



Implementing Reform of Swiss Insurance Supervision Laws

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Key Take-aways

- 1.** Untied insurance intermediaries will be subject to prudential supervision by FINMA and, as regards existing untied intermediaries, they must submit top-up documentation by 30 June 2024 at the latest.
- 2.** The revised insurance intermediary regulation will prohibit a dual business model as insurance broker and agent by the same legal entity, which leads to a reorganization of the affected intermediaries.
- 3.** The revised regulation will allow an insurer to expand to "related" activities without FINMA approval, provided there is functional connection to the insurance business and the activity is narrow in scope.

1 Background

The reform of the [Swiss Insurance Supervision Act \(ISA\)](#) that we discussed in our earlier [Schellenberg Wittmer, Monthly Newsletter of June 2021](#) was passed by the Swiss Parliament on 18 March 2022. The implementation of the reform was subject to implementing provisions in the secondary legislation, which were [adopted by the Swiss Federal Council on 2 June 2023](#) as an amendment of the [Insurance Supervisory Ordinance \(ISO\)](#).

The revised rules of the ISA and the ISO will enter into force with **effect from 1 January 2024** except for those regarding the key information documents for qualified life-insurance products, i.e. life insurance contracts incorporating a risk of capital loss, that are scheduled to enter into force on 1 January 2025. With the references to the ISA and ISO, we are referring to the versions entering into force on 1 January 2024.

We are addressing a selection of **initial action points** resulting from the reform.

The revised provisions of the ISA and ISO will enter into force with effect from 1 January 2024.

2 Insurance Intermediaries

2.1 Identifying Insurance Intermediaries

The scope of Swiss insurance intermediary regulation continues to apply to persons who **advise policyholders with a view to entering insurance contracts or propose insurance contracts**. Providing **only data or information** about the insurance market does not constitute an activity as insurance intermediary.

The ISO explicitly specifies that the insurance intermediary regulation also includes operators of **internet-based or other electronic platforms** having a **commercial interest in the offer or conclusion of insurance contracts**, provided that either (i) the users may obtain information about certain insurance contracts on the basis of **individual criteria** they specify and they may select such insurance contracts via that platform or (ii) the platform provides a **ranking of insurance products**, taking into account a comparison of prices and products. This raises the question how the intermediary regulation should be applied to internet- or InsurTech-based portals covering insurance products.

The revised ISO also introduces generally a **de minimis exemption for ancillary intermediation activities**. Such exemption will be available where (1) the annual premium does not exceed CHF 600, (2) the insurance contract is ancillary to the relevant product or service and (3) the intermediation of insurance contracts is not the main business activity.

2.2 Registration of Insurance Brokers

To the extent an insurance intermediary **acts for policy holders or holds itself out to doing so**, it is classified as an **untied intermediary (insurance broker)**. By default, all other insurance intermediaries are **tied intermediaries (agents)**.

While the previous rules defined the status of an untied intermediary by reference to the absence of being tied to one or two insurance companies, from a substance point of view, the scope of activities triggering the regulation for untied intermediaries remains largely unchanged going forward. However, the revised rules for **untied intermediaries do not specify a minimum number of insurance companies** whose policies an insurance broker must have "on offer", but follows a principles-based approach by requiring that an untied intermediary shall not enter into any agreements with an insurer that would limit its options of working with other insurers. This **independence requirement** for untied intermediaries results in a prohibition to have an insurer as a qualified shareholder or to be a qualified shareholder in an insurer (the relevant percentage being 10% of capital or voting rights) and to be part of the management of an insurer or vice versa.

While tied intermediaries, contrary to the practice to date, cannot be registered as insurance intermediaries with FINMA – not even on a voluntary basis – **untied intermediaries must register with a registry for untied insurance intermediaries** by filing a request to FINMA containing the information pursuant to Annex 6 ISO and thereby becoming subject to prudential supervision by FINMA. This registration requirement will apply for any new activity as an untied insurance intermediary from 1 January 2024 going forward and must be completed before starting the activity. For untied intermediaries that are already registered with FINMA for an existing business by the end of 2023 under the rules of ISO as in force to date, the ISO specifies a **transition period of six months** by when an untied intermediary must file the relevant top-up documentation to FINMA.

FINMA clarified in its [Guidance 04/2023](#) published on 21 August 2023 the process it will apply for these purposes. Please also see our [newsflash published on 24 August 2023](#).

2.3 No Activity as Broker and Agent by the Same Legal Entity

Contrary to the insurance broker regulation as in place so far, it will no longer be possible for an insurance broker to act, in respect of some insurance categories, as broker and, in respect of others, as agent. The ISA will **prohibit a dual business model as insurance broker and agent by the same legal entity**.

For any intermediaries that were operating with such dual roles, the entry into effect of the new rules necessarily leads to a **reorganization**, including the onboarding of part of the client base to a new entity, to ensure compliance with the ISA and the ISO. However, the ISO does not specify a transition period for the completion of such reorganisation. In the absence of further guidance by FINMA on this point, the principle of separating brokerage and agency activities must be adhered to already from 1 January 2024 for the intermediation of new insurance contracts.

