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Belgium

INSURANCE & REINSURANCE

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This country-specific Q&A provides an overview of insurance & reinsurance laws and regulations applicable in Belgium.

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BELGIUM

INSURANCE & REINSURANCE



1. How is the writing of insurance contracts regulated in your jurisdiction?

Insurance and reinsurance business is governed by a comprehensive body of law.

The main text for the authorisation and supervision of (re)insurance undertakings, implementing 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 Directive"), is the Law of 13 March 2016 on the status and supervision of insurance and reinsurance undertakings ("Solvency II Law").

The Solvency II Law is supplemented by implementing Royal Decrees and regulatory guidance by the national competent authority for prudential supervision, the National Bank of Belgium ("NBB").

The activity of (re)insurance distribution is governed by the Law of 4 April 2014 on Insurance ("Insurance Law"). Among others, this law implements Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution ("IDD").

The Insurance Law is supplemented by laws governing specific aspects of insurance law, implementing Royal Decrees and regulatory guidance by the national competent authority for supervision on (re)insurance distribution, the Financial Services and Markets Authority ("FSMA").

The Insurance Law and related texts set out Belgian rules protecting the general good. These rules include, among others, mandatory formalities for the conclusion and performance of insurance contracts, rules of conduct and minimum content for all types of insurance contracts.

2. Are types of insurers regulated differently (i.e. life companies, reinsurers?)

The NBB authorises insurance undertakings for specific

classes of insurance. These classes are grouped in life insurance and non-life insurance. The category for which the insurer is authorised will impact the prudential rules to which it is subject (e.g. capital requirements).

Furthermore, Belgium has implemented the principle of proportionality in various aspects of insurance regulation. For example, less significant insurance undertakings must have a less robust governance framework, may apply simplified methods and techniques to calculate technical provisions and are subject to less rigorous reporting requirements.

Reinsurance undertakings are equally subject to a comprehensive body of insurance regulation. However, both the Solvency II Law and the Insurance Law take into account the specific nature of reinsurance business. Often, this results in less stringent regulatory conditions, such as the requirements for market access for third country reinsurance undertakings or the (non-)imperative nature of the provisions governing reinsurance contracts.

3. Are insurance brokers and other types of market intermediary subject to regulation?

The activity of (re)insurance distribution is governed by Part 6 of the Insurance Law, as well as its implementing Royal Decrees and FSMA regulatory guidance.

(Re)insurance intermediaries must register with the FSMA before carrying out insurance distribution activities in Belgium or, alternatively, exercise passporting rights when registered in another EEA Member State.

The FSMA register of insurance intermediaries consists of the following categories:

- Insurance brokers
- Insurance agents
- Insurance subagents
- Mandated underwriters
- Ancillary insurance intermediaries

Reinsurance distribution is equally regulated by the Insurance Law. The FSMA register of reinsurance intermediaries consists of the following categories:

- Reinsurance brokers
- Reinsurance agents
- Reinsurance subagents

The FSMA regularly emphasises that the whole chain of (re)insurance distribution is regulated and that any (re)insurance undertakings must verify whether all intermediaries in the distribution chain are duly authorised.

The Insurance Law sets out detailed registration conditions (e.g. professional knowledge and experience requirements for regulated positions), as well as rules of conduct (e.g. precontractual disclosures, conflict of interest management). These rules are further supplemented by Implementing Royal Decrees, such as the Royal Decree of 18 June 2019 on the implementation of Articles 5, 19° /1, 264, 266, 268 and 273 of the Insurance Law, and FSMA guidance (e.g. IDD Handbook, newsletters, FAQs etc.)

4. Is authorisation or a licence required and if so how long does it take on average to obtain such permission? What are the key criteria for authorisation?

Insurance and reinsurance undertakings must obtain a license before carrying out any activity of insurance in Belgium.

Insurance and reinsurance undertaking established in other EEA Member States may exercise passporting rights in accordance with European rules.

Insurance undertakings established in third country jurisdictions can only carry out activities in Belgium after establishing a local branch. Reinsurance undertakings established in third countries enjoy more flexible market access requirements (see question 6).

