



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Switzerland: Insurance & Reinsurance (3rd
edition)

This country-specific Q&A provides an overview
to insurance and reinsurance laws and regulations
that may occur in [Switzerland](#).

This Q&A is part of the global guide to Insurance &
Reinsurance (3rd edition). For a full list of
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1. How is the writing of insurance contracts regulated in your

jurisdiction?

Swiss insurance companies as well as foreign insurers wishing to do business in or from Switzerland have to be authorised by the Swiss Financial Market Supervisory Authority (*Eidgenössische Finanzmarktaufsicht* -**FINMA**) before they may do so as a matter of principle.

The FINMA has the competency to supervise the activities of insurance companies doing business in or from Switzerland in accordance with the Financial Market Supervision Act (*Bundesgesetz vom 22. Juni 2007 über die Eidgenössische Finanzmarktaufsicht, Finanzmarktaufsichtsgesetz, FINMAG-FINMASA*).

The Insurance Supervision Act (*Bundesgesetz betreffend die Aufsicht über Versicherungsunternehmen vom 17. 12. 2006, Versicherungsaufsichtsgesetz, VAG-ISA*) sets down the regulatory requirements that have to be met by insurance companies in order to obtain a license and the business rules that have to be respected in the proper course of the conduct of their business up until run-off. The ISA is relatively lean when compared with the more detailed and more technical Insurance Supervision Ordinance (*Verordnung betreffend die Beaufsichtigung von Versicherungsunternehmen, Aufsichtsverordnung AVO-ISO*), which complements it. The ISA and ISO are further complemented by Circulars of the FINMA that give details concerning the FINMA's supervisory practice. Such Circulars are binding on the FINMA so far as the supervisory practices described in its Circulars are concerned.

The relationship between an insurance company and its policyholders is predominantly regulated by the Insurance Contract Act (*Bundesgesetz über den Versicherungsvertrag of 1908, Versicherungsvertragsgesetz, VAG-ICA*). The provisions of the ICA are themselves complemented by the general principles of the Code of Obligations (*Obligationenrecht, OR-CO*).

Both, the ISA and the ICA are currently under revision. After the Parliament had declined a full revision (*Totalrevision*) of the ICA in 2013 it mandated the Federal Council (Bundesrat) to prepare a partial revision (*Teilrevision*) focussing on certain selected matters. A pre-draft for consultation (*Vernehmlassungsvorlage*) of the partially revised ICA was published by the Federal Council in July 2017 and stakeholders were invited to take part in the consultation. In November 2017 the Federal Council released the draft ICA ("**Draft ICA**"). The draft has been dealt with by the Parliament since the beginning of 2018. It is expected that the revised ICA could enter into force in 2020.

The revision of the ISA is still at an earlier stage. The Federal Council started its consultation of the stakeholders and published the pre-draft of the revised ISA in November 2018 ("**Pre-Draft ISA**"). The consultation was closed at the end of February 2019. The next step will be the release of a draft law by the Federal Council.

Though we can neither foresee whether the Parliament will adopt the Draft ICA (with or without further amendments), nor whether and what further amendments will be made to the Pre-Draft ISA following the consultation, we endeavour to highlight in the following where (possible) changes could affect our answers to the questions below:

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

Reinsurance companies are exempt from certain provisions of the ISA that are aimed at consumer protection (LSA 35). Reinsurers are, *inter alia*, not requested to hold so-called "restricted assets" as direct insurers are. The less intense level of supervision for reinsurance companies is also made apparent by the fact that reinsurance companies having their seat abroad can reinsure Swiss cedants on

a cross border basis without any need for a Swiss license. For the time being, foreign reinsurance companies also can conduct reinsurance business in/from Switzerland via a Swiss branch office without any need for a license by FINMA. Similarly, Swiss reinsurers can do business in EU countries on a cross border basis as the Swiss reinsurance supervision is acknowledged as equivalent by the EU Commission.

For life insurance companies, certain additional provisions regarding the maximum guaranteed interest rate, tariff calculation, surplus participation, surrender values and information duties apply (ISA 36 in connection with ISO 120 et seqq.) Further details are set out in FINMA Circulars.

In addition, life insurance companies must not conduct other lines of insurance business, except for health and accident insurance (ISA 12).

Collective life insurance in connection with occupational schemes is subject to further regulation (ISA 37, in connection with ISA 137 and ISA 4, 2 lit r), including separate accounting for this particular type of life insurance and prior approval of tariffs and terms by FINMA.

