RUOSS VOGELE

Multinational Insurance and Insurance Distribution Business – General Considerations

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Management Summary

Numerous corporations operate regionally or globally and have therefore multinational insurance needs. A comprehensive insurance and insurance distribution solution must generally be implemented locally and separately due to national supervision laws. In particular, cross-border insurance activity is statutorily admissibly only as an exception and otherwise causes a statute violation. In this context an insurance undertaking may decide to disregard a (possible) statute violation, as long as the breach of law risk emerging therefrom is small or can effectively be reduced.

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Multiple Supervision

Multinational corporations

Not only big but also small and mid-size companies nowadays operate their businesses on a regional and global level. They are active in several countries at the same time. Besides the head office in one country, there are further establishments in form of subsidiaries or branches in other countries.

Multinational corporations generally do not purchase insurance cover for each and every country where they are active. Rather, they look for a comprehensive insurance solution for the whole regional or global group for efficiency and cost reasons. Insurance undertakings and insurance intermediaries face implementation difficulties under supervisory law as a result thereof. They must observe several supervision laws at the same time when implementing the insurance solution.

National supervision laws

In a supervisory system based on state laws cross-border insurance and insurance distribution activity is *generally not admissible*. Insurance activity may

generally only be performed based on a local insurance license and insurance distribution activity may generally only be performed based on local registration. Any cross-border activity would cause a statute violation in the state of activity.

In Switzerland relevant supervisory law is based on the Swiss Insurance Supervision Act (VAG) and the Swiss Insurance Supervision Ordinance (AVO) which are specified in various FINMA Circulars.

Service treaty

The difficulties that exist due to national supervision laws are in some cases overcome by entering into a service treaty. Cross-border insurance and insurance distribution activity may be admissible based on a service treaty (*freedom to provide services*). This applies for example to the EU/EEA Region and the relation between Switzerland and Liechtenstein. In these cases cross-border activity between different states is generally admissible after notification between the relevant regulators.

In the EU/EEA Region insurance supervisory law is mainly based on the Solvency II-Directive, the Delegated Solvency II-Ordinance as well as on the implementing acts of the single Member States. Insurance intermediary law is mainly based on the Insurance Distribution Directive ("IDD"), the Delegated Ordinances and the implementing acts of the single Member States. The Insurance Distribution Directive 2002 is replaced by the Insurance Intermediary Directive 2016.

Supervisory Law Attribution

Geographical tie

Insurance supervision laws geographically mainly tie in with the existing risks (e.g. situation of a building) or the incurred commitments (e.g. place of registered office) (see Art. 1 para. 1 and 2 AVO; Art. 14 no. 13 and 14 Solvency II-Directive). The same applies to insurance intermediary laws (see Art. 1 para. 3 AVO; see also Art. 1 IDD).

In the event of a multinational corporation asking for a comprehensive insurance solution, one must determine which fact elements are to be attributed to which national supervision laws. The multinational facts are in a way split from a regulatory point of view and attributed to the concerned supervision laws.

Conflict between national supervision laws

The supervisory law tie and attribution of multinational insurance and insurance distribution business may lead to conflicts between different national supervision laws. In particular, different supervision laws may apply to identical facts in a particular case. Insurance and insurance distribution solutions are sometimes possible only if the violation of at least one of two (or several) national statutes requiring application is accepted. Conflicts between national laws must generally be solved by the supervised institutions themselves in my opinion. Concerned national regulators are generally not in a position to be of help, as they must exclusively observe the law applicable to them and are unable to consider non-Swiss laws.

Conflicts between supervision laws must generally be solved in a way that any specific insurance or insurance distribution activity is subject to one national supervision law only. It cannot be that any specific insurance or insurance distribution activity is subject to two supervision laws at the same time or subject to no supervision law. The solution of a conflict should be based on generally recognized principles. One may agree on flexible attribution in unclear cases allowing a later change within the insurance group.

