered when there is a settlement between the insurer, claimant and the insured person, or a final adjudication.
- For motor vehicle theft and hull insurance, the policyholder only needs to prove that the vehicle was properly parked and could not be found after return from an uninterrupted absence.

The insured must inform the insurer of relevant developments immediately (Article 33, VersVG). Special notification provisions will be included in the insurance contract. The insurer can avoid coverage if the policyholder breaches one of their obligations (Article 6, VersVG). For example, under Article 9(3.3.1) of the general conditions for motor third party insurance, the policyholder must notify the insurer within one week of the occurrence of the insured event.

To avoid coverage, the insurer only needs to prove violation of the particular term. The insurer is not obliged to establish prejudice to avoid coverage based on late notice.

The insured must:

- Provide all the necessary information to allow the insurer to assess the claim.
- Co-operate with the insurer in providing information.

(Article 34, VersVG.)

Time Limits

25. Is there a time limit outside of which the insured/reinsured is barred from making a claim?

The insured/reinsured is barred from making a claim after three years (Article 12, VersVG). However, Article 12 does not specify when this time limit starts running. Therefore, civil law applies. Under Article 1478 of the Civil Code, time starts to run at the time the extent and amount of the damages can be determined and the insurer has finished the necessary investigations to assess the insured event and the extent of the insurance benefit.

The limitation period is suspended once the policyholder registers the claim with the insurer until the insurer sends its decision about the coverage in writing to the policyholder.

Further suspension of the time limit is possible based on the rules of general civil law.

However, the insured/reinsured is absolutely barred from making a claim after ten years from the occurrence of the insured event (Article 12(2), VersVG). Claims of third parties against the insurer/reinsurer are also barred after ten years (Article 12(1), VersVG).

If the insurer declines coverage and, in doing so, points out the legal consequences, that is, the start of a one-year limitation period, the policyholder has one year to start court proceedings. This time limit is suspended if the policyholder and the insurer are conducting settlement discussions. The Austrian Constitutional Court has recently struck down the one-year limitation period as unconstitutional, taking effect on 1 June 2027.

The statutory limitation periods can only be varied in favour of the insured person (Article 15a, VersVG) (that is, the applicable limitation periods can only be prolonged).

Subrogation

26. Does an insurer have subrogation rights to claim against third parties who have caused loss to the insured?
What conditions must be satisfied to do this?

The right of the policyholder to claim damages against third parties who caused the insured loss passes to the insurer if and to the extent the insurer has already provided compensation to the policyholder (Article 67, VersVG).

Third Party Claims

27. In what circumstances can third parties claim under an insurance policy?

A third-party insurance claim must be based on an insurance policy concluded for the benefit of that third party (*Versicherung für fremde Rechnung*) (Article 74, VersVG). Generally, the policyholder must claim for the third party as it is the party to the insurance contract. The third party can only claim if the policyholder transferred its rights to the third party. This is typically the case in directors' and officers' insurance, where insured persons can directly claim coverage from the insurer.

The insurance contract can also restrict the transferability of insurance claims to third parties.

28. Can the original policyholder or other third party enforce the reinsurance contract against a reinsurer?

Whether the original policyholder or other third party can enforce the reinsurance contract against a reinsurer depends on the contractual situation. Typically, the policyholder concludes an insurance contract with the insurer only. Therefore, the policyholder can only claim against the insurer with whom the contract was concluded. In some cases, the policyholder has a right under the terms of the insurance policy to raise a claim against the reinsurer (a "cut-through" clause). However, this is very rare.

Similarly, a third party can only raise claims against the reinsurer if there is a cut-through clause and the policyholder transferred its right to claim (see [Question 27](#)).

Generally, insurance claims are privileged claims with the right for primary satisfaction in insolvency proceedings (Article 314, VAG). This is an exception to the general rule that all claims are treated equally.

