INSURANCE REGULATION IN EUROPE

CLIFFORD CHANCE

FOURTH EDITION

Austria

1. *Market developments*

1.1 *Premium income*

In 1995 premium income from the Austrian domestic insurance market was US$12.86 billion made up of US$6.67 billion non-life, $4.6 billion life and $1.59 billion health insurance.

1.2 *Market participants*

As of July 1996 there were 76 insurance companies established in Austria of which 9 were branch offices of foreign companies. More than 180 insurance companies established in other EC countries have notified the Austrian supervisory authorities of their intention to write insurance business in Austria on a services basis, although so far such companies account for a very small percentage of the market.

A major change over the past year has been the formation of a joint venture company between the Bundeslaender and Austria-Collegialitaet which merges the fourth largest non-life insurer with the largest health insurer. It is thought that the two companies may well merge in the future. The new group wrote business producing combined premium income in 1995 of US$2.51 billion.

In addition to private companies each state in Austria has its own insurance company which controls a certain amount of local business.

In 1995 the largest 10 non-life companies in Austria accounted for 73.5% of the total market income as the market is dominated by four large groups, being EA-Generali, Wiener Staedtische, Bundeslaender and Wiener Allianz. Of these the first is Italian owned and the last German owned. Of the two major Austrian owned groups, Wiener Staedtische is owned by the municipality of Vienna while Bundeslaender belongs to the nine States or Laender and to the large mutual agricultural bank Raiffeisen.

1.3 *Principal distribution channels*

Insurance is sold in Austria mainly through tied agents and brokers although there is a limited amount of direct selling mainly in the motor insurance market.

The traditional method of selling insurance has been through tied agents but broking firms are increasingly making their presence felt particularly in industrial business. All leading insurance companies have tied agents and it is estimated that these tied agents account for around seventy percent of the total premium income in the Austrian market.

A new insurance intermediaries law came into effect in July 1996 which marks the beginning of more stringent controls over insurance intermediaries.

There are now about 2,200 insurance brokers operating in Austria but many of these are small single person firms distinguished from agents only by the fact that they place business with more than one company. There are additionally around 3,300 brokers that hold a broking licence but are not operating. Many brokers obtained the required licence once it was known that from July 1989 qualifications required to gain a broker's licence would be much stricter as brokers would be required from that date to pass examinations in order to qualify.

Broker activity is governed by the Broker Act of 1996 which makes special provisions for insurance brokers concerning their duties to consumers. There is also an insurance brokers' association which currently has 51 members, plus 45 affiliated members, and obliges its members to have insurance cover for a minimum of ASH three million. It is estimated that brokers now control about 20% of the non-life market and as much as 50% of industrial business.

Many Austrian banks are involved in selling insurance although this has traditionally been restricted to life insurance. Banks and insurance companies are also forming joint ventures, for example CA-Generali between the insurer EA-Generali and the mainly state-owned bank Creditanstalt.

The post savings bank ("PSK") is said to be the country's busiest personal lines broker and in February 1996 the Austrian post office and the PSK formed a joint venture insurance company.

2. *Framework of insurance regulation*

2.1 *Legislation*

The main law regulating transactions of insurance business in Austria is the Insurance Supervisory Act of 1978 *Versicherungsaufsichtsgesetz* ("the VAG"). Austria has implemented the first and second insurance directive through the *VAG-Novelle 1992* and the third EU insurance directive by *VAG-Novelle 1994*. The VAG was also amended in August 1996 to implement requirements for more information to be provided to policyholders, rules on the use of derivatives and the participation of the insured in the profits of life assurance.

The Market Liability Insurance Act of 1994 modified the existing law to comply with other requirements of the third non-life directive.

The Insurance Contract Law (*Versicherungsvertraggesetz*) of 1994 governs the relationship between insurer and policyholders and is intended to protect the latter in the increasingly liberal insurance market.

Other general legislation which will also apply to insurers include the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*), the Commercial Code (*Handelsgesetzbuch*) 1897, the 1965 Stock Companies Act (*Aktiengesetz*), the 1984 Federal Act against Unfair Competition (*Bundesgesetz gegen den unlauteren Wettbewerb*) and the 1994 Commerce Act (Gewerbeordnung).

Private insurance companies have to be incorporated either as public joint stock companies (*aktiengesellschaft*) or mutual insurance societies (*versicherungsverein auf gegenseitigkiet*).