Supervisory Law Structuring

Comprehensive technical insurance solution

A client who has multinational operations is generally interested in a comprehensive insurance solution for the whole group. He wishes consistent insurance cover for all of his establishments in the various countries in which he is active and wishes to pay insurance premium for the whole transaction.

Technically, it is generally possible for an insurance undertaking to offer the client a group-wide solution with largely consistent insurance cover against payment of a total premium. However, it is then a different issue to implement the technical insurance solution on a legal and regulatory lever. Consistent implementation is possible only to a limited extent,

as the requirements are mostly based on national supervision laws.

Several insurers and intermediaries

The conclusion and performance of multinational insurance business generally require several insurance undertakings and several insurance intermediaries. This is because the authority to carry out insurance and insurance distribution activity is based on national supervision laws and therefore geographically limited. For example, the performance of multinational insurance business in Switzerland and the EU/EEA Region generally requires a Swiss insurance undertaking as well as an insurance undertaking in an EU/EEA Member State and a Swiss insurance intermediary as well as an insurance intermediary in an EU/EEA Member State. Nevertheless, an (independent) insurance intermediary in an EU/EEA Member State may at the same time also be registered and admitted in Switzerland.

For the purpose of supervisory law structuring of multinational insurance business, one must determine which insurance undertaking and which insurance intermediary holds the necessary license and complies with the respective requirements to perform the insurance and insurance distribution activity, respectively, in a concerned state. For example, insurance distribution in the EU/EEA Region requires an insurance intermediary to be established in a Member State as home Member State and be registered in such state (e.g. establishment and registration in Liechtenstein) and in addition to be authorized to act in the host Member State (e.g. Germany) based on notification and thereby comply with the professional and organizational requirements (Art. 3 IDD and Insurance Distribution Act of Liechtenstein). Admitted insurance undertakings and insurance intermediaries must comply with all duties under the supervision law applicable to them. For example, an insurance intermediary who performs insurance distribution in the EU/EEA Region must comply with conduct of business rules, information requirements and advice related requirements (see Art. 17 IDD).

From a supervisory law point of view, each insurance undertaking and each insurance intermediary are generally responsible themselves to comply with all supervisory law provisions addressed to them. There are supervisory law sanctions in the event of a breach of law. In addition, insurance undertakings may also be liable for the business conduct of the insurance intermediaries whom they work with to a limited extent. This may expressly be stated in the relevant act (see for example Art. 16 Liechtenstein Insurance Distribution Act) or result from the assurance of proper conduct of business (see for example Art. 14 VAG). As a result, insurance undertakings should issue appropriate guidelines, implement useful processes and obtain contractual confirmation in view of their cooperation with insurance intermediaries.

Under criminal law it also applies that each insurance undertaking and each insurance intermediary is responsible for its own business conduct. The criminal norms and sanctions are partly included in supervision laws. In addition, insurance undertakings need to pay attention that the insurance intermediaries whom they work with do not violate statutory criminal provisions. Otherwise, they could possibly become liable as helpers ("*Gehilfenschaft*").

Division and coordination

If several insurance undertakings and several insurance intermediaries are involved in the operation of multinational insurance business there must be a division of activity. The division may be horizontal or vertical. In the case of a horizontal division, several insurance undertakings enter into an insurance contract with the client and several insurance intermediaries are involved in the insurance distribution in parallel. In the case of a vertical division, the activity is partly delegated. The insurance undertaking, to the extent it does not hold the necessary insurance license, delegates the activity to another insurance undertaking which on its part enters into a local insurance contract with the client (*fronting*). The insurance intermediary, to the extent it does not hold the necessary intermediary registration, delegates the activity to another insurance intermediary which enters into an agreement with the principal but not with the client.

The insurance and insurance distribution activity must not only be divided but also coordinated between the involved insurance undertakings and insurance intermediaries. This applies not only to the contractual structuring but also to the performance of the insurance business. For example, portfolio management and claims handling may be performed centrally by a service provider on a group level. Such an outsourcing of important insurance functions, if done by a Swiss insurance undertaking, requires a

change of business plan subject to FINMA approval (Art. 5 para. 2 VAG).