The Solvency II Law and the Royal Decree of 22 February 1991 on the general regulation on the supervision of insurance undertakings set out detailed and comprehensive conditions and documentary requirements for authorisation. The NBB has issued further practical guidance in its 2017 Memorandum on the application for authorisation by an insurance or reinsurance company under Belgian law and related communications.

The key criteria for authorisation relate to quantitative requirements (e.g. minimum capital requirements),

qualitative requirements (e.g. governance) and transparency requirements (e.g. reporting to the NBB and disclosures to the general public).

The NBB approves applications for authorisation within a period of six months from the date of receipt by the NBB of a complete application. In practice, candidates discuss the application with the NBB and submit their file informally well in advance. Both the informal and formal process are regulated by the NBB in its 2017 Memorandum on the application for authorisation by an insurance or reinsurance company under Belgian law. The time to obtain authorisation largely depends on the discussions during the informal pre-approval process. Recent applications for authorisation took around 12 to 24 months to be processed.

5. Are there restrictions or controls over who owns or controls insurers (including restrictions on foreign ownership)?

The NBB approves the suitability of qualified shareholders. Any shareholder having a holding of 20%, 30% or 50% or parent company must notify the NBB in advance of its intention.

The NBB can oppose to the holding if the candidate-shareholder is not suitable to ensure the sound and prudent management of the undertaking. The suitability assessment is carried out based on the following criteria:

- Reliability
- Professional aptitude and competence
- Solvency position
- The assurance that the shareholder will continue to comply with prudential requirements
- The absence of any indications of money laundering and terrorist financing

Further regulatory guidance on the requirements for persons or entities owning or controlling insurance or reinsurance undertakings can be found in the NBB's Governance Circular, its 2017 thematic Circulars, and the ESA's Joint Committee's Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors.

6. Is it possible to insure or reinsure risks in your jurisdiction without a licence or authorisation? (i.e. on a non-admitted basis)?

The Solvency II Law provides several exemptions on the licensing requirement. These exemptions relate, for example, to certain social security schemes, export credit insurance and car assistance cover.

Furthermore, Belgium is a party to the WTO General Agreement on Trade in Services and the OECD Code on the liberalisation of current invisible operations.

Insurance undertakings established in WTO Member States enjoy freedom of services to carry out regulated activities insofar the insured risks relate to maritime transport, commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability deriving therefrom; and risks related to goods in international transit. Such (re)insurers must notify the FSMA of their intention to exercise their right to write risks in Belgium.

Insurance undertakings established in third countries that have adopted the OECD Code may cover, under the freedom to provide services, risks located in Belgium belonging to classes 4 (rolling stock CASCO), 5 (aircraft CASCO), 6 (inland and sea vessel CASCO), 7 (transported goods), 11 (civil liability for aircraft) and 12 (civil liability for sea and inland vessels) if the policyholder took the initiative to enter into the contract.

Finally, reinsurance undertakings established and licensed in third countries may establish a branch in Belgium or carry out their activities without a branch with regard to the same activity for which they have obtained authorisation in their home state.

7. Is a branch of an overseas insurer, insurance broker and/or other types of market intermediary in your jurisdiction subject to a similar regulatory framework as a locally incorporated entity?

Insurance undertakings established in third countries obtain Belgian market access by establishing a branch in Belgium. This procedure is governed by the Solvency II Law and regulatory guidance by the NBB, notably NBB's 2017 Communication on the procedures for the performance of insurance or reinsurance activities in Belgium by insurance or reinsurance companies governed by foreign law.

The branch of an insurance company from a third country may only perform insurance activities in Belgium if:

- the insurance company is governed by the law of a third country that is considered "equivalent";
- the Bank has entered into a cooperation agreement with the supervisory authorities of the third
- country of origin;
- the insurance company has been granted authorisation in the third country of origin for performing the insurance activities it intends to carry out through its Belgian branch; and
- the branch has been granted prior authorisation by the Bank.

To obtain NBB approval, the insurance undertaking must comply with similar authorisation requirements as a Belgian insurer. In practice, it must submit a dossier to the NBB containing, among others, information on its organisation, solvency and prudential information, proof that it has the necessary eligible own funds to attain half of the absolute floor of the minimum capital requirement and sufficient collateral in Belgium and the contact details of the authorised agent in Belgium.