For life, health, and accident insurance, an insurance company must establish a coverage pool that is exclusively used for the satisfaction of insurance claims in the event of the company's insolvency (Article 300, VAG).

Insurance of Punitive Damages

29. Are punitive damages insurable? Can punitive damages be reinsured if they are covered by an underlying policy?

Punitive damages are insurable. However, insurance policies often exclude punitive damages as the insurer cannot calculate the risk.

Under Article 7 of the VVO's general conditions for indemnity insurance (Allgemeine Bedingungen für die Haftpflichtversicherung), the insurer will not cover, unless otherwise agreed, damages that go beyond the extent of general tort law rules and that are based on a contractual obligation or a promise of the policyholder.

The reasoning behind this provision is that parties can agree extensive liability clauses that cannot be assessed by the insurer.

Public law sanctions and penalties are not generally insurable in Austria.

Remedies for Breach of Policy

30. What remedies are available to the insurer and to the insured for breach of the insurance policy by the other party? On what basis are they claimed?

Insurer's Remedies

Austrian law distinguishes between breach of contract and breach of an obligation.

- A breach of contract is breach of an essential contractual obligation, which may entitle the innocent party to terminate the contract.
- A breach of obligation typically entitles the insurer to avoid coverage.

Examples of a breach of obligations, for which the insurer can terminate the insurance policy, are where the policyholder:

- did not notify the insurer about all the relevant circumstances that are vital for assessing the risk; or
- maliciously (in bad faith) failed to notify the insurer of important circumstances.

A breach of Article 9(3.3.1) of the general conditions of motor third party insurance (under which the policyholder must notify the insurer within a week of the occurrence of the insured event) is a breach of obligation. Insurers can

also stipulate in their general conditions that breach of an obligation entitles the insurer to withhold coverage and to terminate the contract.

Non-payment of premium. If the first (or one-time) premium is not paid within 14 days of the conclusion of the insurance contract and following a request for payment, the insurer is entitled to withdraw from the contract. Failure to file proceedings to claim the premium within three months of the due date is deemed a withdrawal from the contract.

The insurer must have drawn the policyholder's attention to the consequences of non-payment (Article 38, VersVG).

The insurer is not obliged to provide cover if, at the time of the insured event and after the 14day period has expired, the first (or one-time) premium is still unpaid, unless the policyholder was prevented from timely payment without fault. The insurer must have drawn the policyholder's attention to the consequences of non-payment in such a case (Article 38, VersVG).

If a subsequent premium is not paid in time, the insurer can set a payment deadline of at least two weeks in writing and specify the consequences associated with non-payment. If the deadline has expired, the insurer:

- Is not required to provide cover if the insured event occurs and the policyholder is still in default of payment at the time of the event.
- Can terminate the contract. The insurer can also expressly notify the policyholder that non-payment within the set term will result in termination of the contract when setting the payment deadline. In this case, the insurer does not need to take any further action in the event of non-payment (Article 39, VersVG).

Bad faith. The insurer can generally terminate the policy if the policyholder acts in bad faith under Article 870 of the Civil Code. The insurer can also claim compensation under the general provisions of tort law.

If the insurance policy is terminated during the insurance period, the insurer is only entitled to the premium for the time that has elapsed until termination (Article 40, VersVG). However, the insurer can include provisions for a reasonable contractual penalty in the policy.

After the contract has been concluded, the policyholder must refrain from doing anything that could lead to a permanent and significant increase in the risk. If the policyholder violates this duty, the insurer can terminate the contract and is not obliged to provide compensation if the insured event occurs after the increase in the risk.

Insured's Remedies

The Civil Code applies to all contracts. If the insurer is in breach of its services/contractual obligations, the policyholder can terminate the agreement and claim damages. However, failure to investigate the insured event does not constitute fault in all cases; only where the default is groundless and not based on any reason.

The policyholder has the right to withdraw from an insurance policy within 14 days of conclusion (30 days for life insurance) without giving reasons (Article 5c, VersVG). The time runs from the day the policyholder was provided by the insurer with the insurance certificate and conditions of insurance (including provisions on the determination or amendment of premiums).