Uniform product

Multinational clients generally request an insurance product that is uniform for their entire business activity. It is intended to obtain insurance for the same risks and have the same insurance cover applying to all establishments.

An uniform design of the insurance product is possible only to a limited extent in the context of multinational business due to different national supervision laws. Certain local product deviations cannot be avoided. In particular, the general insurance conditions must be adapted so that they comply with mandatory local statutory requirements. In the EU/EEA Region insurance undertakings and insurance intermediaries who design insurance products for sale to clients (except for large risks) must set up a process for approval of each insurance product (product approval process pursuant to Art. 25 IDD).

Distribution documentation and contracts

One may wish to use uniform distribution documentation for the multinational insurance business. The documentation may be based on the strictest supervision law or alternatively provide for local deviations.

As national supervision laws require several insurance carriers and several insurance distributors, the multinational insurance business makes it generally necessary to enter into several contracts in parallel. For example, insurance agreements are entered into in parallel between a Swiss insurance undertaking and the Swiss client head office and in addition between a Liechtenstein insurance undertaking and the German establishment of the client. For example, cooperation agreements are entered into in parallel between a Swiss insurance undertaking and a Swiss insurance intermediary and in addition between a Liechtenstein insurance undertaking and a German insurance intermediary.

Cross-border Activity

Cross-border insurance and distribution activity

In the event of cross-border insurance and insurance distribution activity, insurance cover and insurance intermediation, respectively, are provided from a home state to a state of activity. In the case of Switzerland, one may distinguish between two types of cross-border insurance activity and two types of cross-border insurance distribution activity as follows: (1) A non-Swiss insurance undertaking acts from abroad in Switzerland. (2) A Swiss insurance undertaking acts from Switzerland abroad. (3) A non-Swiss insurance intermediary acts from abroad in Switzerland. (4) A Swiss insurance intermediary acts from Switzerland abroad.

This Bulletin mainly deals with cross-border activity of insurance undertakings. A particular case of cross-border insurance activity concerns the DIC/DIL-cover of global insurance programmes. If a group with subsidiaries and branches in a number of countries gets its factories and real estate insured, it generally does it in a two-stage approach: A master policy covers the entire group. In addition, there are local policies that are co-ordinated with the master policy. It is thereby aimed at granting uniform insurance cover at all locations of a globally operating enterprise consistent with the supervisory law requirements of the concerned states. How should this be archived in case of gaps in cover or deviations in cover if locally provided capacity is below the global capacity or local insurance conditions cannot conform to those of the group home state? It can generally be archived in the following way: The master policy of the group parent company grants foreign subsidiaries the broader insurance cover (i.e. DIC) or the higher insurance amount (i.e. DIL) subsequent to the existing basic covers. DIC/DIL-cover qualifies as cross-border co-insurance of local subsidiaries under the master policy.

Activity without statute violation

Cross-border insurance and insurance distribution activity is in principle not admissible due to a system of national supervision laws. Such an activity generally violates the statute of the state of activity which requires a local license for the performance of insurance activity and possibly local registration for the performance of insurance distribution activity.

On an exceptional basis, cross-border activity may be admissible without need for a local license or registration based on a service treaty or the local supervision law. For example, the Swiss Insurance Supervision Act provides that cross-border reinsurance or cross-border transport insurance is admissible without local license (Art. 2 para. 2 lit. a VAG;

Art. 1 para. 2 lit. a AVO) and cross-border dependent insurance intermediation is admissible without local registration (Art. 43 Abs. 2 VAG).