Reinsurance undertakings established and licensed in third countries may establish a branch in Belgium or carry out their activities without a branch with regard to the same activity for which they have obtained authorisation in their home state.

Insurance intermediaries established in third countries must register with the FSMA prior to starting their activities of insurance distribution in Belgium. They are subject to the same regulatory requirements as Belgian insurance intermediaries (e.g. incorporation of a Belgian company, appointment of regulated positions, etc.).

8. What penalty is available for those who operate in your jurisdiction without appropriate permission?

Both the activity of writing insurance and the activity of insurance distribution without authorisation are penalised by administrative and criminal sanctions (fines, imprisonment, penalty payments etc.).

Furthermore, the Insurance Law provides that insurance contracts concluded without authorisation are null and void. However, for the protection of policyholders' interests, the insurance contract continues to bind the unauthorised insurer, provided the policyholder has taken out the contract in good faith.

Consequences for breaches also include (extra-)judicial proceedings by policyholders and other interested persons, both in civil proceedings (contract or tort and

individual or class action) and criminal circumstances.

9. How rigorous is the supervisory and enforcement environment? What are the key areas of its focus?

The NBB and FSMA are well-equipped and no less rigorous than their larger neighbours in their scrutiny of applications and investigations. However, both regulators show to be pragmatic, are easily accessible and communicate in multiple languages (including English).

For 2022, the NBB continues to monitor the impact of COVID-19, new financial embargo's and asset freezing as well as low interest rates on the insurance industry closely. Furthermore, it will focus on reinsurance arrangements as a tool to optimise capital management, for example in the context of run-off transactions. In 2021, the NBB has looked into Insurtech developments (e.g. cloud computing, open insurance, crypto currencies) in light of cyber risks. The NBB has indicated that it will continue this course for 2022. Another continued focus area for 2022 are outsourcing arrangements and its impact on, among others, conflicts of interests, internal audit and cost allocation.

In recent years, the FSMA has focused on the duty of regulated entities to rely on registered insurance intermediaries only. We expect the FSMA to maintain this priority, in particular in light of cross-border organisational structures post-Brexit. Furthermore, market behaviours causing consumer detriment remains an area of priority. The FSMA has also published its comprehensive IDD Handbook (available in Dutch and French) in February 2022, containing regulatory guidance on IDD-obligations (with a key focus on information obligations).

Finally, we have seen an increased focus on sustainability and sustainable finance on all policy levels. These developments should be monitored closely, as the new regulatory initiatives will have a large impact on various aspects of insurance business (capital requirements, (precontractual) disclosures, investments, risk management, reporting, internal trainings, etc.)

10. How is the solvency of insurers (and reinsurers where relevant) supervised?

The NBB is the competent authority for prudential supervision of insurers and reinsurers. These entities report on a regular basis and spontaneously to the NBB. Furthermore, the NBB has extensive powers under the Solvency II Law to, for example, request additional

information on the insurer's solvency position, to conduct audits and to intervene where necessary.

11. What are the minimum capital requirements?

Minimum capital requirements are set out in the Solvency II Law in accordance with the provisions of the Solvency II Directive.

12. Is there a policyholder protection scheme in your jurisdiction?

Belgium has introduced detailed rules on contracts of insurance. In general, these rules are part of the provisions protecting the general good and are imperative. Therefore, they apply to all insurance undertakings, regardless of their place of incorporation.

These rules relate to contract formalities as well as the content of the insurance contract (termination conditions, mandatory cover or exclusions, language, claims notification process etc.).

Belgium has also enacted rules on specific lines of business such as, for example, workplace accidents, compulsory motor vehicle liability insurance and pension schemes. These texts are considerably more prescriptive.

Finally, various general texts apply to the insurance sector. A key example is the Code of Economic Law of 28 February 2013, which sets out rules on unfair contract terms and market practices.

13. How are groups supervised if at all?

Group supervision applies to any insurance Belgian undertaking that is:

- a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking;
- a subsidiary of an insurance holding company which has its head office in the Community;
- a subsidiary of an insurance holding company having its head office outside the Community or a third-country insurance or reinsurance undertaking; and
- a subsidiary of which is a mixed-activity insurance holding company.