Dispute Resolution

31. Are there special procedures or venues for dealing with insurance or reinsurance complaints or disputes?

There are no special procedures or venues for dealing with insurance or reinsurance complaints or disputes. However, in cases where an insurance agent negotiated or concluded the insurance contract, claims regarding the insurance relationship against the insurer must be filed at the court where the insurance agent's branch is located (Article 48, VersVG). General provisions on the filing of claims otherwise apply.

Generally, consumer complaints can be directed to the Federal Minister of Labour, Social Affairs, Health and Consumer Protection, who answers those complaints and submits them to the FMA (Article 33, VAG).

Insurers and reinsurers must set up a complaints department with complaints procedures under which all policyholders and consumer protection associations can submit their complaints directly against the insurer or reinsurer, as well as any intermediary. The insurer or reinsurer must then process the complaints accordingly (Article 127e, VAG).

32. Are arbitration clauses in insurance and reinsurance agreements enforceable? Are they commonly used in commercial insurance disputes?

Only family and tenancy law claims are excluded from the scope of arbitral proceedings (Article 582, Code of Civil Procedure ([Zivilprozessordnung](#)) (ZPO). However, arbitration clauses between commercial parties and consumers are subject to strict requirements (Article 617, ZPO).

Arbitral proceedings are very common in reinsurance cases and are becoming more common in large coverage disputes concerning liability insurance.

33. Are choice of forum, venue and applicable law clauses in an insurance or reinsurance contract recognised and enforced?

Forum, venue, and applicable law clauses are recognised and enforced. However, restrictions apply in relation to consumers.

In the absence of choice, jurisdiction is determined by the Law on Court Jurisdiction ([Jurisdiktionsnorm](#)) (JN). If the defendant is domiciled in an EU country, jurisdiction is determined by Articles 10 to 16 of the [Recast Brussels Regulation](#) (1215/2012).

The applicable law is determined in accordance with the [Rome I Regulation](#) (593/2008), which contains specific mandatory provisions on insurance contracts.

Rome I does not apply to reinsurance contracts. Therefore, in the absence of choice, the law applicable to a reinsurance contract is determined by the Law on International Private Law ([Bundesgesetz über das internationale Privatrecht](#)) (IPR-Gesetz).

Insolvency

34. What is the regulatory framework for distressed or insolvent insurance or reinsurance companies? What protections exist for policyholders if the insurance company is insolvent?

Insolvent insurers are governed by the Insolvency Code ([Insolvenzordnung](#)) (IO) and corresponding provisions of the VAG.

If there are reasons for opening insolvency proceedings under Articles 66 or 67 of the IO (inability to pay or over-indebtedness), the FMA must be informed immediately (Article 309, VAG).

If the conditions for opening insolvency proceedings are met, the FMA must apply for insolvency proceedings which must be opened immediately.

However, the FMA is not obliged to apply for insolvency proceedings when this will not be in the interest of policyholders. In this case and only if compatible with the interests of the policyholders, the FMA must prohibit payments, especially of insurance benefits, or reduce the insurer's life insurance obligations (Articles 309 and 316, VAG).

The FMA must be notified of the dissolution of an insurance or reinsurance entity (Article 306, VersVG). The liquidators must publicise the dissolution in the [Official Journal of the European Union](#) and immediately notify all known creditors who reside in other EU member states.

Insurers that provide life, health, and accident insurance must set up a coverage pool/technical reserves to cover their underwriting liabilities. This obligation does not apply to reinsurance companies (Articles 300 and 301, VAG). In the insurer's insolvency, the pool is used to satisfy the claims of beneficiaries. Assets in the coverage pool cannot be used to satisfy the claims of creditors other than policyholders/beneficiaries.

Generally, insurance claims are privileged claims with the right for primary satisfaction in insolvency proceedings (Article 314, VAG). This is an exception to the general rule that all claims are treated equally.