Companies incorporated in Austria as well as non EEA companies operating as a branch in Austria must obtain a licence from the supervisory authority. Authorisation is granted for each class of business and life insurance must be clearly separate from non-life, although existing licences for composite insurers remain operative.

2.2 *Regulatory authority*

The insurance sector is regulated by the Federal Ministry of Finance via the Insurance Supervision Authority, *Versicherungsaufsichtsbehörde* ("VAB"). A licence to operate insurance business is granted by the VAB and the application must include the articles and memorandum of association of the company, a business plan, reinsurance policy and proof of sufficient funds. Supervision of insurance companies by the VAB comprises all the activities of the insurance company within Austria and the EU and any business apart from insurance business is prohibited. The acquisition of certain levels of shareholding in an insurance company has to be notified to the VAB which may prohibit the acquisition and may suspend voting rights in certain circumstances. There are also general reporting requirements to the VAB.

2.3 *Reinsurance*

In order to conduct reinsurance business in Austria a licence is also required from the VAB unless the reinsurance is one of the classes authorised under the direct insurance authorisation. Foreign insurance companies which conduct only reinsurance business in Austria are not subject to the VAG licensing requirements.

Capital requirements, solvency margins and reserve requirements are the same as those for insurance companies, the only difference being that rules applying to locally established insurance companies, as to where and in what they may invest their reserves, do not apply to reinsurers.

3. Regulation of marketing/consumer protection

The Insurance Contract Law contains provisions to protect policyholders in their relationship with insurers including rights for policyholders as to information to be provided and cancellation rights.

There is no specific compensation fund for policyholders but the VAG does include regulations for policyholder protection in the event of insolvency of an insurance company.

4. Taxation

4.1 *General*

Austrian insurance companies are in principle subject to the same taxation as other companies, the current rate of corporate income tax being 34%.

The Corporate Income Tax Act contains general regulations for insurance companies regarding the deductibility of increases in technical reserves and equalisation reserves in so far as these reserves are required by the VAG. Additionally increases in provisions for bonuses and policyholders' shares in profits are deductible.

4.2 *Insurance Premium Tax*

Under the Insurance Tax Act (*Versicherungssteuergesetz*) premiums are taxable if the policyholder is either resident or domiciled in Austria and if the insured item is within Austrian territory on the conclusion of the insurance contract. Whilst the premium tax is payable by the policyholders the insurance companies are responsible for its collection and accounting for it to the tax authorities.

Insurance contracts with insurance companies which are not established in EEA Member States are subject to an increased premium tax of five times the normal rate with a maximum of 50% of the net premiums.

Generally the tax rate on insurance premiums varies between 1% and 11%, with 1% being charged on health insurance premiums and 11% being charged on single premium endowments for less than 10 years and on property/casualty insurance. Life and personal accident insurance premiums attract a rate of 4% and annuity insurance 2.5%.

4.3 *Tax reliefs*

Premiums for personal accident, health and annuity insurance policies are tax deductible if the policyholder does not earn more than ATS 700,000 per year. For a taxable income of up to ATS 500,000 an amount of between ATS 10,000 and ATS 25,000 is tax deductible depending on the status of the policyholder.

5. *Financial supervisory requirements*

5.1 *Solvency requirements*

The VAG specifies the required solvency margin for Austrian insurers which is calculated from the relevant EC directives.

Insurers must also establish special funds to meet future liabilities on life policies and any potential claims from medical cover. These funds must be administered by an independent trustee approved by the VAB.

5.2 *Insurance companies' accounts*

There are a variety of provisions stipulating the structure of balance sheets and annual profit and loss accounts for insurance companies. An annual report must also be submitted to the VAB.

There are also provisions stipulating how assets and obligations should be valued and from January 1997 insurance companies are obliged to revalue investments previously written down to cost value if the reason for the devaluation has ceased to exist.

All insurance companies in Austria have to submit two sets of accounts, one being the returns to the VAB as set out in the VAG and the other, annual accounts to shareholders based on Austrian Corporation Law and the Austrian Commercial Code (HGB) in connection with the VAG.

6. *Insolvency of insurance undertakings*

In general, insurers are subject to normal insolvency proceedings, the most important exception to this is that bankruptcy proceedings can only be initiated through the VAB, and the VAG includes regulations to protect policyholders in the course of bankruptcy proceedings. However, there have been no insolvencies in the Austrian insurance market in the modern era.