The Solvency II Law implements the detailed provisions of the Solvency II Directive governing supervision on groups and conglomerates.

14. Do senior managers have to meet fit and proper requirements and/or be approved?

Yes, the NBB approves the appointment of board members, executive managers and the persons who effectively run the insurance undertaking.

The NBB has published comprehensive guidance on its expectations regarding the fitness and propriety of these persons. In particular, it has dedicated a chapter in its Overarching Governance Circular and provided specific guidance in thematic Circulars, such as the "Fit & Proper Handbook".

15. To what extent might senior managers be held personally liable for regulatory breaches in your jurisdiction?

Under certain circumstances, directors, executive managers and persons who effectively run the insurance undertaking may be personally liable for damages incurred for failure to comply with prudential requirements. This liability concerns administrative fines up to 5,000,000 EUR.

Serious breaches may lead to criminal prosecution and potential liability up to imprisonment from one month to one year and a criminal fine up to 80,000 EUR.

Finally, creditors may invoke the personal civil liability of senior managers for serious breaches of their mandate.

16. Are there minimum presence requirements in order to undertake insurance activities in your jurisdiction (and obtain and maintain relevant licences and authorisations)?

Insurance undertakings subject to the supervision of the NBB must hold their central administration in Belgium.

The NBB has provided further guidance on corporate substance requirements in its Overarching Governance Circular. It expects Belgian insurance undertakings to keep their principal place of business in Belgium and to take the principal decisions of the company in Belgium.

Furthermore, the NBB assesses corporate substance

requirements on a case-by-case basis. It will take into account all relevant circumstances and will not rely on a tick box exercise.

17. Are there restrictions on outsourcing services and/or operational resilience requirements relating to the business?

Outsourcing of activities or procedures which are specific to the (re)insurance company and are performed on a recurring or continual basis are subject to prudential requirements. These are set out in the Solvency II Law and the NBB's Overarching Governance Circular, as well as the NBB's thematic Circulars, such as the Circular on cloud outsourcing.

Outsourcing is defined as "an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself".

The Solvency II framework distinguishes between the outsourcing of critical or important activities and functions and forms of outsourcing that are not critical or important. Critical or important outsourcing is subject to more stringent regulatory requirements.

As a general principle, all (re)insurance undertakings remain fully responsible for the outsourced functions or activity.

The outsourcing of operational tasks must not lead to any of the following:

- material impairment of the quality of the governance system of the insurance company;
- undue increase of the operational risk;
- impairment of the Bank's ability to monitor compliance by the insurance company with the obligations laid down by or pursuant to the Solvency II Law;
- undermining of the continuous and satisfactory service to policyholders, insureds and beneficiaries of insurance policies or the persons concerned by the performance of reinsurance policies.

All (re)insurance undertakings must develop an outsourcing policy containing mandatory content, for example including rules regarding continuity plans (ensuring operational resilience), protection of personal data and reporting to the NBB.

Specific and comprehensive rules apply to the outsourcing of critical or important functions or activities. In such a case, special emphasis is placed on ensuring that the service provider has suitable contingency plans to deal with emergencies or business interruptions, as well as the obligation for insurance and reinsurance undertakings to have a documented exit strategy in accordance with its outsourcing policy and its business continuity plan, ensuring that withdrawal from an outsourcing agreement does not cause any disruption to its business operations.

Finally, on 4 April 2019, the Belgian legislator has introduced restrictions on certain b2b transactions. These restrictions relate to unfair market practices and unfair terms. These rules entered into force on 1 September 2019 (unfair market practices), 1 June 2020 (abuse of a dominant position) and 1 December 2020 (unfair terms). While financial services are excluded from the scope of the “b2b-law”, outsourcing arrangement fall within scope.

18. Are there restrictions on the types of assets which insurers or reinsurers can invest in or capital requirements which may influence the type of investments held?

The Solvency II Law, Solvency II Royal Decree, Solvency II Delegated Regulation and the NBB’s regulatory guidance govern the capital requirements applicable to (re)insurance undertakings. The choice of assets in which (re)insurance undertakings invest directly impacts the calculation of the Solvency Capital Requirement (SCR) and the Minimum Capital Requirement (MCR).

