

Insurance and Reinsurance in Switzerland: Overview

by Peter Ch. Hsu and Daniel Flühmann, *Bär & Karrer Ltd*

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A Q&A guide to insurance and reinsurance in Switzerland.

The Q&A gives a high-level overview of the regulatory framework for insurance and reinsurance activities; rules relating to authorisation of insurers and reinsurers and insurance intermediaries; ownership restrictions; ongoing requirements; penalties for non-compliance with regulatory requirements; sales and marketing of insurance/reinsurance services; transfer of risk; reinsurance contracts and risks; contracts and policies; claims; dispute resolution; insolvency; and tax.

Regulatory Framework

1. What is the main legislation and regulatory authorities for insurance and reinsurance activities in your jurisdiction?

Main Legislation

The Swiss regulatory framework on private insurance and reinsurance includes two main legislative acts, supplemented by various implementing ordinances:

- The *Federal Insurance Supervision Act* (ISA) (substantially revised in 2006, a partial revision entered into force on 1 January 2024), the *Federal Ordinance on the Supervision of Private Insurance Undertakings* (ISO) (a partial revision entered into force on 1 January 2024), the *FINMA-Ordinance on the Supervision of Private Insurance Undertakings* (ISO-FINMA) (a partial revision entered into force on 1 September 2024), and the *FINMA-Ordinance on Insurance Bankruptcy* (IBO-FINMA) (expected to be replaced by a new general FINMA Ordinance on Insolvency Proceedings at Financial Market Institutions in Q4 of 2025 (see [Question 34](#))). These address the regulatory requirements applicable to insurance and reinsurance undertakings and insurance intermediaries.
- The *Federal Insurance Contract Act* (ICA) (a partial revision entered into force on 1 January 2022), which applies to direct insurance contracts and regulates the civil law relationship between the insurance undertaking, policyholder, and insured. (Reinsurance contracts are in principle subject to the *Code of Obligations* (CO) (Article 101, ICA).)

In addition, the *Swiss Financial Market Supervisory Authority* (FINMA) further specifies financial market regulations, including insurance activities, through numerous circulars. In principle, FINMA circulars are not binding on Swiss courts but reflect

FINMA practice and constitute an interpretation of the applicable law by FINMA. However, FINMA circulars can in many instances be considered as de facto authoritative for insurance undertakings since a violation may potentially lead to regulatory sanctions. FINMA also regularly publishes less formal guidance documents and FAQs on specific supervisory topics.

Specific rules apply to insurance groups and insurance conglomerates (in particular, Article 64 *et seq.*, ISA and Article 191 *et seq.*, ISO on insurance groups and Article 72 *et seq.*, ISA and Article 204 *et seq.*, ISO on insurance conglomerates).

Two or more companies constitute an insurance group if all the following conditions are met:

- At least one company in the group is an insurance undertaking.
- The companies are, as a whole, primarily engaged in the field of insurance.
- The companies constitute an economic unit or are otherwise connected to each other through influence or control.

(Article 64, ISA.)

Two or more companies constitute an insurance conglomerate if all the following conditions are met:

- At least one company in the group is an insurance undertaking.
- At least one company in the group is a bank or securities dealer of major economic importance.
- The companies are, as a whole, primarily engaged in the field of insurance.
- The companies constitute an economic unit or are otherwise connected to each other through influence or control.

(Article 72, ISA.)

If a Swiss company belongs to an insurance group or conglomerate, FINMA can impose its consolidated supervision on the insurance group or conglomerate if either:

- The group is effectively managed from Switzerland.
- The group is effectively managed abroad but is not subject to an equivalent group supervision there.

(Article 65, ISA.)

Consolidated group supervision applies in addition to FINMA's individual supervision over the Swiss insurance undertakings (or other regulated Swiss entities) in a group or conglomerate.

The ISA contains specific provisions on insurance special purpose vehicles (SPVs) domiciled in Switzerland (Article 30*e et seq.*, ISA and Article 111*d et seq.*, ISO).

Certain private insurance fields are exempt from the scope of the ISA. They are regulated by special laws instead, such as the Health Insurance Act (HIA) (governing compulsory health insurance) and the Federal Law on Occupational Retirement (governing compulsory occupational pension schemes).

Regulatory Authorities

FINMA is the supervisory authority for financial institutions, including insurance and reinsurance undertakings as well as insurance intermediaries within the scope of the ISA. FINMA was established in 2009 by the [Federal Act on the Swiss Financial Market Supervisory Authority](#) (FINMASA) as a unified supervisory authority. FINMA also regulates and supervises other types of financial institutions (including banks, securities firms, managers of collective assets, and fund management companies).

FINMA's primary tasks are to protect the interests of insured persons, creditors, and investors and to ensure the proper functioning of the Swiss financial market. To perform its tasks, FINMA applies instruments such as licensing, supervision, enforcement, and regulation.

Certain private insurance undertakings are supervised by other authorities based on special federal legislation. For example, insurance undertakings offering compulsory health insurance are supervised by the [Federal Office of Public Health](#) and pension institutions by cantonal supervisory bodies.

2. Which types of insurance and reinsurance activities and insurers are regulated in your jurisdiction?

Swiss statutory law does not provide a definition of insurance or reinsurance activities, but the term has been established by case law. Insurance activities within the meaning of the ISA are commonly understood to be the conclusion of insurance contracts (as defined in [Question 19](#)) between an insurance undertaking and the policyholder. Reinsurance activities are considered to be the insurance by the reinsurer of the risk assumed by an insurance or reinsurance undertaking (that is, the cedent).

In principle, the ISA applies to both Swiss insurance and reinsurance undertakings and insurance undertakings domiciled abroad in respect of insurance activities conducted in or from Switzerland (subject to differing provisions in international treaties) (Article 2, paragraph 1, ISA). Insurance undertakings domiciled abroad engaged only in reinsurance activities in Switzerland are exempt from supervision under ISA (Article 2, paragraph 2(a), ISA). For further exemptions, see [Question 5](#).

While basic regulatory requirements are, in principle, the same for all supervised institutions, the following points are worth noting:

- The minimum capital requirements differ depending on the scope of insurance activities (Article 8, ISA).
- ISA contains supplementary provisions that only apply to certain types of insurance classes (*Versicherungszweige*) (Article 31 *et seq.*, ISA).
- Additional requirements apply to foreign insurance undertakings (Article 15 *et seq.*, ISA) (see [Question 3](#)).

Swiss domiciled reinsurance undertakings are exempt from certain regulatory requirements under the ISA, for example, from the tied asset requirement (*gebundenes Vermögen*) (Article 35, ISA). Special provisions apply to the consolidated supervision of insurance groups and insurance conglomerates (see [Question 1](#)).

In addition, the ISA does not apply to:

- Public insurance undertakings, for example, cantonal building insurance undertakings.

- Private insurance undertakings that are regulated by special federal legislation, for example, pension institutions (Article 2, paragraph 2(b), ISA).

These insurance undertakings are either regulated by cantonal law or special federal legislation. Certain insurance co-operatives (*Genossenschaften*) with a very limited scope of business, and where the insureds are also members of the co-operative, are also exempt from supervision by FINMA (Article 2, paragraph 2(d), ISA).

Further, the Federal Council has been delegated power to exempt undertakings from supervision (in whole or in part), to ensure the future viability of the Swiss financial market (Article 2, paragraph 5(b), ISA).

Authorisation

Insurers and Reinsurers

3. What authorisations are required to carry out insurance and reinsurance activities in your jurisdiction and how are they obtained?

Application

An insurance undertaking falling within the scope of ISA must obtain an insurance licence from FINMA before engaging in any relevant insurance activities (Article 3, paragraph 1, ISA). To obtain a licence, the insurance undertaking must submit a formal application to FINMA accompanied by a (regulatory) business plan (as defined by ISA) (Article 4, paragraph 1, ISA). FINMA has set up the electronic survey and application platform EHP to submit encrypted supervisory data and licence applications to FINMA electronically. For further information on obtaining an insurance licence, see [FINMA: Getting licensed: insurers](#).

[FINMA Ordinance on the Levying of Supervisory Fees and Charges](#) (FINMA-GebV) regulates licensing fees. Base fees range from CHF5,000 to CHF50,000 (Annex, cipher 3.1, FINMA-GebV).

