

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Beschwerdekommission der Finanzmarktaufsicht in the case of A Ltd v Finanzmarktaufsicht

(Case E-2/23)

A request has been made to the EFTA Court dated 23 March 2023 from Beschwerdekommission der Finanzmarktaufsicht (Appeals Board of the Financial Market Authority), which was received at the Court Registry on 24 March 2023, for an Advisory Opinion in the case of A Ltd v Finanzmarktaufsicht on the following questions:

- 1. How must the terms “suitability” and “reputation” be interpreted for the purposes of Article 59(1)(a) of 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), OJ L 335, 17.12.2009, p. 1, incorporated into the EEA Agreement by Decision No 78/2011 of the EEA Joint Committee of 27 November 2012, LGBl. 2012/384? Is it thereby intended to refer only to the integrity or also to the professional suitability of the proposed acquirer?**
- 2. In the appraisal of the financial soundness of the proposed acquirer within the meaning of Article 59(1)(c) of the Directive mentioned may it also be taken into account that any necessary supply of funds by that person to the insurance undertaking is ensured through the provision of a bank guarantee or the making available of funds on a trust account which may be drawn on by the insurance undertaking at any time?**
- 3. How must the words “reasonable grounds” be interpreted for the purposes of Article 59(2) of the Directive mentioned? Is for these purposes certainty of non-compliance with the statutory requirements necessary or are substantiated doubts sufficient?**
- 4. Does a declaration made by the competent authority, here: by the Financial Market Authority Liechtenstein, pursuant to Article 16(3) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), OJ L 331, 15.12.2010, p. 48, incorporated into the EEA Agreement by Decision No 200/2016 of the EEA Joint Committee of 30 September 2016, LGBl. 2016/303, to make every effort to comply**

with guidelines, here: Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector, JC/GL/2016/01, have a binding effect on the courts of the Member States so that the latter are also obliged to make every effort to comply with these guidelines?