As a general principle, (re)insurance undertakings should have assets of sufficient quality to cover their overall financial requirements. (Re)insurance undertakings should manage these assets in accordance with the ‘prudent person’ principle. Investments are only permitted if the (re)insurance undertaking can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency needs. Furthermore, the (re)insurance undertakings must invest all assets in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole, while ensuring appropriate diversification. Assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities. Those assets shall be invested in the best interest of all policy holders and beneficiaries taking into account any disclosed policy objective.

In the case of a conflict of interest, insurance undertakings, or the entity that manages their asset portfolio, shall ensure that the investment is made in the best interest of policyholders and beneficiaries.

Investments in derivatives are permitted if the investment contributes to risk management or facilitates effective portfolio management.

While the Belgian legislator does not require (re)insurance undertakings to invest in particular categories of asset, the FSMA has published guidance on certain assets that are not suited for distribution to retail customers. In practice, most life insurance undertakings have adhered to this voluntary moratorium of structured products. The moratorium applies to the distribution of structured products that are considered particularly complex.

Finally, recent regulatory initiatives have an impact on the investment management of insurance undertakings. In particular, the Shareholders Rights Directive and the sustainable finance package create additional points of attention for (re)insurance undertakings when determining their investment strategy. These rules may impact the choice of assets, precontractual disclosures and (contractual) reporting to policyholders, the general public and the regulator.

19. How are sales of insurance supervised or controlled?

The distribution of insurance contracts is governed by the Law of 4 April 2014 on Insurance (“Insurance Law”), its implementing Royal Decrees and regulatory guidance of the national competent authority, the Financial Services and Markets Authority (“FSMA”).

Furthermore, specific legislation applies to certain aspects of the distribution, such as the prohibition on discrimination, or to specific lines of business, such as compulsory motor vehicle liability insurance or payment protection cover.

At all times, the general principles of civil and commercial law continue to apply, if not derogated from by specific laws. For example, the Civil Code sets out rules on the conclusion of contract (e.g. valid consent), the Code of Economic Law on unfair market practices and unfair terms, the Brussels Ibis Regulation governs the choice of jurisdiction and the Rome I Regulation the choice of law.

These rules are, in general, imperative and part of the provisions protecting the general good. Insurance contracts cannot derogate from these legal provisions.

However, specific lines of business may fall outside the scope of certain rules (e.g. large risks, export credit insurance or maritime insurance). In that case, parties may enjoy larger contractual freedom.

20. To what extent is it possible to actively market the sale of insurance into your jurisdiction on a cross border basis and are there specific or additional rules pertaining to distance selling or online sales of insurance?

Belgian insurance distribution laws apply to non-Belgian (re)insurance intermediaries when activities of (re)insurance distribution are “carried out in Belgium”.

In the context of Brexit, the FSMA has issued further guidance on the interpretation of the notion “carried out in Belgium”. The FSMA’s clarifies in its Newsletter of August 2019 that Belgian distribution laws apply to non-Belgian insurance distributors when:

- It carries out (re)insurance distribution activities for policyholders established in Belgium and for risks situated in the EEA;
- it factually carries out its activities in Belgium by targeting the Belgian market, for example by using a website with a .be extension or using communication in one of the Belgian official languages (Dutch, French and German).

In that case, the insurance distributor must comply with all Belgian requirements for the distribution of insurance contracts, including the registration requirement for insurance intermediaries and the requirement to comply with Belgian general good provisions. The FSMA and NBB publish an indicative list of general good provisions on their websites.

Specific rules apply to distance selling. The insurance undertaking must grant a cooling-off period of 14 days to the policyholder. This period is extended to 30 days for life insurance contracts. Furthermore, the distributor must make additional disclosures and include appropriate contractual clauses in the insurance contract.

21. Are consumer policies subject to restrictions, including any pricing restrictions? If so briefly describe the range of protections offered to consumer

policyholders

Belgian laws govern the distribution and product development of consumer policies in detail, leaving few contractual freedom for the contractual parties. While the Insurance Law generally applies to both consumer and non-consumer policies, general laws, such as the Code of Economic Law, provide additional rules when distributing insurance to consumers.