Conditions

The ISA defines the financial and organisational requirements to obtain an insurance licence from FINMA. Additional requirements apply to foreign insurance undertakings engaging in Swiss insurance business. The ISO substantiates the requirements set out in the ISA.

An insurance undertaking domiciled in Switzerland must meet the following financial requirements:

- Minimum capital between CHF3 million and CHF20 million, depending on the classes of insurance that are part of its business plan. FINMA determines the actual capital requirement in each individual case. (Article 8, ISA and Articles 6 to 10, ISO.)

- Sufficient solvency margin (Article 9 to 9c, ISA; Articles 21 to 53b, ISO; Article 1 *et seq.*, ISO-FINMA). The Swiss Solvency Test (SST) defines the necessary capital resources for the risks to which an insurance undertaking is exposed (target capital) and sets the resulting target capital against the creditable capital (risk-bearing capital). Since 1 January 2016, the European Commission recognises the SST as an equivalent standard to that applicable under EU law.
- An organisational fund (*Organisationsfonds*) to cover the costs of establishing and developing the business or an extraordinary business expansion. The organisational fund usually amounts to up to 50% of the minimum capital at the start of business operations and should generally settle at an amount around 20% of the minimum capital later on. FINMA determines the exact minimum amount in each individual case (Article 10, ISA and Article 11, ISO).
- Sufficient insurance-related reserves (*versicherungstechnische Rückstellungen*) for all business activities (Article 16, ISA, Article 54 *et seq.*, ISO and Article 28 *et seq.*, ISO-FINMA).
- Tied assets (*gebundenes Vermögen*) to secure claims under insurance contracts at all times (Article 17 *et seq.*, ISA and Article 58 *et seq.*, ISO-FINMA). The required amount of tied assets is equal to the insurance-related reserves plus an appropriate surcharge (Article 18, ISA). This requirement does not apply to reinsurance undertakings (Article 35, ISA).
- Sufficient liquidity to satisfy all its payment obligations, even in stress scenarios (Article 22, ISA and Article 98a, ISO).

An insurance undertaking domiciled in Switzerland must meet the following organisational requirements:

- It must have the legal form of either a company limited by shares or a co-operative (Article 7, ISA).
- The persons responsible for direction, supervision, control, and management must pass FINMA's fit and proper test (good standing and assurance of proper business conduct) (Article 14, ISA and Article 12 *et seq.*, ISO).
- It must be organised in a manner that allows it to recognise, limit, and monitor all significant risks (Article 22, ISA; Articles 96 to 98a, ISO; *FINMA-Circular 2017/2 "Corporate Governance – Insurers"*).
- It must appoint a responsible actuary who has access to all business records (Article 23, ISA), ensuring, for example, that the tied assets meet the relevant requirements or that there are sufficient insurance-related reserves (Article 24, ISA and Article 81 *et seq.*, ISO-FINMA).
- It must establish an effective internal control system and an internal audit function independent from management (Article 27, ISA and *FINMA-Circular 2017/2 "Corporate Governance – Insurers"*).
- It must appoint a licensed audit firm to review its conduct of business (Article 28, ISA).

Foreign insurance undertakings engaging in relevant insurance business in Switzerland must meet the following additional requirements (subject to differing rules in international treaties):

- Be authorised to engage in insurance business in the country where they are domiciled.
- Establish a presence in Switzerland and appoint a general agent (*Generalbevollmächtigter*), who must be of good standing and provide assurance of proper business conduct. The general agent does not have to be licensed or registered but must:
 - reside in Switzerland;
 - have authority for, and be entrusted with, the actual management of the office for all of the Swiss business; and

- possess the knowledge necessary to manage the insurance undertaking.

(Article 16, paragraphs 1 and 2, ISO.)

Before appointing the general agent, a curriculum vitae and a power of attorney/authorisation containing the rights and obligations of the general agent outlined in Article 17 of the ISO must be filed with FINMA (Article 16, paragraph 3, ISO).

- Comply with minimum capital and solvency requirements in its home jurisdiction, taking into account its business activities in Switzerland (Articles 8 and 9, ISA).
- Have an organisational fund in Switzerland and the corresponding assets in accordance with Article 10 of the ISA (see above).
- Lodge a security deposit with the Swiss National Bank that is proportionate to the solvency margin related to the Swiss business.

(Article 15, ISA.)

Requirements may differ for foreign insurance undertakings falling within the scope of the [Agreement between the Swiss Confederation and the European Economic Community on direct insurance other than life insurance of 10 October 1989](#) (EU Direct Insurance Treaty) and the [Switzerland-UK Agreement on Direct Insurance other than Life Insurance of 25 January 2019](#) (UK Direct Insurance Treaty). See also [Question 5, Exemptions Based on International Agreements](#).

The (regulatory) business plan of an insurance undertaking regulated must contain the following information:

- Articles of incorporation.
- Management structure and geographic scope of business of the insurance undertaking and, if applicable, of the insurance group or insurance conglomerate of which it is part.
- When conducting insurance activities outside Switzerland, the licence from the responsible foreign supervisory body or an equivalent certification.
- Information about financial resources and reserves.
- Financial statements for the last three financial years, or initial balance sheet for a newly established insurance undertaking.
- Information about the persons who:
 - directly or indirectly own at least 10% of the capital or voting rights of the insurance undertaking; and
 - can significantly influence its business activities in any other way.
- Names of the persons entrusted with the ultimate management, supervision, control, and conduct of the business or general agent's name for foreign insurance undertakings.
- Name of the responsible actuary.
- Contracts or other arrangements through which any of the insurance undertaking's significant functions are outsourced.

- Insurance classes intended to be operated and nature of the risks to be insured.
- Declarations of accession to the National Insurance Office (*Nationales Versicherungsbüro*) and the National Guarantee Fund (*Nationaler Garantiefonds*), if applicable.
- Information on the means to provide assistance services (*Beistandsleistungen*), if permission for this type of insurance activity is applied for.
- Reinsurance plan and, for an active reinsurance undertaking, retrocession plan.
- Expected costs of establishing the insurance undertaking.
- Plans for balance sheets and income statements for the first three financial years of operation.
- Information about the recognition, limitation, and monitoring of risks.
- Premium scale and general business terms and conditions to be used in Switzerland for the insurance of all risks in occupational pension plans and supplementary insurance to the mandatory health insurance, if applicable.

(Article 4, paragraph 2, ISA.)

Consultants, claims adjusters, third party administrators, and other outsourcing partners are not subject to specific licensing or registration requirements if they do not qualify as an insurance or reinsurance undertaking or intermediary.

Key Stages and Timing

The licence application procedure is governed by the *Federal Act on Administrative Procedure* (APA) (Article 53, FINMASA).

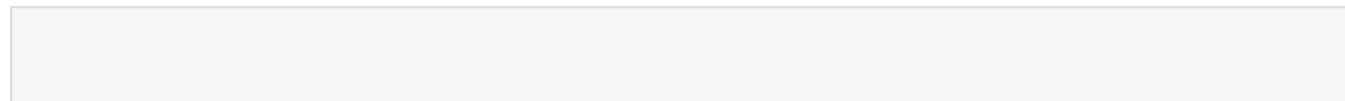
The applicant must file a licence application, including its regulatory business plan, with FINMA on the electronic platform EHP. On receipt of the licence application, FINMA confirms receipt within a few days and notifies the applicant of any obvious deficiencies or missing information or documents. In principle, FINMA must issue a decision no later than three months after receipt of the complete licence application (Articles 3, paragraph 2 and 4, paragraph 1(c), Federal Ordinance on Principles and Procedural Deadlines for Authorisation Procedures). However, in practice, the review period usually takes between six and nine months because FINMA may request additional information or documents.

FINMA's decision is an official ruling subject to appeal (Article 5, APA). Following approval, the insurance undertaking must commence business operations within six months, otherwise FINMA can revoke the licence in its entirety or for the relevant insurance classes (Article 61, paragraph 1, ISA).

Duration and Renewal

A licence is not limited to a specific duration and does not need to be renewed regularly. A FINMA licensed insurance undertaking must meet the licensing requirements on an ongoing basis during the entire period of the licence.