Cross-border insurance activity may not only be prohibited in the state of activity but also restricted in the home state. This applies for example to Switzerland. The Swiss Insurance Supervision Act and a FINMA-Circular expressly deal with cross-border insurance activity from Switzerland. Swiss insurance undertakings must notify FINMA of any planned insurance activity abroad and get such activity approved in the context of a change of business plan (Art. 4 para. 2 lit. c VAG; Art. 5 para. 2 VAG). The term "insurance activity abroad" is defined in a FINMA-Circular (FINMA-Circular 2017/5 Business Plans – Insurers, nos. 18 – 23). Any violation of the notification duty may lead to criminal sanctions pursuant to Art. 87 para. 1 lit. b VAG. Furthermore, the breach of non-Swiss supervisory law may question the assurance of proper conduct of business pursuant to Art. 14 VAG. Administrative sanctions as for example an occupational ban may result therefrom (see FINMA-Circular 2017/5 Business Plans – Insurers, no. 24; FINMA Position Paper on Legal and Reputation Risks in Cross-Border Financial Services dated 22 October 2010, p. 2 – 3).

It follows that an insurance undertaking that wishes to perform cross-border activity without statute violation needs to clarify the legal situation in the state of activity as well as in the home state. The legal clarification in the state of activity will generally show that insurance activity may not be performed cross-border but only within the state based on a local license ("*non-admitted countries*"). Should by way of exception any cross-border activity in the state of activity be admissible, existing requirements in the home state would still need to be complied with. In the case of non-admitted cross-border insurance activity, the insurance solution generally needs to be local. The insurance cover needs to be provided by a locally licensed insurance undertaking. This would generally also exclude any DIC/DIL cover in the context of an international insurance programme.

Activity based on financial interest clause?

The implementation of multinational insurance business with local insurance solutions may be costly and time-consuming. In this context one may ask the question whether one can avoid statute violations in the context of cross-border insurance activity by means of contractual structuring.

In the context of cross-border insurance activity, statute violations are occasionally intended to be avoided by means of a *financial interest clause*. For example, it is agreed in the master policy of a global insurance programme that instead of insuring the assets of a local subsidiary the respective financial interest of the parent company is insured. In the event of a local loss, the insurance benefit is paid to the parent company which for its part forwards the funds to the subsidiary. The insurance benefit formally does not compensate the local property damage but rather the respective financial loss of the parent company. Based on the wording of the contract, there is no cross-border property insurance in the state of activity, but rather local finance insurance in the home state. Accordingly, there can be no formal statute violation in the state of activity.

Contractual structuring is generally admissible. However, there are legal limits. The structuring must not qualify as inadmissible *evasion of the law*, which consists of observing the wording of a prohibition norm but *ignoring its meaning* (BGE 104 II 206). The Swiss Federal Supreme Court describes the legal situation of evasion business as follows: "*In the case of an evasion transaction, the parties intend to evade a statutory or contractual provision by means of structuring. Its admissibility depends on the content of the provision that is intended to be evaded. Either the evaded statutory or contractual provision based on its meaning and purpose also applies to the evasion transaction, in which case the evasion transaction is subject to the provision, or the evaded statutory or contractual provision based on its meaning and purpose does not apply to the evasion transaction, in which case the evasion transaction is not concerned and remains valid.*" (BGE 125 III 259 ff., 262 E. 3b). Furthermore, the Federal Supreme Court states the following: "*The answering of the evasion question requires [...] a review and assessment of all circumstances of a particular case. If applicable, one may also ask as a matter of discretion whether or not there is an evasion in a particular case.*" (BGE 125 III 257 ff., 262 E. 3b).

The approach of the financial interest clause is criticized in legal writing. It is argued (among others) in the context of a global insurance programme that foreign supervision law is violated by entering into a domestic insurance contract. As a result, it is argued

that the situation is similar to the one of an explicit DIC/DIL cover. There is an evasion of the local statute and therefore a breach of law.

Activity with low breach of law risk

If cross-border insurance activity is statutorily prohibited in the state of activity and a solution based on a financial interest clause appears disputable, it may make sense to clarify the legal significance of statutory norms and the violation of statutory norms. A realistic understanding of the law must thereby replace the positivist legal theory which is outdated.