35. Can excess insurance policies "drop down" to provide coverage if the primary insurer goes into insolvency?

Excess insurance policies can drop down to provide coverage if the primary insurer goes into insolvency, provided this is contractually agreed.

36. Is a right to set-off mutual debts and credits recognised in an insolvency proceeding involving an insurer or reinsurer?

There are no restrictions on set-off in an insolvency proceeding involving an insurer or reinsurer under the VAG or other Austrian legal provisions. Therefore, a set-off between the reinsurer and insurer in an insolvency proceeding is allowed within the limits of Article 19 of the IO. Specific conditions apply to mandatory liability insurance.

Tax

37. What is the tax treatment for insurers, reinsurers, and other persons or entities providing insurance and reinsurance services?

Received premiums are subject to taxation under the Insurance Tax Act ([Versicherungssteuergesetz](#)) (VersStG). Health insurance premiums are taxed at 1%, while life insurance premiums are taxed at either 4% or 11% (Article 5, VersStG). The VersStG contains very complex rules and provides for many exemptions and specialist tax advice is recommended.

Under Article 6 of the Value Added Tax Act ([Umsatzsteuergesetz](#)) (UStG), insurance revenues are exempt from value added tax (VAT) and input tax deduction is usually excluded (subject to certain exceptions). Intermediaries are exempt from VAT (Article 6, UStG).

Different rules apply to the taxation of income of natural persons and legal entities. Natural persons can only provide insurance and reinsurance-related services (such as mediation) as intermediaries. Intermediaries are taxed under Article 23 of the Income Tax Act ([Einkommensteuergesetz](#)) (EStG).

Tax rates are progressive and range from 25% to 55% depending on the person's income (the first EUR13,539 are exempt from tax). Legal entities are generally taxed at 23% (Article 22, Corporate Income Tax Act ([Körperschaftsteuergesetz](#)) (KStG)). Mutual insurance associations are exempt from corporate income tax if their annual gross premium income in the last three years did not exceed EUR4,400 on average (Article 5, number 8, KStG).

Contributor Profile

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Professional qualifications. Lawyer, Austria; senior lecturer, Vienna University of Economics and Business

Areas of practice. Insurance contracts and supervisory law; banking and finance; professional liability; corporate law; investment disputes; arbitration and litigation.

Recent transactions

- Acting as monitoring counsel in various D&O cases with amounts of damage exceeding EUR400 million.
- Negotiating a deal between an insurer and an Austrian bank regarding liability coverage under D&O insurance.
- Acting as counsel for insurers, public entities, and corporations in structuring various individual insurance programmes.
- Representing a large industrial conglomerate in negotiating a coverage deal regarding business liability insurance.
- Defending an insurer in litigation against a number of investors' claims.
- Acting in various professional negligence cases against auditors, issuers of securities, and other financial market participants as defendants' and/or insurers' counsel.
- Regularly representing managers and insurance companies in coverage disputes, including litigation and acting as an arbitrator.

Languages. English, German

Professional associations/memberships. Vienna Bar Association; Society for financial markets law (GFR); European Law Institute (ELI).

Publications

- *Numerous articles in scientific journals on insurance law topics, including D&O and other financial lines, environmental, and disaster insurance.*
- *Völkl/Völkl, Beraterhaftung (Advisor's Liability and Insurance), 2nd edition.*
- *Ratka/Rauter/Völkl, Gesellschafts- und Unternehmensrecht (Austrian Corporate and Commercial law), 5th edition.*
- *Völkl et al, Auditing standards and auditor's liability §§ 269 ff Austrian Commercial Code in Straube, Austrian Commercial Code, 4th edition.*
- *Völkl, various sections in Laurer/M. Schütz/Kammel/Ratka, Austrian Banking Act, 4th edition.*
- *Völkl, Third party claims and auditor's liability in RdW, 2018/61.*

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