Insurance Intermediaries



4. How are insurance intermediaries regulated? What authorisations do they require?

Insurance intermediaries are defined as persons offering or concluding insurance contracts, either:

- In a fiduciary relationship with, and acting in the interest of, policyholders (untied insurance intermediaries, typically brokers) (Article 40, paragraph 2, ISA).
- Acting in the interest of an insurance undertaking (tied insurance intermediaries/insurance agents) (Article 40, paragraph 3, ISA).

Untied insurance intermediaries must register in the *public register of insurance intermediaries* maintained by FINMA (Article 41, paragraph 1, ISA). Tied insurance intermediaries cannot register, unless registration is required for activities abroad (Article 42, paragraph 4, ISA).

To register, insurance intermediaries must:

- Have their registered office, residence, or a branch in Switzerland (Article 41, paragraph 2(a), ISA, and Article 186, ISO).
- Provide evidence of:
 - good standing and assurance of proper business conduct (Article 41, paragraph 2(b), ISA, and Article 187 *et seq.*, ISO);
 - sufficient professional qualifications (Article 41, paragraph 2(c), ISA); and
 - professional indemnity insurance with an annual policy limit for all damages of at least CHF2 million (or equivalent financial security) (Article 41, paragraph 2(d), ISA, and Article 189, ISO).

Insurance intermediaries must meet the following personal requirements (mainly in connection with the good standing and assurance of proper business conduct requirement):

- Capacity to act (*Handlungsfähigkeit*).
- No criminal record involving activities incompatible with the business of an insurance intermediary.
- No outstanding certificates of unpaid debts (*Verlustscheine*) connected to activities incompatible with the business of an insurance intermediary.

(Article 187, ISO.)

The ISA also includes requirements on education and training (Article 43, ISA) and avoiding conflicts of interest (Article 45a, ISA, and Article 186 *et seq.*, ISO).

Untied insurance intermediaries must disclose to clients any fees, commissions, rebates, and similar types of compensation received from insurance undertakings and other third parties (Article 45b, ISA).

All insurance intermediaries must provide policyholders with the following information (on a durable medium, usually a physical information leaflet, allowing the policyholder to store the information for future reference):

- Intermediary's identity and address.
- Whether they are a tied or an untied insurance intermediary (a tied insurance intermediary must give the name and address of the insurance undertaking on whose behalf they are acting).
- How the policyholder can obtain information about the education and training of the insurance intermediary.
- Name of the person who can be held liable for negligence, mistakes, or incorrect information in connection with their activities as insurance intermediaries.
- Processing and storage of personal information.

(Article 45, ISA.)

Insurance intermediaries are prohibited from:

- Engaging in intermediary activities in Switzerland on behalf of insurance undertakings that have not been granted the required FINMA licence.
- Acting simultaneously as tied and untied insurance intermediary.
- Collaborating with insurance intermediaries who are not registered in the public register of insurance intermediaries (when required by law).

(Article 44, ISA.)

Exemptions and Foreign Insurers

5. Are there exemptions or exclusions from authorisation or licensing? Are there specific exemptions or exclusions for foreign entities to carry on insurance or reinsurance business in your jurisdiction?

General Exemptions

Certain types of insurance activities and undertakings do not fall within the scope of application of the ISA, namely:

- Insurance undertakings domiciled abroad that only engage in reinsurance activities in Switzerland, directly from abroad or through a Swiss branch.
- Public and private insurance undertakings that are regulated by special federal legislation.
- Foreign government-owned or state-guaranteed export risk insurance undertakings.

- Certain insurance intermediaries who are in a relationship of dependence with a policyholder (such as in-house brokers).
- Certain insurance co-operatives (*Versicherungsgenossenschaften*) that existed on 1 January 1993.
- Certain associations (*Vereine*), organisations (*Verbände*), co-operatives (*Genossenschaften*), and foundations (*Stiftungen*) that conclude contracts with their members or beneficiaries on transactions of a collateral nature, in particular sureties or guarantees.
- Insurance intermediaries if their activities are limited to insurance contracts of minor importance that supplement a product or service (annex insurance).

(Article 2, paragraph 2, ISA.)

Insurance undertakings with a registered office abroad engaging in insurance activities in or from Switzerland fall within the scope of the ISA, unless:

- An international treaty provides otherwise (Article 2, paragraph 2(b), ISA) (see below, [Exemptions Based on International Agreements](#)).
- An exemption applies under the ISA or ISO.

An insurance activity is deemed to take place in Switzerland, irrespective of the place and circumstances of the conclusion of the contract, if either:

- The policyholder or the insured is a natural person or legal entity domiciled in Switzerland.
- The insured assets are located in Switzerland.

(Article 1, paragraph 1, ISO.)

Foreign insurance undertakings that have no branch office in Switzerland do not fall within the scope of the ISA if their insurance activities in Switzerland exclusively cover:

- Risks relating to ocean shipping, aviation, or cross-border transport.
- Risks located abroad.
- War risks.

(Article 1, paragraph 2, ISO.)

Additionally, certain simplifications and exemptions from supervision apply to, for example, small insurance undertakings (Article 1c *et seq.*, ISO).

Exemptions Based on International Agreements

Specific exemptions apply under the following international agreements:

- The *EU Direct Insurance Treaty of 10 October 1989*, which facilitates access to the Swiss market for EU insurance undertakings.
- The *Liechtenstein Direct Insurance Treaty of 19 December 1996*, which allows insurance undertakings domiciled in Liechtenstein to engage in direct insurance business in Switzerland either on a cross-border basis or through a Swiss branch office without a FINMA licence.
- The *UK Direct Insurance Treaty of 25 January 2019*, which guarantees reciprocal freedom of establishment for insurance undertakings in the area of direct non-life insurance.

On 21 December 2023, Switzerland and the UK signed the *Berne Financial Services Agreement on Mutual Recognition in Financial Services*, which provides for mutual recognition of the equivalence of the UK and Swiss regulatory and supervisory frameworks applicable to certain financial services sectors. Among other things, this will allow UK insurance undertakings to provide certain non-life insurance services directly to large Swiss corporate clients without requiring authorisation in Switzerland. Approval of the agreement by both parties' parliaments is pending. The agreement is expected to enter into force on 1 January 2026.

Fronting

6. Is fronting prohibited or are there any limitations to such an insurance arrangement?

In principle, fronting is permitted. Swiss law does not provide for a specific retention obligation on the part of the cedent in fronting arrangements.

Legal Forms

7. What legal forms are generally used for insurance and reinsurance business? Does a specific corporate form have to be used?

Insurance undertakings must take the legal form of a company limited by shares (*Aktiengesellschaft*) or a co-operative (*Genossenschaft*) (Article 7, ISA). The predominant form of corporate organisation in the Swiss insurance market is the company limited by shares.

Restrictions on Insurance Activities

8. Are there restrictions on the types of insurance activities that authorised entities can carry out? Can insurers and reinsurers carry on non-insurance business?

An insurance licence is granted for one or more classes of insurance and also entitles the licence holder to operate reinsurance in the insurance class concerned (Article 6, paragraph 3, ISA).

In principle, insurance and reinsurance undertakings can only engage in business connected with the insurance business (Article 11, paragraph 1(a), ISA). However, FINMA can approve the conduct of non-insurance business if it considers that:

- Such business does not compromise the interests of the insureds.
- The insurance undertaking manages the associated risks.
- This does not make FINMA's supervision disproportionately more difficult.

(Article 11, paragraph 1(b), ISA and Article 5c, paragraph 1, ISO.)

Insurance undertakings engaging in direct life insurance can only take part in supplementary engagements in accident and health insurance (Article 12, ISA).

In principle, an insurance or a reinsurance undertaking can indirectly engage in non-insurance activities through one or several separate subsidiaries. In this case, FINMA must be notified of the equity participation of the regulated Swiss entity in such subsidiaries. FINMA can impose conditions or prohibit these participations if their type and scope could jeopardise the insurance or reinsurance undertaking or the interests of the insureds (Article 21, paragraphs 1 and 4, ISA) (see [Question 10](#)).