Breach of law risk

According to a realistic legal understanding, statutes are not the law but merely legal basis. The law comes into being only in a particular case, namely if the judge takes a decision. Whether or not a specific business activity is lawful, may only be decided retroactively by the judge. And no one can know with certainty how the judge would decide. Accordingly, one cannot know the law but only predict it with respect to specific facts. The judge does not take any decision merely based on a statute, but also considers case law and legal doctrine and renders own value judgements based on common moral views (see RV Bulletin 6/2017 on Reduction of Legal and Reputation Risks through Anticipative Implementation of Statutory Norms in a Corporation, p. 9 and 10).

A corporation that wishes to operate lawfully may not rely on the wording of the statute according to a realistic understanding of the law, but must orientate itself to the future finding of justice by the judge. The corporation must anticipate how the judge would retroactively view its own business activity taking into consideration a pre-existing statute and in addition other legal foundations (see RV Bulletin 6/2017 on Reduction of Legal and Reputation Risks through Anticipative Implementation of Statutory Norms in a Corporation, p. 10).

If the law is realistically understood as judgement in a particular case, the breach of law risk may be understood as risk to be convicted by the judge. In other words, the formal violation of a statutory norm causes an *increased breach of law risk*, which may "realize" delayed in time if and as soon as the judge considers the formal statute violation as a breach of law and issues sanctions. A company may violate a statute and thereby knowingly accept an increased breach of law risk. The normative requirement for statutory compliance is all the stronger the higher the breach of law risk is after the occurrence of a statute violation. Like other risks, the breach of law risk may generally be understood as product of damage extent and occurrence probability. It is determined based on how high a sanction could be and how probable it is that a sanction is issued in the future during the relevant statutes of limitation.

Non-compliance with a statutory norm has a "price tag". The higher threatened sanctions are and the more probable sanctions are issued, the more a corporation is incentivized to implement the statutory norm in an anticipative way. It is up to the relevant state to enforce an existing legal system so that addressees of the legal order assess the risk of a breach of law as too high and therefore effectively implement a statutory norm (see RV Bulletin 6/2017 on Reduction of Legal and Reputation Risks through Anticipated Implementation of Statutory Norms in a Corporation, p. 10 and 13).

Risk assessment and risk strategy

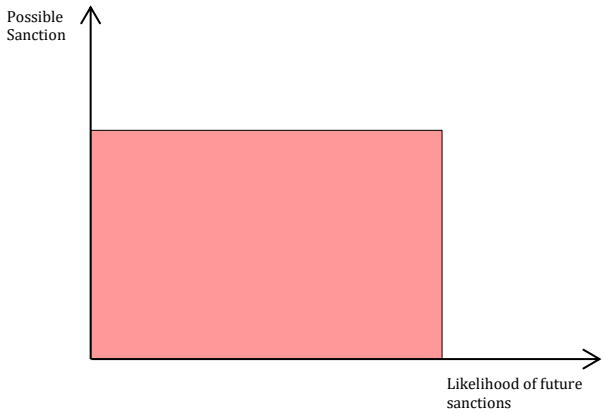
The breach of law risk may not be avoided but only reduced. Each corporation bears a certain breach of law risk when implementing or not implementing statutory norms. The breach of law risk exists in any case but is higher or lower depending on whether statutory norms are implemented restrictively or extensively or whether there is an evasion or open violation of statutory norms. The view that a corporation can apply statutory norms "to the extent of 100 percent" and thereby guarantee compliance with the law is based on an out-of-date positivist legal theory. On closer examination it is not directly relevant whether statutory norms are complied with or violated. What really matters at the end is how high or low the breach of law risk emerging therefrom is.

A corporation must implement statutory norms based on its own assessment and own responsibility. It must opt in a way for a certain risk strategy. A corporation may decide to violate statutory norms and thereby bear the emerging breach of law risk. A corporation may decide to implement statutory norms in an anticipative way and thereby reduce the breach of law risk to a maximum extent. A corporation may also decide to find a middle course and not (fully) implement statutory norms, but thereby take supplementary measures to reduce the breach of law risk emerging therefrom.

Risk due to non-implementation of a statute

A corporation may decide to not implement statutory norms and thereby bear the emerging breach of law risk. Such an approach may possibly be justified from a corporation's point of view if possible sanctions appear acceptable and the likelihood of sanctions is considered to be low.