Proposed amendments by Pre-Draft ISA (not exhaustive):

- Foreign Reinsurers acting through a Swiss branch will need a Swiss licence and become subject to FINMA supervision (Pre-Draft ISA 2, para 1 lit b (2))
- Insurers with innovative business models (e.g. InsurTechs) may request relief from supervision if favourable to the sustainability of the Swiss financial market (“regulatory sandbox”) Pre-Draft ISA 2 para 3 lit b.
- Insurance companies that conclude insurance contracts exclusively with professional customers shall become exempt from certain provisions of the ISA aimed at consumer protection Pre-Draft ISA 30b. Most striking is that such insurance companies will be exempt from the requirement to hold “restricted assets”, which have the purpose of securing claims of the insureds. For companies having partly professional and partly non-professional policyholders the relief from regulation shall apply proportionally. It shall not apply, however, in so far as compulsory TPL insurances (that protect non-professional persons) or occupational life insurance schemes are concluded by the insurance company.

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

Intermediaries doing business in Switzerland are subject to regulation in accordance with ISA 40 to 45 in combination with ISO 182 to 190.

Brokers (i.e. intermediaries who are not legally or economically tied to an insurance company) have to register themselves in FINMA's public intermediaries' register, ISA 42, 43.

To get registered the broker has to demonstrate:

- Professional qualification evidenced by an exam or equivalent proof.
- Personal integrity, i.e. no criminal or debt records.
- PI insurance or equivalent financial security (44 ISA, ISO 184 et seq.)

Tied intermediaries are not obliged to register, but they currently have the option to register if they meet the above-mentioned prerequisites. The current ISAISA/ISO does not provide a clear distinction between tied/untied intermediaries and it is possible that an intermediary is untied for intermediation of insurance contracts in one branch of insurance and tied for intermediation in another branch of insurance.

Intermediaries are subject to certain obligations concerning information towards their customers, ISA 45, ISO 190.

Proposed amendments by Pre-Draft ISAISA (not exhaustive):

- The Pre-Draft proposes a clearer distinction between tied and untied intermediaries: i.e. intermediaries will cease to be able to work as a tied intermediary for one branch of insurance and as untied for another branch of insurance; tied intermediaries shall lose the option to register with the FINMA's intermediary's register. The register shall become a register for untied intermediaries only (Pre-Draft ISA 42, 42a, 45 para 1 lit b)
- Untied intermediaries will have to disclose to the customer any kind/amount of

commission they will receive from the insurer before they are allowed to accept such commission. If being paid by the customer, a waiver of the customer will be required or, alternatively the intermediary must pay the commission received from the insurer (?) completely to the customer (Pre-Draft ISA 45a).

4. Is authorisation or a licence required and if so how long does it take on average to obtain such permission?

Taking up insurance business in or from Switzerland is subject to authorisation by the FINMA (see question 1 above – also with respect to the exemption for reinsurance business from abroad or from a Swiss branch).

In the course of the application a business plan of the insurance company must be submitted to FINMA. The business plan consists of the following information and documents:

- Statutes;
- organisation and local area of activity including, where applicable, the group or conglomerate of insurance companies the companies belongs to;
- if activity abroad is envisaged: authorisation or equivalent by the foreign supervisory authority;
- information on capital and reserves;
- balance sheets of the last 3 business years or opening account;
- information on persons holding at least 10 per cent of the share capital in the insurance company or who can influence the company by other means;
- information (including names and CVs) on the persons who are in the senior management and those who are in charge with the supervision and control of the senior management;
- name (including CV) of the appointed actuary;
- agreements by which essential functions of the insurance company shall be outsourced;
- envisaged classes of insurance and kind of risks to be covered;
- where applicable: membership in the national insurance burau and national guarantee fund;

- where authorisation for assistance is applied for: information on means to perform assistance benefits;
- reinsurance plan and retrocession plan for active reinsurance;
- estimated costs for the set-up of the insurance company;
- budgeted balance sheets and budgeted profit and loss accounts for the first 3 years;
- information on risk management;
- in case of life insurance in connection with occupational schemes and in supplemental health insurance: tariffs and general terms and conditions.

The duration of the licensing process depends on various issues, including the quality and completeness of the documents submitted to the FINMA, the complexity of the envisaged business, whether authorisation is sought for a newly established insurance company with its seat in Switzerland or for a branch of an EU based insurance company (the latter profit from some a certain liberalisation) communication with FINMA and, last but not least FINMA's workload.

On average, once the documentation has been completed and lodged, one should expect that it may take between 3 and 6 months before a licence is granted.