Moreover, an untied intermediary will already have to be in compliance as of such date with the **conduct requirements** the ISO sets out, which will require, inter alia, to allocate and document the competences, business responsibilities and reporting lines.

2.4 Domiciliation Requirements for Insurance Brokers

According to the ISO, **untied insurance intermediaries** acting in their own name must at least have a **branch office or a domicile in Switzerland**. While their employees must be registered with the registry for untied intermediaries, these employees do not necessarily have to carry out intermediary activities from Switzerland.

FINMA grants a transition period until 30 June 2024 to comply with this domiciliation requirement. An exemption may be provided by FINMA from the domiciliation requirement if the intermediation only relates to reinsurance business.

The ISA will prohibit a dual business model as insurance broker and agent by the same legal entity going forward.

2.5 Minimum Standards for Brokers regarding Education and Continuous Training

As part of the new prudential supervision for untied intermediaries, FINMA will recognize minimum standards to be set by the relevant industry associations for insurance brokers as regards the **education and continuous training** in the sense of article 190 and 190a ISO.

For insurance brokers that are already registered with FINMA by the end of 2023, the ISO provides a transition period of two years for compliance with such requirements, calculated from the time FINMA will approve the relevant minimum standards.

2.6 New Reporting Obligations

As regards regulatory reporting obligations, the ISO defines **new reporting requirements** for registered untied insurance intermediaries.

2.7 Inducements

According to the ISA, an untied intermediary may only accept **inducements or other fees** in connection with the intermediation activity from **third parties**, to the extent that they have disclosed such fees to their clients. Where the untied intermediary is remunerated by the client for the intermediation activities, it must either (1) **on-pay such inducements or fees** received from third parties to the client or (2) **obtain a waiver** from the client to the effect that the fees shall be retained by the intermediary. In order to meet the requirements for a valid waiver, the disclosure must least include information about the calculation method of the fees including the percentage brackets that apply to the fees. The fee arrangements will have to be brought in line with these requirements by 1 January 2024, where this has not yet occurred.

3 Insurer Expanding into Related Business Activities

The revised rules of the ISA allow an insurer to expand to **"related" business activities** without triggering FINMA approval requirements. This is a liberalisation compared to the current rules, which only allow this for "immediately related" business activities and require an approval by FINMA.

The ISO further specifies that a permitted "related" business activity must have a **functional connection to the insurance business** and must be **narrowly confined in scope**. The insurer must ensure that requirements regarding minimum capital, documentation, operational risks and solvency are met. Also, it must include the related business activities into the calculations under the Swiss Solvency Test (SST) and all operative and legal risks must be adequately managed.

The ISO further specifies that **FINMA may approve** further business activities that are not **permitted as "related"** in the sense as specified above in case the activity is in the interest of the insured, the insurer manages the associated risks adequately and the supervision by FINMA is not unreasonably more difficult.

4 Conflicts of Interest

The revised ISO amends the definition of conflicts of interest to align it with the definition contained in the Swiss Financial Services Act of 15 June 2018 (**FinSA**). According to the new definition, a conflict of interest exists in particular if an insurer may **gain a financial advantage or avoid a financial loss** at the expense of certain policyholders in bad faith or **has interests contradictory to the interests of the policyholder** (e.g. in the context of a product remuneration model for its employees or tied intermediaries). In case conflicts of interests cannot be avoided despite the necessary organizational safeguards being in place, the occurrence of conflicts of interests must be **adequately disclosed** by describing the specific conflict of interests to the insureds in standardized and electronic form, provided that such information is durably accessible.

5 Investment of Assets and Tied Assets

The revised rules of the ISO contain new principles regarding the insurer's investment of assets and the requirements regarding tied assets. In particular, insurers may choose to request FINMA to approve **an expanded list of assets which may be included in the pool of tied assets further to those specified in article 79 ISO**.

The revised rules of the ISO are expected to result in updates to the **FINMA Circular 2016/5** with the further requirements on investment rules for direct insurers and the assets belonging to the tied assets. For instance, the amended rules of the ISO on how derivatives transactions and collateral assets are accounted for in the tied assets (according to articles 91, 91a and 91b ISO) and the new FINMA competences in reorganization proceedings applicable to insurance companies will result in updates to the relevant Master Agreement for OTC derivatives transactions.

For the insurance business conducted through foreign branches, the insurer is no longer permitted to set-aside tied assets in Switzerland. The insurer must comply with this prohibition by 30 June 2024.

6 Captives and Insurers intending to benefit from Wholesale Exemption

To the extent its business is limited to **intragroup direct or reinsurance**, it may benefit as a captive from exemptions. To make use of such exemptions, the insurers will have to notify FINMA accordingly within six months of the entry into force of the new ISA.

The same applies to an insurer intending to benefit from the exemptions available for offering policies only to **professional policyholders (wholesale exemption)**, which results e.g. in the absence of a requirement to set-aside tied assets.



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