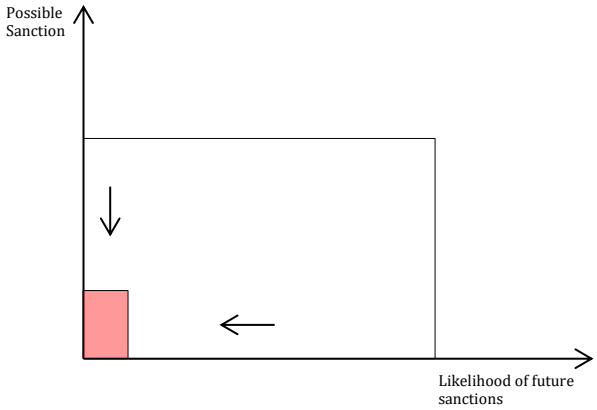
The breach of law risk due to non-implementation of statutory norms may be illustrated in a simplified way as follows:



Risk reduction through implementation of a statute

A corporation may decide to implement statutory norms in an anticipative way and thereby reduce the breach of law risk to a maximum extent (full compliance). This approach may generally be appropriate for the area of supervisory law where high administrative and criminal sanctions (e.g. penalties, profit confiscation, occupational ban) are threatened and the breach of law risk is generally high.

The reduction of the breach of law risk through anticipative implementation of statutory norms may be illustrated in a simplified way as follows:



A corporation that wishes to act in compliance with the law must implement statutory norms in an anticipative way. It must ask the question how the judge would retroactively decide in a particular case. It may not rely on formal application of statutory norms. It must decide based on own responsibility, as there is no one who could be asked for instructions: The law maker may only issue general and abstract norms and cannot issue individual and concrete implementation instructions. The judge may only decide retroactively in a particular case and is not available at the time of implementation of a statute. The regulator (in the case of supervised corporations) must limit itself to specify laws and ordinances and to investigate specific cases and retroactively issue decrees. It may not provide guidance on the implementation of statutory norms. Should a regulator provide guidance upon request anyway, the advice (without formal decree) would be non-binding and outside the functional scope of supervision in my opinion. Also such an advice would be very limited and could practicably only insist on literal implementation of own supervision law without legal assessment for reasons of possible liability.

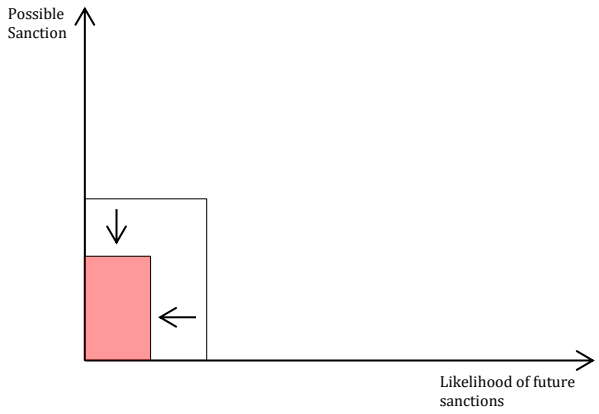
In the case of multinational insurance business, the approach of anticipative implementation of a statute will generally lead to local insurance solutions and only exceptionally to cross-border insurance activity. This approach restricts cross-border activity even more than formal statute application, as it does not allow any extensive statutory interpretation in one's own interest.

Reduction of risk through additional measures

A corporation may possibly decide to find a middle course between non-implementation and anticipative implementation of statutory norms. It may violate statutory norms in situations with low breach of law risk and at the same time take additional measures serving the reduction of the emerging breach of law risk. In reality there is not only statute implementation but also other measures to reduce the breach of law risk. Such measures cause the statute violation to be less severe and/or the possibility of investigations and sanctions to be less likely. In the context of investigations and judicial assessments, not only the formal violation of a statutory norm is considered, but also in which way and under which conditions the statutory norm was violated. Any conscious violation of a statutory norm is not legally assessed in an abstract way but always with

reference to a particular case. For this reason, the circumstances of a statute violation are relevant and it is possible to reduce the effect of a formal statute violation by means of accompanying measures. Certainly, such additional measures will generally reduce the breach of law risk less extensively than any anticipative implementation (or formal application) of a statute.