Proposed amendments by Pre-Draft ISA (not exhaustive):

- The Pre-Draft exempts certain types of companies from supervision and thus from the authorisation requirement (ISA 2 para 2):
 - Foreign state export credit insurance;
 - small mutual companies with limited significance that have existed since 1993 or earlier;
 - mutuels, clubs and similar entities providing certain guarantees to its members.
- In addition, certain types of companies may become exempt on application:
 - Insurers with innovative business models (e.g. InsurTechs);
 - smaller entities with little economic significance if special circumstances support the exemption.

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

Information regarding persons holding at least 10 per cent of the shares in an insurance company has to be submitted to FINMA during the authorisation process for approval. Anyone who intends to acquire a participation in an existing Swiss insurance company has to inform FINMA if such participation reaches 10, 20, 33 or 50 per cent of the share capital or the voting rights of such company. The same notification duties apply if an existing participation is reduced, Art 21 para 2 and 3 ISA. FINMA is authorised to restrict participation if it might endanger the insurance company or the interests of the insureds, ISA 21 para 4.

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

Risks located in Switzerland can be covered on a non-admitted basis to a very limited extent only. As a matter of principle, a direct insurance contract (i) made with a policyholder based in Switzerland or (ii) covering a risk located in Switzerland can only be written by an insurance company that holds a Swiss license. ISO 1 para 2 allows non-admitted insurance by companies based abroad in the following cases:

- Cover of risks in connection with shipping on the high-seas, aviation and cross-border transportation;
- Cover for risks abroad (where the policyholder is located in Switzerland);
- Cover for war risks.

Foreign reinsurance companies are allowed to offer reinsurance cover to Swiss cedants from abroad on a non-admitted basis.

Proposed amendments by Pre-Draft ISA (not exhaustive): See at no. 4 above.

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

Those who intentionally conduct insurance business in Switzerland without appropriate authorisation may be penalised by imprisonment of up to 3 years. In the case of negligence, a fine of up to 250 000 Swiss Franc can be imposed, FINMASA 44.

8. How rigorous is the supervisory and enforcement environment?

We view FINMA as being relatively strict in enforcing any violations against the applicable laws and in particular if companies operate in Switzerland without appropriate authorisation.

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

A company that intends to start insurance or reinsurance business in Switzerland has, during the licensing process, to provide evidence to FINMA that it meets the applicable solvency margin, Art 9 ISA. In addition, the company must hold a so-called organisational fund to cover all costs in connection with the establishment, the set-up, or an extraordinary expansion of the business. The amount of the required organisational fund is normally 50 per cent of the amount of the required solvency margin, ISO 10.

In the course of the ongoing business of the insurance company, an appointed

actuary is responsible for the calculation of the solvency margin at any time, ISA 24. FINMA supervises the adequacy of the solvency margin regularly through annual reports that have to be provided to FINMA, ISA 25.

The Solvency margin of insurance companies is assessed in accordance with the Swiss Solvency Test (SST). Following SST, the solvency margin is determined by the risk exposure of the insurance company (target capital) and the creditable (to the solvency margin) own capital (risk bearing capital) of the company. Further details are set out in ISO 21 et seq and in FINMA Circular RS 2017/3.

Proposed amendments by Pre-Draft ISA (not exhaustive):

- The term “solvency margin” is going to be displaced by the (more precise) term “sufficient solvency”. The solvency is sufficient if the risk-bearing capital is equal to or higher than the target capital (ISA 9). ISA 9a and 9b contain provisions on the future calculation of the risk bearing capital and the target capital; the amendment takes into account internationally acknowledged principles and equivalence with Solvency II.

10. **What are the minimum capital requirements?**

The applicable minimum capital requirements depend on the type of insurance business conducted by an insurance company. In life insurance (Art 7 ISO) they are:

- 5 million Swiss Francs for life insurers (excluding occupational schemes) that provide, exclusively, death benefits and/or waiver of premium in the event of disability;
- 8 million Swiss Francs for life insurers (excluding occupational schemes) that provide in addition to death benefits and/or waiver of premium in the event of disability a capital guarantee or other guarantee at the maturity date;
- 10 to 12 million Swiss Francs for collective life insurance in the framework of occupational schemes.

In non-life insurance (Art 8 ISO) they are:

- 8 million Swiss Francs for most classes of non-life insurance business (excluding those mentioned under the following bullet point);
- 3 million Swiss Francs for class B 9 (other property losses), B 16 (various financial losses), class B 17 (legal cost insurance), B 18 (assistance).

In reinsurance (ISO 9) they are:

- 10 million Swiss Francs and 3 million for captive reinsurers.