An insurance undertaking that has obtained a specific licence within the subset of life insurance licences can conclude capitalisation contracts. These are contracts where the insurance undertaking does not carry any biometric risks, that is, risks related to the duration of an insured person's life, disability, or state of health or too little risk to qualify as life insurance within the meaning of the ISA (Appendix 1 ISO, insurance class A.6). Insurance undertakings offering these contracts remain under insurance supervision and do not fall under banking supervision. However, they are not allowed to call these contracts "insurance contracts."

Insurance and reinsurance undertakings that seek to acquire an equity stake in a non-insurance undertaking are subject to a specific notification and approval process (see [Question 10](#)).

Ownership Restrictions

9. Are there restrictions on the ownership or control of insurance-related entities in your jurisdiction?

Insurance/Reinsurance Providers

The (regulatory) business plan submitted to FINMA along with a licence application (see [Question 3](#)) must include, among others, information on the persons who, directly or indirectly, either:

- Own at least 10% of the capital or voting rights of the insurance undertaking.
- Can significantly influence its business activities in any other way.

FINMA considers this information when assessing licence applications by applying a "fit and proper" test.

Insurance undertakings domiciled in Switzerland intending to acquire a participation in another business which exceeds certain thresholds must notify FINMA. Intended acquisitions or reductions of participations in insurance undertakings domiciled in Switzerland which reach or cross over certain thresholds must be reported to FINMA by the respective buyer(s) and seller(s) (Article 21, ISA) (see [Question 10](#) for further information).

Insurance/Reinsurance Intermediaries

Insurance and reinsurance intermediaries must submit to FINMA information on:

- Persons holding more than 10% of the capital or voting rights of the intermediary (for registration in the register of insurance intermediaries (see [Question 4](#)) (Annex 6, cipher 1.8(d) and 2.8(d), ISO).
- Their shareholdings in companies of more than 10% of the capital or voting rights (Annex 6, cipher 1.9, 2.9, and 3.8, ISO).

Untied insurance intermediaries are subject to certain restrictions, for example:

- They must not hold, directly or indirectly, more than 10% of the capital of an insurance undertaking (Article 182c, paragraph 1a no. 2, ISO).
- An insurance company cannot hold, directly or indirectly, more than 10% of their capital (Article 182c, paragraph 1c, ISO).

Other Providers of Insurance/Reinsurance-Related Activities

There are no specific restrictions on ownership or control for general managing agents, consultants, claims adjusters, third party administrators, and other outsourcing providers if they do not qualify as an insurance or a reinsurance undertaking or other regulated entity.

10. Must owners or controllers notify or obtain approval before taking, increasing, or reducing their control or ownership of an insurance-related entity?

The following notification requirements apply to equity participations in or by insurance undertakings:

- An insurance undertaking domiciled in Switzerland intending to acquire a participation in another business must notify FINMA if that participation equals or exceeds the thresholds of 10%, 20%, 33%, or 50% of the capital or voting rights of the other business.
- A person or an entity intending (directly or indirectly) to acquire or reduce a participation in an insurance undertaking domiciled in Switzerland must notify FINMA if the participation equals, exceeds, or falls below the thresholds of 10%, 20%, 33%, or 50% of the capital or voting rights of the insurance undertaking. A notification must also be filed if the participation in the insurance undertaking no longer qualifies it as a subsidiary.

(Article 21, paragraph 1 to 3, ISA.)

According to authors in Swiss legal literature, FINMA can be notified of a purchase of participation after signing the purchase agreement but before closing of the transaction. However, in some cases, FINMA took the view that notification should take place ahead of the signing of the purchase agreement, meaning at the point where the actual intent to acquire or reduce a participation is formed.

Following notification, FINMA can prohibit acquisitions or changes to participations, or subject them to conditions, if the nature and scope of the participation could endanger the insurance undertaking or the interests of the insureds (Article 21, paragraph 4, ISA).

Since FINMA is not subject to any specific deadline to issue a decision under the ISA, it can be useful to seek FINMA's consent in advance to avoid uncertainties.

Further restrictions and disclosure obligations may apply under:

- The *Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading*.
- The *Federal Act on Cartels and other Restraints of Competition*.

See [Question 9](#) for insurance/reinsurance intermediaries and other providers of insurance/reinsurance-related activities.

Ongoing Requirements

11. What are the key ongoing requirements for an authorised entity?

Insurance/Reinsurance Providers

Licensed insurance undertakings must comply with all licence requirements, including adequate organisation and solvency, on an ongoing basis (see [Question 3](#)).

A licensed insurance undertaking must report to FINMA for prior approval amendments to the following elements of its regulatory business plan:

- Articles of incorporation (for example, intended capital increases or reductions require an amendment of the articles of incorporation and therefore require FINMA approval).
- Name of the responsible actuary.
- Intended classes of insurance and nature of the risks to be insured.
- Premium scale and general business terms and conditions to be used in Switzerland for the insurance of all risks in occupational pension plans and supplementary insurance to the mandatory health insurance.

(Article 5, paragraph 1, ISA.)

Any changes to the business plan resulting from a merger, spin-off, or conversion of an insurance undertaking also require FINMA's prior approval.

All other changes to the key elements of the business plan under Article 4, paragraph 2, ISA must be reported to FINMA within 14 days from the change and are considered approved if FINMA does not initiate a review of the submission within four weeks after receiving the notification (Article 5, paragraph 2, ISA and Article 5, ISO).

Insurance/Reinsurance Intermediaries

Registered insurance intermediaries must:

- Report to FINMA any changes to the facts underlying their registration (for example, the type of insurance business intermediated, including insurance classes) immediately on awareness of that change (Article 185, paragraph 1, and Annex 6, cipher 1 to 3, ISO, and Article 91, paragraph 1 and 2, ISO-FINMA). Changes of significant importance require prior approval from FINMA (Article 185, paragraph 2, ISO).
- Prepare an annual report for FINMA, containing key figures and information essential for supervision (Article 93, paragraph 1, ISO-FINMA).

An insurance undertaking with which an insurance intermediary has taken out professional indemnity insurance, or the person who provides an equivalent form of financial security in favour of an insurance intermediary (see [Question 4](#)), must inform FINMA immediately of the suspension or termination of this insurance or financial security (Article 185, paragraphs 3 and 4, ISO).

Further, persons entrusted with the management or administration of insurance undertakings must annually confirm to FINMA that the facts underlying the registration of their insurance intermediaries are accurate and current (Article 91, paragraph 3, ISO-FINMA).

Other Providers of Insurance/Reinsurance-Related Activities

Before the appointment of a new general agent, a curriculum vitae and a power of attorney containing the rights and obligations of the general agent, outlined in Article 17 of the ISO, must be filed with FINMA (Article 16, paragraph 3, ISO).

Consultants, claims adjustors, third party administrators, and other outsourcing providers do not need to be licensed or registered if they do not qualify as an insurance or reinsurance undertaking or intermediary, and are therefore not subject to ongoing requirements (see [Question 3](#)).

Penalties for Non-Compliance

12. What are the penalties for non-compliance with the regulatory requirements?

Insurance/Reinsurance Providers

FINMA has a broad range of supervisory and enforcement tools to uphold supervisory law (applied in accordance with, in particular, the principle of proportionality) (see Article 24 *et seq.*, FINMASA). For example, FINMA can initiate regulatory procedures and impose protective measures or sanctions (Article 29 *et seq.*, FINMASA). These protective measures and sanctions include:

- A reprimand under a declaratory ruling (Article 32, FINMASA).
- Specific orders to restore compliance with and prohibit further breaches of the law or regulations (Article 31, FINMASA). This can include an order to develop and implement a risk management and risk control system suitable to appropriately identify, limit, and monitor the legal and reputational risks emanating from certain business activities.
- Publication of a supervisory ruling (Article 34, FINMASA).
- Disgorgement of illegally generated profits and avoided costs (Article 35, FINMASA).
- Specific orders to limit or terminate certain business activities, up to revocation of a licence in severe cases (Article 37, FINMASA).

As a last resort measure, FINMA can revoke the licence of a supervised insurance undertaking if it no longer meets the licence requirements or seriously violates regulatory provisions (Article 37, paragraph 1, FINMASA). An insurance licence can also be fully or partially revoked if an insurance undertaking has ceased its business operations in the corresponding insurance classes for more than six months (Article 61, ISA). In that case, the policyholder is entitled to withdraw from the insurance contracts with that insurance undertaking (Article 36, paragraph 1, ICA).