See question 2, 12, 19 and 20 for further details on the substance of these requirements.

Tariff-setting is in principle subject to the contractual freedom of the parties, but has to comply with basic rules under anti-discrimination law and unfair market practices. For certain types of consumer policies (including compulsory motor vehicle liability insurance, fire insurance of residential property, individual life insurance and health insurance), the insurer is under the obligation to publish on its website the criteria it uses in relation to its segmentation policy for risk acceptance, tariffication and scope of coverage. This segmentation policy must be objectively justified by a legitimate aim and the means of achieving that aim must be appropriate and necessary.

For specific types of insurance, particular (and limited) protective measures exist, that could impact and restrict the pricing policy, for example:

- for mortgage credit insurance and professional credit insurance, insurers are, under certain specific conditions, not allowed to take into account cancer insofar as the candidate insured has been in remission for a period of 10 years (so-called ‘right to be forgotten’);
- principal right to health insurance and premium restrictions for chronically ill patients (but with a possibility to exclude the chronic illness);
- measures ensuring access for chronically ill patients to mortgage credit insurance;

22. Are the courts adept at handling complex commercial claims?

Industrial risk and financial lines insurance disputes as well as reinsurance disputes are often submitted to arbitration, whereas arbitration is not allowed in case of insurance disputes with consumer-policyholders. In case there is a technical controversy part of the dispute, the courts will appoint a court expert whose advice in a final report will be quasi-decisive for the outcome of the case. The fact that witness examination and cross-examination

practically never happen and the slow pace of the court proceedings, especially at the level of the (important) Brussels Court of Appeal, are considered to be an important disadvantage of the Belgian court system.

23. Is alternative dispute resolution well established in your jurisdictions?

Arbitration and mediation are in Belgium labelled as "alternative dispute resolution" techniques. Arbitration is often used for reinsurance disputes and complex industrial risk and financial lines disputes, but is not allowed in case of insurance disputes with consumers. Mediation is not often used in insurance disputes, generally because the parties seem capable of settling without needing the assistance of a mediator.

24. Is there a statutory transfer mechanism available for sales or transfers of books of (re)insurance? If so briefly describe the process.

An insurance portfolio transfer is subject to prior approval by the NBB. The procedure for approval is set out in Articles 102 to 106 of the Solvency II Law and the NBB's regulatory guidance. Furthermore, Belgium has introduced certain general good rules in the Insurance Law, which must be taken into account when transferring insurance contract with risks situated in Belgium (such as mandatory disclosures). The FSMA supervises compliance with those rules of conduct.

Once approved, the portfolio transfer is published in the Belgian Official Gazette. After this publication, the transfer is binding upon third parties, such as insureds, policyholders and beneficiaries. During the approval process, these third parties have no right to intervene and should not consent to the transfer.

Belgium has made use of the option under Article 39.6 of the Solvency II Directive and grants policyholders an additional cancellation right when their insurance contract is part of a portfolio transfer.

25. What are the primary challenges to new market entrants? Are regulators supportive (or not) of new market entrants?

A primary challenge to new market entrants is the fact that, except for some limited lines of business (for example CAR-insurance for large projects), the Belgian market is mature and even overcrowded in terms of both

domestic insurers and international insurers being active via a Belgian branch or based on their freedom to provide services within the EEA. Therefore, it requires an important capital investment to obtain market access and market share. This may be the reason why many players interested in entering the Belgian market consider either an acquisition, or passport into Belgium from their EEA home Member State and cooperate with domestic insurance intermediaries. Another challenge is the dual language system (French and Dutch) which obliges insurers to develop policy wordings and marketing materials (website etc) in both languages (yet, some insurance policies benefit from legal exemptions where it is possible to draft the policy documentation in English).

In general, is the NBB is rather easily accessible and communicates in multiple languages (including English). For the most important regulatory guidance of the NBB, an unofficial English translation is made available on the NBB's website (for example its 2017 Memorandum on the application for authorisation by an insurance or reinsurance company under Belgian law or its Overarching Governance Circular).