Proposed amendments by Pre-Draft ISA (not exhaustive):

- Amendments to ISO can be expected in the course of the revision of the ISA (details have not yet been published).

11. **Is there a policyholder protection scheme in your jurisdiction?**

Currently not. According to ISA 55, life insurance contracts for which particular “restricted assets” have been established (these are particularly life insurance contracts that also provide endowment benefits) are not terminated in the case of the bankruptcy of the insurance company. Instead FINMA may temporarily restrict cancellation rights for such policies. This has the aim of giving FINMA the possibility of finding another insurance company that is prepared to assume the portfolio of the bankrupt insurance company and to duly fulfil the obligations under the respective insurance contracts. If FINMA finds such other insurance company it can request that a portfolio transfer to such company takes place.

Proposed amendments by Pre-Draft ISA (not exhaustive):

Pre-Draft ISA 52a et seq. set out new provisions on the restructuring of insurance companies. These include the possibility to transfer an insurance

portfolio (or a part of it) to another legal entity, which shall be in the position to manage the portfolio through a well-regulated run-off.

12. **How are groups supervised if at all?**

Groups and conglomerates are supervised in accordance with ISA 64 et seq (insurance groups) and ISA 72 et seq (conglomerates of insurance).

Group supervision becomes necessary when a group operates on an international scale and has a complex structure. Conglomerate supervision is used if the group also plays a key role in the financial services sector; this applies in particular to banks and securities dealers.

Two or more companies are deemed an insurance group in accordance with ISA 64 if at least one of the companies is an insurance company, the “ensemble” of companies predominantly conducts insurance business and if the companies form an economic unit.

FINMA can bring such an insurance group under its supervision if the group is effectively managed from Switzerland. The same applies if the group is managed from abroad, provided that it is not subject to equivalent group supervision in the respective country, ISA 65.

Group supervision applies in addition to the individual supervision of the insurance company, ISA 66. Senior management must fulfil the same “fit and proper” criteria as the senior management of an insurance company (see question 13 below). Group supervision focusses on in particular on 3 main areas (see ISO 191 et seq for details):

- Organisation, group structure and internal processes.
- Risk management on a group level.

- Consolidated solvency on a group level (group SST).

A conglomerate of insurance companies (ISA 72 et seq ISA) is an insurance group (according to the criteria set out in ISA 64ISA) in which at least one of the group companies is a bank or a securities trader. The principles that apply for the supervision of conglomerates of insurance companies are equivalent to those that apply to insurance groups (see e.g. ISO 204). FINMA has set out further details on group supervision in its Circular RS 2016/04.

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

Senior management, i.e. the board of directors (Verwaltungsrat), the top management, and the appointed actuary have to ensure (by character and qualification) the flawless operation of the insurance company. ISA 14, 23 para 2 in connection with ISO 12 et seqq.

The eligibility of the senior management is assessed in the course of the licensing process, ISA 4 para 2 lit g and h (see no 4 above) and continuously monitored by FINMA. Changes in the senior management must be notified to FINMA (and in case of the appointed actuary, approved by it).

Proposed amendments by Pre-Draft ISA (not exhaustive):

- The owners of a qualified holding (10% or more) will also have to meet the fit and proper criteria.

14. **Are there restrictions on outsourcing parts of the business?**

Agreements by which the “essential functions” of an insurance company are outsourced to service providers (“Outsourcing Agreements”) are considered to

be a part of the business plan of an insurance company.

Such Outsourcing Agreements must be submitted to FINMA during the licensing process (ISA 4 para 2 lit j). It is deemed an amendment of the business plan if an existing insurance company enters into an outsourcing agreement. Thus, it has to inform FINMA accordingly. The amendment of the business plan is deemed approved if FINMA does not start any investigations within 4 weeks.

According to the new FINMA Circular 2018/3 on Outsourcing, which has entered into force on 1. April 2018 in principle, all essential functions of an insurance company can be outsourced, except senior management and controlling by senior management, if the following prerequisites are met:

- The eligibility of the service provider must be documented.
- Responsibility for outsourced services remains with the insurance company.
- The insurance company must be entitled to examine the provider's business at any time; FINMA's supervision must not be impeded by outsourcing.
- Outsourcing to a service provider based abroad is admissible only if the insurance company can prove that examination and supervision rights by FINMA are not impeded by such outsourcing
- Outsourcing Agreements must be made in writing and provide for a minimum content set out in detail in FINMA's circular

Outsourcing Agreements entered into by insurance companies before April 2018 are not affected by the new Circular as such. However, any amendment in such Agreements will subject them to the rules of Circular 2018/03

15. **How are sales of insurance supervised or controlled?**

Sales is one of the key functions of an insurance company and as such subject to the general supervision by FINMA. In particular, FINMA may intervene in case of inappropriate sales techniques based on ISA 46 in connection ISO 117.