FINMA can adopt protective measures to safeguard the interests of the insured if:

- An insurance undertaking or intermediary does not comply with the ISA, an implementing ordinance, or an order of FINMA.

- It appears that the interests of the insured are otherwise endangered (Article 51, paragraph 1, ISA).

In this context, FINMA can require the dismissal of a person entrusted with the ultimate direction, supervision, control, or management, the general agent, or the responsible actuary and prohibit that person from engaging in any insurance activities for up to five years (Article 51, paragraph 2(f), ISA).

FINMA can also require a change of the audit company in justified cases (Article 28a, paragraph 2, FINMASA) or impose a prohibition on practising a profession or performing an activity (Article 33 and 33a, FINMASA).

Financial market laws may also include penal provisions. For example, the ISA and the FINMASA provide for the following criminal sanctions that are imposed by the Federal Department of Finance (FDF), or investigated by FDF and imposed by criminal courts (and not FINMA):

- Anyone who wilfully carries out an activity without the required licence, recognition, or registration is liable to a custodial sentence of up to three years or to a monetary penalty (Article 44, paragraph 1, FINMASA). Persons acting negligently are liable to a fine of up to CHF250,000 (Article 44, paragraph 2, FINMASA).
- Imprisonment of up to three years or a monetary penalty can be imposed on any person that intentionally (Article 87, paragraph 1(b) to (d), ISA):
 - distributes insurance contracts through an insurance intermediary that should be registered in the register of insurance intermediaries;
 - removes or encumbers tied assets so that the required amount is no longer covered; or
 - commits other acts that reduce the value of the tied assets.

(Article 87, paragraph 1(b) to (d), ISA.)

Persons acting negligently in these instances are liable to a fine of up to CHF250,000 (Article 87, paragraph 2, ISA).

- A fine of up to CHF100,000 can be imposed on any person that intentionally:
 - violates an information duty under Article 2c, paragraphs 1 and 2 of the ISA;
 - violates a notification duty under Article 21 of the ISA (see [Question 10](#));
 - violates an information duty under Articles 14a, paragraph 2, 45, 45a, paragraph 2, and 45b of the ISA; or
 - commits an offence defined in Article 31a, paragraph 3 of the ISA, in the area of supplementary social health insurance.

(Article 86, paragraphs 1 and 1bis, ISA)

Persons acting negligently in these instances are liable to a fine of up to CHF50,000 (Article 86, paragraph 2, ISA).

Additional sanctions can apply, for example, for violations of the [Federal Act on Combating Money Laundering and Terrorist Financing](#) (AMLA) or the [Swiss Criminal Code](#) (SCC).

Insurance/Reinsurance Intermediaries

Insurance intermediaries that intentionally conclude or broker insurance contracts on behalf of an insurance undertaking that is not licensed to conduct insurance activities in Switzerland are liable to imprisonment of up to three years or a monetary penalty. In cases of negligence, a fine of up to CHF250,000 can be imposed (Article 87, paragraphs 1(a) and 2, ISA).

Insurance intermediaries that violate a disclosure obligation towards a policyholder under Article 45 of the ISA (see [Question 4](#)) are liable to a fine of:

- Up to CHF100,000 in cases of wrongful intent.
- Up to CHF50,000 in cases of negligence.

(Article 86, paragraphs 1(c) and 2, ISA.)

The penalty provisions of the FINMASA and other Swiss laws can also apply to insurance intermediaries (see above, [Insurance/Reinsurance Providers](#)).

Other Providers of Insurance/Reinsurance-Related Activities

Other providers such as general agents, consultants, claims adjusters, third party administrators, and other outsourcing providers are subject to the general criminal sanctions under, for example, the SCC.

Sales and Marketing

13. Are there any requirements or restrictions on how insurance/reinsurance services are sold and marketed?

Generally, there are no specific restrictions on the persons to whom insurance or reinsurance contracts can be marketed or sold. However, life insurance is null and void if the person whose life is covered does not consent to the insurance, in writing, before the insurance contract is concluded (Article 74, paragraph 1, ICA).

From 1 September 2024, cold calling is banned in relation to supplemental health insurance (that is, cold calling cannot be used for initial contact with potential clients with whom there is no business relationship, who have not been clients for more than 36 months, who have exercised their opt-out rights, or where the contact did not result from a recommendation by a third party known to the potential client) (Annex, Ordinance on the Regulation of Insurance Intermediary Activities).

The revision of the ISA that entered into force on 1 January 2024 introduced new rules regarding the sale of insurance products with investment character (qualified life insurance products), for example:

- The obligation of an insurance undertaking offering qualified life insurance products to prepare a key information document (KID) in advance.
- Advertising for qualified life insurance products must be clearly discernible as such and must contain a reference to the KID and where it can be obtained.

- Before recommending a qualified life insurance policy, an insurance undertaking or intermediary must examine whether the product is appropriate for the policyholder and what knowledge and experience the policyholder has.

(Articles 39a *et seq.*, ISA.)

For potential customers who are not domiciled or resident in Switzerland, applicable international treaties and local laws and regulation must be considered.

Transfer of Risk

14. Are there any restrictions on the transfer of insurance or reinsurance business and risk? Is there a specific mechanism for this?

There are no specific restrictions under Swiss law on the transfer of insurance or reinsurance risks.

New rules have been introduced for insurance SPVs (Article 2, paragraph 1(e), 30e, and 30f, ISA).

The approval of FINMA is required for the transfer of a Swiss insurance portfolio (in whole or in part) from one insurance undertaking to another. FINMA only grants approval if it considers that the interests of the insured are protected (Article 62, paragraph 1, ISA).

Within 30 days of notification of FINMA's approval, the acquiring insurance undertaking must individually notify the policyholders affected by the portfolio transfer about the transfer and their right of termination. A policyholder has the right to terminate the insurance contract within three months after that notice (Article 62, paragraph 3, ISA). However, FINMA can decide to exclude this termination right if the portfolio transfer does not lead to a change in the policyholder's contractual partner in economic terms.

The approval and notification requirements do not apply to reinsurance undertakings (Article 35, ISA).

Reinsurance Contracts and Risks

15. Is facultative or treaty reinsurance more common? What are the most common clauses in reinsurance policies?

Facultative/Treaty Reinsurance

Both facultative and treaty insurance are common in the Swiss market.

Common Clauses

Reinsurance contracts often contain "access to records" or "right to audit" clauses as well as "follow the fortunes" or "follow the settlements" clauses. Various forms of claims control clauses are often found in facultative reinsurance.

16. Can insurers cede risks without limitation to foreign reinsurers?

In principle, there are no specific limitations on insurance undertakings ceding risks to foreign reinsurance undertakings. However, depending on the circumstances of the case, if the reinsurance plan is amended, the insurance undertaking must file the change of its business plan with FINMA (see [Question 11](#)).

17. Does a reinsurance company typically monitor the claims, settlements, and underwriting of the cedant company?

There are no specific statutory monitoring requirements. However, the reinsurance contract can contain relevant provisions.

18. Does the cedant company have disclosure/notification obligations to the reinsurance company?

There are no specific statutory disclosure or notification requirements. However, the reinsurance contract can contain relevant provisions.

Contracts and Policies

Content Requirements and Common Clauses

19. What is a contract of insurance for the purposes of the law and regulation? How does it differ from a contract of reinsurance?