The reduction of an already low breach of law risk through additional measures (instead of statutory implementation) may be illustrated in a simplified way as follows:



In the event of cross-border insurance activity, the breach of law risk emerging from a statute violation may generally be reduced by means of the following structuring and compliance measures:

- *Reduction of possible tax consequences:* The extent of cross-border insurance may be reduced in order to minimize negative tax consequences in the state of activity. There is a higher risk of legal proceedings if income from tax is lost than if there is mere formal statute violation. For example, the DIL-cover balancing a locally existing capacity below the global capacity may be supplemented by a reinsurance solution for the purpose of reducing the need for additional capacity.
- *Financial Interest Clause:* The property risk in the state of activity may be converted into a finance risk in the home state by means of contractual structuring so that at least formally there is no cross-border insurance activity. There is, however, an evasion of the law in my opinion.
- *Change of home state:* The breach of law risk is higher if cross-border insurance activity does not only cause a statute violation in the state of activity, but also in the home state. For example, in the case of an international insurance programme, it may appear reasonable to arrange the DIC/DIL-cover exceptionally not under the master policy, but rather under a local policy in a state where the supervision law does not include any express requirements for activity abroad.
- *Distinction between states of activity:* The breach of law risk in connection with cross-border insurance activity may be different from state to state. Therefore, it may appear reasonable under a risk-based approach to implement extensive local solutions in certain states of activity like for example the USA instead of choosing a cross-border solution.
- *Change clause:* It generally appears reasonable in the case of cross-border insurance activity to include a particular clause in the insurance contract in order to make a change of structure possible for supervisory law purposes during the contractual term. This is how one may react to an increasing breach of law risk before contract expiry.
- *Monitoring:* The breach of law risk connected to cross-border insurance activity should be monitored continuously in order to be able to take risk reducing or risk avoiding measures early enough, if necessary.

Objective of low breach of law risk (conclusion)

Insurance undertakings may realistically assess cross-border activity considering the breach of law risk and limit themselves to activity with low risk. Various risk strategies are possible from an insurance undertaking's point of view.

An insurance undertaking may try to exclude statute violation and accordingly minimize the breach of law risk (full compliance-strategy). In such a case the insurance undertaking would try to implement statutory norms in both the state of activity and the home state in an anticipative way and perform cross-border activity only to the extent it does not cause any statute violation. As a result, the insurance undertaking would need to implement mainly local insurance solutions. Only exceptionally could it perform cross-border insurance activity. Such a strategy would be costly and time-consuming. Also it could not be fully implemented considering the possibility of conflicts between different national supervision laws.

Alternatively, an insurance undertaking may decide to deviate from the said "maximum solution" to a limited extent and selectively accept statute viola-

tions *without the resulting breach of law risk in total being considerably increased*. If applicable, the insurance undertaking would take a risk-based approach and accept statute violations only where the breach of law risk is low from the outset and could be further reduced with additional measures. As a result, the insurance undertaking would be able to perform cross-border activity to a larger extent and thereby save time and costs. Comprehensive local insurance solutions may still need to be implemented selectively in states with generally a high breach of law risk. Certainly, the insurance undertaking would need to monitor such a middle course continuously and adapt it in the event of a changing risk situation.

Special case of Switzerland as home state

Cross-border insurance activity from Switzerland is generally subject to an increased breach of law risk compared to many other home states, as the Swiss Insurance Supervision Act regulates also insurance activity abroad in order to protect the reputation of the Swiss insurance industry. Any cross-border activity without prior notification to FINMA would automatically cause a statute violation in Switzerland, independent from whether or not there is also a statute violation in the state of activity.