16. **Are consumer policies subject to restrictions? If so briefly describe the range of protections offered to consumer policyholders**

Currently, neither the ISA, ISO, nor the ICA contain particular consumer protection provisions. Rather, these acts protect policyholders in general irrespective of whether they conclude their insurance contracts as consumers or entrepreneurs. Since 2012, however, Unfair Competition Act (*Bundesgesetz gegen den unlauteren Wettbewerb*, “**UCA**”) 8 provides for protection of consumers against unfair clauses in general terms and conditions of insurers. No relevant case law exists so far but is expected to develop in the future.

Proposed amendments by Draft ICA (not exhaustive):

While the proposal of a full revision of the ICA (which was declined by the Parliament in 2013) had a relatively strong focus on consumer protective ideas, the current Draft ICA limits such restrictions to a minimum in favour of the freedom of contract:

- Withdrawal right, Draft ICA 7
- Statutory regulation of preliminary coverage, Draft ICA 23
- Admission of retroactive insurance, Draft ICA 24 (which currently is not allowed and thus void)
- Deletion of the current ICA 12 (according to which discrepancies in the policy from the agreed content of an insurance contract are deemed permitted if the policyholder does not object within 4 weeks)
- Prolongation of the period of limitation, Draft ICA 46

17. **Are the courts adept at handling complex commercial claims?**

The Swiss court system is both experienced and adept at handling even complex commercial claims. In four Cantons (Zurich, Aargau, Berne and St. Gallen) there are even specialised commercial courts having jurisdiction as sole cantonal court in commercial matters. According to Article 6 (2) of the Swiss Civil Procedure Code a commercial dispute is to be qualified as commercial matter if it concerns the commercial activity of at least one party and if the parties are registered in the Swiss Commercial Register or in an equivalent foreign commercial register, Additionally, the value of dispute exceeds CHF 30'000.00. If only the defendant is registered in the Swiss Commercial Register or in an equivalent foreign register, but all the other conditions are met, the plaintiff may choose between the Commercial Court and the ordinary court.

18. **Is alternative dispute resolution well established in your jurisdictions?**

In principle, ADR techniques i.e. arbitration and mediation are well established in Switzerland. Most reinsurance contracts and a considerable number of (industrial) direct insurance contracts governed by Swiss law contain arbitration clauses. However, reinsurance disputes are often settled amicably in Switzerland before arbitration even starts. Thus, the number of arbitration proceedings may be smaller than it appears to be in other industry sectors. We expect, however, that arbitration and other ADR techniques will become more important for the insurance sector within the next years.

Consumers have the possibility to assert their complaints against an insurance company - free of charge - with the Swiss Insurance Ombudsman (*Versicherungsbundsmann*). The Swiss Ombudsman of Insurance is a Foundation established by the Swiss Insurance Association in 1972. The main function of the Ombudsman is

- to receive communications in respect of complaints, disputes and claims in connection with or arising out of private insurance contracts;
- to provide guidance and advice to insurance customers;
- to facilitate the settlement of claims and the resolution of disputes by recommendations.

However, the Ombudsman is not entitled to make any binding settlement decisions.

19. What are the primary challenges to new market entrants?

For direct insurers entering the Swiss market, in our view, the main challenge is on sales, in particular if the business predominantly focusses on consumers. Recruiting may be another challenge, since even though the Swiss market provides numerous highly skilled individuals, the competition among the insurance companies to hire these individuals is very strong. Product adaptations to Swiss law are, of course, a challenge too.

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

Several InsurTech start-ups have been established within the last years and we believe that further start-ups will follow. FINMA tries to make Switzerland a FinTech/InsurTech hub and gradually provides for a proper regulatory environment. The Federal Council supports this approach by proposing to exempt InsurTechs from supervision if certain prerequisites are met (see also Question 2 above). We also observe that traditional insurance companies have recently started to take digital innovation seriously and that they have invested a considerable amount of time and money in connected projects. Most notably, Swiss insurers and reinsurers play an eminent role in the Blockchain Insurance Industry Initiative (B3i).

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

We are neither brokers nor fortune-tellers. We think, however, that in a market like the Swiss market where banks, securities dealers, asset managers and other financial institutions have a predominant position, financial lines insurance is an important business line and it may gain importance within the coming years. Moreover, digitalisation and the control of data may become decisive factors for business success in insurance.