Swiss insurance legislation does not specifically define the terms "insurance" or "contract of insurance." The Swiss Federal Supreme Court has defined a contract of insurance as a contract under which an insurance undertaking promises an economic performance to a policyholder (or a third person) on realisation of a risk in exchange for payment of a premium (see, for example, Swiss Federal Supreme Court decision 124 III 382, page 397). According to the definition established by, and consistently used in, case law, the concept of insurance under Swiss law rests on the following five elements:

- **Risk or danger.** Risk can be defined as a future event whose occurrence is both uncertain and in fact possible. There must be either uncertainty as to whether the future event will occur at all or uncertainty as to when the future event will occur (*incertus an* or *incertus quando*).
- **Performance by the insured (that is, a premium payment).** The premium is, in principle, the price the insured pays in exchange for the performance by the insurance undertaking if the insured risk materialises. Although the Swiss Federal Supreme Court often uses the term "insured," the premium is not necessarily paid by the insured. For example, it can be paid by a policyholder.
- **Performance by the insurance undertaking.** The contract must include the obligation of the insurance undertaking (and therefore the right of the insured) to perform to the insured or another beneficiary if the insured risk materialises. Usually, the insurance undertaking pays to the insured an amount of money. However, performance can also consist of a payment in kind, the waiver of a claim against the insured, or any other action or benefit in favour of the insured or according to their will, including omissions. According to recent legal literature, performance can also consist of, for example, the provision of services (for example, legal protection insurance).
- **Independence of the operation.** The contract of insurance must be an autonomous agreement, in contrast to the situation where the obligation to pay on realisation of a risk is ancillary to or a term of a non-insurance contract.
- **Compensation of risks according to the laws of statistics (systematic business activity).** Case law has not developed a single definition for this element. Instead, various court decisions have emphasised different criteria such as the systematic business activity, the distribution of risk according to the law of large numbers, the consideration of the principles of statistics, and the requirement that the earnings are equal to or supersede the expenses. However, the Supreme Court also held that it is not necessary that the business activity must be based on insurance mathematics.

The first three elements are generally considered to be the defining and essential elements of an insurance contract (*essentialia negotii*), while the last two are more relevant from a supervisory law perspective and not decisive elements.

Contracts of insurance often have similarities with other types of contracts. In particular, insurance contracts must be distinguished from gambling and betting contracts, warranties, guarantees, and other surety contracts, and financial contracts (for example, hedging contracts, swaps, and derivatives).

The ICA contains mandatory and non-mandatory provisions applicable to contracts of insurance. In the absence of specific ICA rules, the provisions of the CO apply.

By contrast, reinsurance contracts are excluded from the scope of the ICA. They are subject to the general provisions of the CO to the extent that Swiss law applies.

20. What are the main general form and content requirements for insurance policies? What are the most common clauses?

Form and Content Requirements

The validity of an insurance contract is not subject to compliance with any particular form requirements, although the application for an insurance policy and acceptance by the insurance undertaking are customarily made in writing. However, the insurance undertaking must:

- Issue a policy to the policyholder stating the rights and duties of the parties (Article 11, ICA).
- Inform the policyholder about the identity of the insurance undertaking and the main content of the insurance contract before the conclusion of the contract (subject to the 'policyholder's right to terminate if the insurance undertaking fails to comply with its duty to inform (Article 3a, ICA)).

Article 3 of the ICA lists the key elements of the contract that must be explained to the policyholder:

- The insured risks.
- The scope of insurance coverage and whether it is a sum insured or indemnity insurance.
- The premiums due and any other duty of the policyholder.
- The duration and methods of terminating the contract.
- The methods, principles, and bases for calculating and distributing the surplus profits.
- The surrender and transformation values and the main types of costs associated with a surrenderable life insurance policy in the event of surrender.
- The handling of personal data, including the purpose and type of data collected, data recipients, and data storage.
- The right to withdraw the application to conclude the contract or the declaration of acceptance in accordance with Article 2a ICA, and the form and deadline for withdrawal.
- The time limit for submitting a claim.
- The term of validity of the insurance cover.
- The qualification of a life insurance policy as qualified life insurance.

On the policyholder's request (and against reimbursement), the insurance undertaking must provide the policyholder with a copy or transcript of the statements made by the policyholder in the application for the insurance contract or delivered in any other form, which were determining for the conclusion of the insurance contract (Article 11, paragraph 2, ICA).

Common Clauses

Most insurance undertakings use their own general insurance terms and conditions as a basis for their insurance contracts. For certain types of insurance, the *Swiss Insurance Association* (SIA) has published standard terms that may provide some general guidance on what terms and conditions one can expect in these types of policies (see [Question 23](#)).

Implied Terms

21. Are any terms implied by law or regulation (even if not included in an insurance or reinsurance contract)?

Certain provisions of the ICA cannot be contractually modified, for example, rules governing:

- The premium payment obligation on premature cancellation of the insurance contract.
- The due date of insurance claims.
- Tacit renewal of insurance contracts.
- Overinsurance or double insurance.
- The assignment and pledge of personal insurance claims.
- Insurance policies on the life of another person.

(Article 97, ICA.)

The following provisions of the ICA cannot be modified to the disadvantage of the policyholder or the insured:

- Rules and restrictions regarding the application for insurance.
- The insurance undertaking's duty of information to the policyholder and the 'policyholder's right to cancel the contract of insurance.
- Consequences of default in the payment of premiums.
- Aggravation of risks with or without the policyholder's involvement.
- Insurance undertaking's liability for their intermediaries.
- Rules relating to justifying the insurance claim.
- Rules on partial damage.
- Statute of limitations.

- Insurance undertaking's right of recourse.
- Policyholder's right of withdrawal in the area of life insurance.
- Rules relating to the conversion and surrender of life insurances.

(Article 98, ICA.)

On a more general level, Article 2, paragraph 1 of the *Swiss Civil Code* states that every person must act in good faith in the exercise of its rights and in the performance of its obligations.

Customer Protections

22. How do customer protections in general law affect insurance contracts? What customer protections are generally included in insurance policies to supplement this?

General Law

The main purpose of the ISA is to protect insured persons against the insolvency risks of insurance companies and against abuses in accordance with their need for protection (Article 1, paragraph 2, ISA). In particular, the ISA contains various information duties. For example, insurance undertakings must inform policyholders about compensations accepted by third parties in connection with qualified life insurance policies.

In addition, the use of general insurance terms and conditions (GTCs) to govern the relationship between insurance undertakings and consumers is subject to Article 8 of the *Federal Act on Unfair Competition* (UCA). This provision prohibits the use of GTCs that create a significant and unjustified imbalance between the parties' contractual rights and obligations to the detriment of consumers and contrary to the requirement of good faith. However, this provision only protects consumers and is not applicable to persons using insurance services related to their commercial or professional activities.

Insurance Policies

There are no specific supplemental customer protections that are generally included in insurance contracts by insurance undertakings in Switzerland. However, the ICA contains various consumer protection provisions, some of which are mandatory (see [Question 21](#)). Individual contracts may contain customer-friendly terms, such as a right of withdrawal from the contract within a defined time.

Standard Policies or Terms

23. What are the main standard policies or terms produced by trade associations or relevant authorities?

The SIA publishes standard terms (mainly in German and French, with some also available in English and Italian) for different types of indemnity insurance contracts (such as liability insurance, machine insurance, technical insurance, and transport insurance). These are available at on its [website](#).

Claims

Establishing a Claim

24. What must be established to trigger coverage under an insurance policy?

The insurance contract usually defines the triggering events. On the occurrence of an insured event, the beneficiary must notify the insurance undertaking as soon as the beneficiary knows about the event and the insurance claims (Article 38, paragraph 1, ICA). If the beneficiary is at fault in failing to comply with that duty, the insurance undertaking can reduce the indemnification by the amount by which the indemnification would have been reduced had the notice been made on time (Article 38, paragraph 2, ICA).

Time Limits

25. Is there a time limit outside of which the insured/reinsured is barred from making a claim?

Claims based on an insurance contract are subject to a statute of limitations of five years from the date of the triggering event that gives rise to the obligation to provide indemnification. This statute of limitations cannot be contractually shortened (Article 46, paragraphs 1 and 2, ICA). There are a few exemptions to the five-year limitation period, for example, claims arising from the collective insurance for daily sickness benefits (*kollektive Krankentaggeldversicherung*) become time-barred two years after the occurrence of the event that creates the obligation to provide benefits (Article 46, paragraph 3, ICA).

As reinsurance contracts are not subject to the ICA, the statute of limitations for claims based on reinsurance contracts is ten years from the day on which the claim becomes due (Article 127, CO). This limitation period cannot be contractually altered (Article 129, CO).

These time limits do not extinguish the claim, but, when invoked by the defendant, render the claim unenforceable.

Subrogation

26. Does an insurer have subrogation rights to claim against third parties who have caused loss to the insured?
What conditions must be satisfied to do this?