Bearing in mind that the supervisory law requirement serves the purpose of reputation, the breach of law risk emerging from insurance activity from Switzerland appears particularly high if states of activity are concerned where a statute breach could in fact lead to a reputational damage in Switzerland. Such "risk states" would generally be the neighbouring countries and in additional for example the USA. In other countries proceedings against Swiss insurance undertakings (being unlikely at the outset) would hardly have any effect on the reputation of the Swiss insurance industry. Accordingly, one may expect that FINMA mainly monitors cross-border insurance activity in "high risk states". In these states the breach of law risk due to statute violation appears higher than in other states of activity.

As a result, Swiss insurance undertakings should perform cross-border activity only if it does not violate statutory norms in the state of activity and if it is notified to FINMA in advance. Other cross-border activity should be performed only exceptionally and only risk-based (considering the respective breach of law risk).

Abbreviations

AVO	Swiss Federal Ordinance on Supervision of Private Insurance Undertakings of 2005
BGE	Swiss Federal Supreme Court Decision
EU	European Union
Circular	Circular of FINMA
DIC	Difference in Conditions
DIL	Difference in Limits
FINMA	Swiss Financial Market Authority FINMA
FINMAG	Swiss Financial Market Authority Act of 2007
IDD	Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (Insurance Distribution Directive)
IPRG	Swiss Federal Act on International Private Law of 1987
Solv.II-Dir.	Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast)
VAG	Swiss Federal Act on the Supervision of Insurance Undertakings of 2004
VersVertG	Liechtenstein Insurance Distribution Act of 2017
VVG	Swiss Federal Act on the Insurance Contract of 1908

Other Publications in the Insurance and Finance Law Area

- Reduktion von Rechts- und Reputationsrisiken durch antizipative Normumsetzung im Unternehmen, 2017 (d)
- Obligatorische und freiwillige Versicherung durch Privatversicherer in der Schweiz, 2017 (d)
- Privatversicherungsrechtsprechung 2016, von Samuel Sauter, 2017 (d)
- Wirklichkeitsnahes Rechtsverständnis und Management von Rechtsrisiken, 2016 (d)
- Swiss Supervisory Law Optimization in the Area of Independent Asset Management, 2015 (d)
- Multifunktionale Rückversicherung nach Schweizer Recht, 2015 (d)
- More Protection for Policyholders at Point of Sale in Switzerland, 2014 (e/d)
- How to Deal with Swiss Financial Market Supervision, 2014 (e/d)
- Regulating Data Protection in Multinational Companies (Overview) (e/d)
- Agreements Affecting Competition and Market Dominance with Special Focus on the Swiss Insurance Market (Overview), 2013 (e/d)
- Umstrukturierungen im Versicherungskonzern (eine Übersicht), 2013 (d)
- How to Avoid Regulations for Private Equity Investments in Switzerland, 2011 (e/d)
- Planned Changes of Swiss Insurance Contract Law in a Nutshell, 2011 (e/d)
- Swiss Insurance Law Update 2011/1 (e/d)
- Regulated Contracts in the Swiss Insurance Business, 2010 (e/d)
- Swiss Insurance Law Update 2010/1 (e/d)
- Swiss Insurance, Banking and Capital Market Update 2009/2 (e/d)
- Swiss Insurance, Banking and Capital Market Update 2009/1 (e/d)
- Swiss Insurance, Banking and Capital Market Update 2008/2 (e/d)
- Swiss Insurance, Banking and Capital Market Update 2008/1 (e/d)
- Actions Required under New Swiss Collective Investment Schemes Act, 2007 (e/d)
- Swiss Insurance Law Update 2007/1 (e/d)
- Schweizerische Versicherungs- und Vermittleraufsicht, 2006 (d)
- Unterstellung unter die neue Vermittleraufsicht (AJP 4/2005)
- Abstimmung zwischen Aufsicht und Haftung im neuen Recht der Versicherungsvermittler (SZW 2/2005)
- Recht des schweizerischen Finanzmarktes, Ein Grundriss für die Praxis, Schulthess Juristische Medien, 2004
- Vermögensschutz mittels schweizerischer Lebensversicherung (der Schweizer Treuhänder, 12/03)