26. To what extent is the market being challenged by digital innovation?

Digital innovation is growing rapidly. Insurers innovate by applying digital techniques for the distribution of their insurance policies (e.g. smart phone apps), by cooperating with (ancillary) insurance intermediaries having innovative distribution models, by implementing advanced internal processes (e.g. cloud computing) and by developing new insurance products (e.g. cyber cover). We have seen a rise of banks acting as insurance distributors for insurance products offered through their websites or apps with no physical contact with the policyholders. COVID-19 has led many insurers to amend their more traditional distribution models (using more agencies and brokers), in favour of digital and online tools. Finally, in the last few years a number of specialised companies have entered the Belgian market as Lloyd's broker or coverholder (or its Belgian equivalents, respectively the insurance broker and the mandated underwriter) who underwrite insurance only via the internet.

27. How is the digitization of insurance sales and/or claims handling treated in your jurisdiction, for example is the regulator in support (are there concessions to rules being made) or are there

additional requirements that need to be met?

The regulators prioritises its supervision on new technologies. While there is no overall approach to InsurTech or digitisation, the regulator regularly issues specific guidance. For example, the NBB has published guidance on the outsourcing to cloud service providers and cloud computing. Detailed rules on cyber security exists, such as the FSMA's communication on basic principles for the management of cyber risks and the NBB's prudential expectations on the management of cyber risks. See also question 9 for further discussion on the regulators' priorities with regard to cyber risks.

28. To what extent is insurers' use of customer data subject to rules or regulation?

Insurance undertakings are subject to the rules set out in the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR") and its "implementation" in Belgium in the Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data.

Furthermore, laws and regulatory guidance specific to the insurance industry set out additional rules on the processing of personal data (e.g. medical data, AML-related KYC data), the storage of data and cyber security.

29. To what extent are there additional restrictions or requirements on sharing customer data overseas/on a cross-border basis?

The GDPR provides detailed rules on the sharing of data outside the European Economic Area. Sharing of personal data with entities established in third countries is only permitted under specific conditions and when the data controller has sufficient legal ground for such transfer (e.g. explicit consent, adequacy decision, necessity for the conclusion or performance of a contract in the interest of the data subject).

30. To what extent are insurers subject to ESG regulation or oversight? Are there

regulations/requirements specific to insurers? If so, briefly describe the range measures imposed.

The European Commission has further implemented its sustainable finance package throughout 2021 and the start of 2022 by issuing and implementing three major regulations:

- i. the Taxonomy Regulation, which creates an overall framework for the classification of sustainable economic activities, and which has introduced a reporting requirement for large or listed (re)insurance companies, as well as several disclosure requirements in precontractual documents and annual reporting to clients;
- ii. the Benchmark Regulation, which has introduced two new low carbon benchmarks and requires environmental, social and governance (ESG) disclosure requirements for benchmarks. The direct impact of the Benchmark Regulation is however rather limited for (re)insurance undertakings;
- iii. The Transparency Regulation (or SFDR), which has introduced extensive disclosure obligations for insurance undertakings offering insurance-based investment products (IBIPs), pension funds, as well as insurance intermediaries providing insurance advice with regard to IBIPs.

The Taxonomy Regulation and Transparency Regulation will be implemented further in Commission Delegated Acts and Regulatory Technical Standards, setting out for example mandatory disclosure and reporting templates.

The FSMA, as the competent supervisory authority, is expected to issue further regulatory guidance specifically directed towards insurance undertakings and intermediaries.

31. Over the next five years what type of business do you see taking a market lead?

The market will undoubtedly be led by those players who know how to combine efficiency and scale in their organisation and in their selling and claims handling processes. We expect that there will be ongoing consolidation in the industry, reducing the number of insurers and brokers active on the Belgian market, but with a more solid capital base and know-how. Also those insurers and brokers who will be able to concentrate on new products to cater for new needs associated with, for example, climate change, pandemics and communicable

diseases as well as cyber risks , have more chances to be successful than others. Furthermore, we have seen a steady growth in run-off transactions on the Belgian

market. We expect that the growth of this market of specialised run-off service providers (risk carriers, service companies, consultants) will continue.

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