For an insurance contract that falls within the scope of the ICA, the insurance undertaking, to the extent of its payment and at the time that payment is made, has subrogation rights for the same categories of damages as those covered by the policy (Article 95c, paragraph 2, ICA). According to the Swiss Federal Supreme Court, this applies to both claims in tort (*unerlaubte Handlung*) and claims arising from causal and strict liability (*Kausal- und Gefährdungshaftung*).

The Swiss Federal Supreme Court has not yet clarified whether subrogation also applies to the policyholder's contractual claims against a third party. According to prevailing doctrine, it can be assumed that the insurance undertaking subrogates to the policyholder's claims in this case as well. However, the policyholder benefits from a quota privilege. In the event of subrogation, the claim of the policyholder has priority over the claim of the insurance undertaking. The latter can generally only enforce its claim once the claim of the policyholder has been fully satisfied. (Supreme Court Decision 117 II 609 c. 11c; Supreme Court Decision 4C.62/2005 of 1 November 2005, c. 5.1.)

Subrogation does not apply to sum insured policies (Article 96, ICA) or if the damage was caused by a person closely related to the insured person through slight negligence (Article 95c, paragraph 3, ICA).

Third Party Claims

27. In what circumstances can third parties claim under an insurance policy?

A third party can benefit from insurance cover if the insurance contract itself contains a provision to that effect or when explicitly provided for by law.

An aggrieved third party usually has a direct claim against the insurance undertaking in the areas of mandatory liability insurance, such as:

- Motor liability insurance (Article 65, paragraph 1, Federal Road Traffic Act (RTA)).
- Mandatory liability insurance for, for example:

- airplanes;
- ships;
- fuel and gas pipes;
- dams; and
- power plants.

In these cases, the insurance undertaking has no right to raise objections against the third party's direct claim on the basis of the ICA or the insurance contract (the insurance undertaking will have to take recourse against the policyholder or the insured).

If there is no explicit rule providing for a third party claim, the third party still has a lien on the claim of the policyholder against their liability insurer. The insurance undertaking has the right (but not the obligation) to compensate the affected third party directly, without the consent of the policyholder (Article 60, paragraph 1, ICA).

28. Can the original policyholder or other third party enforce the reinsurance contract against a reinsurer?

Unless otherwise provided in the reinsurance contract, only the parties to the reinsurance contract, that is, the insurance undertaking and the reinsurance undertaking, can derive rights from the reinsurance contract.

Insurance of Punitive Damages

29. Are punitive damages insurable? Can punitive damages be reinsured if they are covered by an underlying policy?

Punitive damages are not available under Swiss law. Further, even if the applicable foreign substantive law provides for punitive damages, a Swiss court cannot in principle award punitive damages in connection with claims arising from product defects in excess of what would be payable under Swiss law for the relevant damage (see Article 135, paragraph 2, *Federal Act on Private International Law* (PILA)). Generally, a Swiss (enforcement) court may consider punitive damages to be incompatible with Swiss public order, in particular in cases of blatant and objectively unjustifiable disproportionality of the amount payable. As a result, the insurability of punitive damages has found very little attention in Swiss legal literature.

Remedies for Breach of Policy

30. What remedies are available to the insurer and to the insured for breach of the insurance policy by the other party? On what basis are they claimed?

Insurer's Remedies

If the insured or the policyholder is in breach of one of their obligations under the insurance contract or the ICA, the insurance undertaking can reduce the indemnification (for example, if the insured caused the insured event in a grossly negligent way) or reject liability outright (for example, if the insured caused the insured event intentionally) (Article 14, ICA).

In certain circumstances, the insurance undertaking can terminate the contract by written notice (for example, if the insured omits to notify, or incorrectly notifies, the insurance undertaking of a significant risk factor) (Article 6, ICA).

Insured's Remedies

The policyholder can terminate the insurance contract by written notice if the insurance undertaking does not perform its duty to inform the policyholder of the identity of the insurance undertaking and the material content of the insurance contract the conclusion of the contract (see [Question 20](#)). This termination right expires four weeks after the policyholder becomes aware of the breach of duty by the insurance undertaking, and in any case one year after the breach of duty (Article 3a ICA).

Dispute Resolution

31. Are there special procedures or venues for dealing with insurance or reinsurance complaints or disputes?

Private law disputes between insurance undertakings or between insurance undertakings and the insured are, in principle, subject to the jurisdiction of the civil courts (Article 85, paragraph 1, ISA). The regular courts can hear disputes arising out of insurance contracts. However, some cantons have established a specialised commercial court, which is the appropriate venue for commercial disputes and disputes relating to the law of commercial companies and co-operatives (Article 6, [Swiss Code of Civil Procedure](#) (CCP)). In principle, the commercial court decides on disputes concerning the commercial activity of at least one party, the value in dispute exceeds CHF30,000 or the dispute is not a property dispute, and both parties are registered in the Swiss Commercial Register or in an equivalent foreign register. However, under certain conditions, the commercial court can be chosen by a non-registered claimant (Article 6, CCP). The cantons can also designate a court that serves as the sole cantonal instance for disputes arising from supplementary health insurance (Article 7, CCP).

32. Are arbitration clauses in insurance and reinsurance agreements enforceable? Are they commonly used in commercial insurance disputes?

Arbitration clauses in insurance and reinsurance agreements are in principle enforceable, as any monetary claims can be submitted to arbitration proceedings, both in disputes with or without an international element (Article 177, paragraph 1, PILA and Article 354, CCP). Arbitration clauses must be in writing or agreed by a means of communication that permits them to be evidenced by text (Article 178, paragraph 1, PILA and Article 358, CCP).

Commercial insurance and reinsurance agreements usually provide for the jurisdiction of state courts, although this depends on the individual case (including whether there is a cross-border nexus).

In principle, arbitration clauses are enforceable against consumers but are rather unusual in practice. However, depending on the situation, arbitration clauses in general terms and conditions may potentially be deemed abusive.

33. Are choice of forum, venue, and applicable law clauses in an insurance or reinsurance contract recognised and enforced?

Choice of Forum

In disputes without an international element, choice of forum clauses are in principle admissible under the CCP. However, where an insurance contract qualifies as a consumer contract according to Article 32 of the CCP, the parties can only enter into a choice of forum agreement after the dispute has arisen (Article 35, paragraph 1(a), CCP). An insurance contract may qualify as a consumer contract if the insurance relates to services or goods for usual consumption (for example, an insurance for household contents or private liability insurance) (Article 32, paragraph 2, CCP).

If a dispute with an international element falls within the scope of the Lugano Convention, the relevant jurisdiction in insurance matters is determined by Articles 8 to 14 of the Lugano Convention. A choice of forum can only be made in an agreement that is:

- Entered into after the dispute has arisen.
- Structured to allow the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in Articles 8 to 14 of the Lugano Convention.
- Concluded between a policyholder and an insurance undertaking, both of whom, at the time the contract is concluded, are domiciled or habitually resident in the same contracting state, and which has the effect of conferring jurisdiction on the courts of that state even if the harmful event were to occur abroad (provided that such an agreement is not contrary to the law of that state).
- Concluded with a policyholder who is not domiciled in a contracting state, except insofar as the insurance is compulsory or relates to immovable property in a contracting state.

- Related to a contract of insurance that covers one or more of the risks set out in Article 14 of the Lugano Convention (for example, any loss of or damage to seagoing ships, installations situated offshore or on the high seas, or aircraft arising from perils that relate to their use for commercial purposes).

(Article 13, Lugano Convention.)

These provisions do not apply to reinsurance matters.

If a dispute with an international element falls outside the scope of the Lugano Convention or another international treaty, the PILA applies. In principle, the relevant jurisdiction is determined based on the rules regarding contracts (Articles 112 and 113, PILA). Under these rules, choice of forum clauses are in principle, admissible. However, if the insurance contract qualifies as a consumer contract according to Article 120 of the PILA, the consumer cannot waive jurisdiction of its domicile or usual place of residence in advance (Article 114, paragraph 2, PILA).

Choice of Law

Swiss courts apply the PILA to the applicable law and choice of law clauses in international disputes. In principle, choice of law clauses are permissible. The choice of law must be explicit or clearly evident from the contract or the circumstances. The choice of law can be made or modified at any time (Article 116, PILA). However, where an insurance contract qualifies as a consumer contract, a choice of law clause is not enforceable (Article 120, paragraph 2, PILA).

Insolvency

34. What is the regulatory framework for distressed or insolvent insurance or reinsurance companies? What protections exist for policyholders if the insurance company is insolvent?

The *Federal Act on Debt Enforcement and Bankruptcy* (DEBA) applies to insolvent insurance and reinsurance undertakings to the extent that the more specific provisions of the ISA (Article 51 et seq., ISA) do not provide otherwise (Article 54, paragraph 2, ISA). The relevant provisions of the ISA are supplemented by the IBO-FINMA (see [Question 1](#)).

If there are reasonable grounds for concern that an insurance undertaking is overindebted or has serious liquidity problems, FINMA can order:

- Protective measures (*Schutzmassnahmen*).
- Reorganisation (*Sanierung*).
- Insurance bankruptcy (*Versicherungskonkurs*).

(Article 51a, ISA.)

In particular, FINMA can order the following protective measures:

- Prohibit the unrestricted disposition of the insurance undertaking's assets.
- Order the deposit or blocking of assets.
- Assign, in whole or in part, the responsibilities and authorities of the officers and directors of an insurance undertaking to a third person.
- Assign the portfolio of insurance policies and the related tied assets to another insurance undertaking (with the consent of that insurance undertaking).
- Order the liquidation of the tied assets.
- Demand the dismissal of the persons entrusted with the ultimate management, supervision, control, or conduct of the business, or the general agent, as well as the responsible actuary, and prohibit them from engaging in any further insurance activities for up to five years.
- Remove an insurance intermediary from the register.
- Assign assets to the tied assets that are required by Article 18 of the ISA.
- Order the extension of the terms of payment and the adjournment of due dates in cases of financial distress.

(Article 51, paragraph 2, ISA.)

If FINMA revokes an insurance undertaking's licence, it becomes subject to liquidation. FINMA appoints and oversees the liquidator (Article 52, ISA).

Where there is good cause to suspect that an insurance undertaking is overindebted or has liquidity problems and where reorganisation is not possible, FINMA will revoke the licence and initiate bankruptcy proceedings (which are then published) (Article 53, paragraph 1, ISA).

Insurance claims that can be recognised from the insurance undertaking's records are deemed to have been submitted in the bankruptcy proceedings. The claims where security was provided in the form of tied assets will be the first to be covered by the proceeds of the tied assets. Any remaining proceeds become part of the bankruptcy estate (Article 54a, ISA and Article 26, IBO-FINMA). In some cases, transferring insurance portfolios under Article 62 of the ISA before a liquidation can be a way of protecting the interests of the insured.

If the insurance undertaking is declared bankrupt, the insurance contracts expire four weeks after the date on which the bankruptcy was made public (Article 37, paragraph 1, ICA). The policyholder can then assert the following claims:

- If the policyholder withdraws from the contract, they can reclaim the premium paid for the unexpired insurance period (Article 24, paragraph 1, ICA).
- If the policyholder withdraws from a life insurance contract, they can reclaim the actuarial reserve (Article 36, paragraph 3, ICA).
- If the policyholder has a claim for compensation against the insurance undertaking from the current insurance period, they can choose to assert either this claim for compensation or the above claim (Article 37, paragraph 3, ICA).

A policyholder also has the right to claim damages (Article 37, paragraph 4, ICA).

35. Can excess insurance policies "drop down" to provide coverage if the primary insurer goes into insolvency?

Swiss law does not provide for any "drop down" of insurance coverage of an excess insurer on insolvency of an insurance undertaking belonging to an underlying layer of coverage. However, an excess insurer and the insured or policyholder can contractually agree to a "drop down."

36. Is a right to set-off mutual debts and credits recognised in an insolvency proceeding involving an insurer or reinsurer?

A creditor can set-off mutual debts. However, in certain circumstances a set-off is not permitted (for example, where a creditor of the bankrupt did not become debtor of the bankrupt or the bankrupt estate until after the opening of bankruptcy proceedings) (Article 213, paragraphs 1 and 2, DEBA).

From an insurance law perspective, an insurance undertaking cannot set-off its liabilities against claims that are counted towards the tied assets (Article 84, paragraph 2, ISO), since tied assets serve as security for the claims of the insured under the insurance contracts (there are specific rules concerning the use of proceeds from tied assets in insurance bankruptcy proceedings) (Article 54a bis, ISA). Consequently, the insurance undertaking must ensure that its counterparty cannot declare set-off against liabilities if the 'insurance undertaking's claim against the counterparty forms part of the tied assets (for example, by contractually excluding set-off in these circumstances).

Tax

37. What is the tax treatment for insurers, reinsurers, and other persons or entities providing insurance and reinsurance services?

Under the *Federal Stamp Tax Act* (STA), stamp taxes are levied on the payment of insurance premiums. However, several types of insurance are exempt from this tax (for example, stamp taxes are not levied on reinsurance premiums) (Article 22, STA)).

Insurance and reinsurance turnovers are exempt from Swiss VAT without the possibility to reclaim input VAT.

Generally, the ordinary Swiss tax regime applies to insurance and reinsurance providers. Consequently, insurance undertakings are subject to:

- Corporate income tax, which is assessed based on the income according to the statutory profit and loss statement in accordance with the CO.
- Corporate capital tax, which is assessed based on the equity according to the statutory balance sheet in accordance with the CO and any deemed equity.

The applicable tax rates depend on the canton and municipality where the insurance or reinsurance undertaking is domiciled or has a permanent establishment. In Switzerland, losses can be carried forward seven years for tax purposes.

Contributor Profiles

Peter Ch. Hsu, Partner

Bär & Karrer Ltd.

Phone: +41 58 261 53 94

Fax: +41 58 263 53 94

peter.hsu@baerkarrer.ch

www.baerkarrer.ch/en/lawyers/hsu-peter

Professional qualifications. Switzerland (Zurich bar), 2002; US (New York Bar, non-practising), 2005

Areas of practice. Insurance; banking; financing; M&A.

Recent transactions

- Advising Swiss and foreign insurance and reinsurance undertakings, groups, conglomerates, and insurance intermediaries as well as banks, securities dealers, and other financial institutions on M&A/corporate law, regulatory, and contract law matters.
- Regularly advising clients on M&A transactions (mergers, spin-offs, and portfolio transfers) in the financial sector and other industry sectors.
- Advising insurance undertakings on capital and solvency requirements and on investment restrictions for tied assets.
- Filing licence applications and registrations with FINMA and obtaining FINMA rulings as well as drafting and negotiation of contractual documentation.

Languages. German, English

Professional associations/memberships

- AIDA Swiss Chapter (Member of the Organising Committee).
- Swiss Bar Association (SAV/FSA).
- Zurich Bar Association (ZAV).
- International Bar Association (IBA).
- Swiss Society for Liability and Insurance Law (SGHVR).

Publications. Co-editor of the Basle Commentaries on the Insurance Supervision Act (ISA) and on the Anti-Money Laundering Act (AMLA) as well as numerous publications with a focus on insurance law, financial market regulation, and M&A/corporate law.

Daniel Flühmann, Partner

Bär & Karrer Ltd.

Phone: +41 58 261 56 08

Fax: +41 58 263 56 08

daniel.fluehmann@baerkarrer.ch

www.baerkarrer.ch/en/lawyers/fluehmann-daniel

Professional qualifications. Switzerland (Zurich Bar), 2011

Areas of practice. Insurance; banking; financing; M&A transactions.

Recent transactions

- Advising Swiss and foreign insurance and reinsurance undertakings, groups, conglomerates, and insurance intermediaries on legal and regulatory matters and in the context of enforcement proceedings.
- Advising purchasers and sellers in M&A transactions, in particular in the financial and insurance sector.
- Filing licence applications and registrations with FINMA and obtaining FINMA rulings.
- Drafting and negotiation of contractual documentation.

Languages. German, English

Professional associations/memberships

- Recognised representative for the listing of securities at the SIX Swiss Exchange.
- Swiss Finance + Technology Association (SFTA).
- International Bar Association (IBA).
- Swiss Bar Association (SAV/FSA).
- Zurich Bar Association (ZAV).

Publications. Co-editor of the Basle Commentary on the Anti-Money Laundering Act (AMLA) as well as numerous publications with a focus on financial market regulation.

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