



The Legal 500 Country Comparative Guides

Switzerland

INSURANCE & REINSURANCE

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

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SWITZERLAND

INSURANCE & REINSURANCE



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

Insurance or reinsurance activities by Swiss domiciled insurers or reinsurers as well as direct insurance activities by non-Swiss insurers in, into and out of Switzerland are subject to the regulatory requirements of the Insurance Supervision Act ("ISA") including obtaining a license from the Swiss Financial Market Supervisory Authority ("FINMA") before conducting regulated activities.

Insurance undertakings domiciled abroad are exempt from the regulatory and licensing requirements of the ISA if their activities in Switzerland are limited to reinsurance only. However, under the revised ISA (see below), the government (Swiss Federal Council) will be competent to submit Swiss branches of foreign reinsurers to regulation and licensing by way of an ordinance.

The ISA requirements and provisions are described in detail in the Insurance Supervision Ordinance ("ISO"). FINMA Circulars and FAQs provide further guidance on the current FINMA supervisory practice.

From a regulatory perspective, other relevant laws and regulation for insurance and reinsurance companies include the Financial Market Supervision Act ("FINMASA") and the Insurance Supervision Ordinance FINMA ("ISO-FINMA").

The contractual relationship between (direct) insurers, policyholders and insureds is governed by the Insurance Contract Act ("ICA") and complemented by the Swiss Code of Obligations ("CO"). While the ICA applies to direct insurance contracts, reinsurance contracts are not within the scope of the ICA. As a consequence, Swiss law governed reinsurance contracts are primarily subject to the provisions of the CO.

These most relevant statutes have recently been revised or will soon come into force in revised form. As a first step, the partially revised ICA has entered into force as of 1 January 2022. The revised ISA was adopted by the

Swiss Parliament on 18 March 2022. It is expected to enter into force in late 2023 or as of 1 January 2024. Also relevant in practice are the revised ISO and respective guidance by FINMA. The first draft of the revised ISO was published in May 2022 and submitted for public consultation until 7 September 2022. The revised ISO will come into force together with the revised ISA.

Outside the Swiss insurance legislation, other pieces of legislation, including consumer protection law, data protection law and law against unfair competition, are relevant as well. In addition, the following international treaties apply:

- Agreement between the Swiss Confederation and the European Economic Community (now: EU) on Direct Insurance other than Life Insurance of 10 October 1989 ("EU Direct Insurance Treaty") and, in wake of Brexit, the Agreement between the Swiss Confederation and the UK on Direct Insurance other than Life Insurance of 25 January 2019 ("UK Direct Insurance Treaty"), which came into force on 1 January 2021;
- Agreement between the Swiss Confederation and the Principality of Liechtenstein on Direct Insurance and Insurance Intermediation of 19 December 1996 ("Liechtenstein Direct Insurance Treaty") that is supplemented by the Agreement between the Swiss Confederation and the Principality of Liechtenstein on Insurance against Natural Disasters of 10 July 2015.

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

As of today, the ISA in principle provides an equal level of protection for all types of insureds, meaning that there are no regulatory differences between private individuals, SMEs or large corporations. The revision of the ISA will reverse this principle by setting up a new supervision framework, which depends on the need for protection of the respective insured rather than on the

type of insurance contract (direct insurance or reinsurance).

For example, pursuant to Art. 30a draft ISA, insurers that are exclusively engaged in the insurance of professional insureds can be granted an exemption from certain supervisory obligations, including for example the duty to set up an organization fund (Art. 10 draft ISA, see question 10) or the requirements regarding tied assets (Art. 17 to 20 draft ISA).

Further, under the existing ISA, there are already deviations from the principle of equal level of protection with regard to reinsurance and life insurance. While cross border reinsurance activities by non-Swiss reinsurers into Switzerland are not regulated at all, reinsurance activities by Swiss domiciled reinsurers are regulated, but compared to direct insurance, certain provisions of the ISA related to policyholder protection do not apply (see Art. 35 ISA). For example, different from direct insurers, reinsurers exclusively active in reinsurance are not legally obliged to guarantee claims arising from insurance contracts by establishing tied assets as per Art. 17 et seqq. ISA. Tied assets constitute loss reserves to ensure that the insureds' claims will be satisfied before all other creditors, should an insurance company ever become insolvent.

Compared to other direct insurance, additional provisions with respect to the maximum guaranteed interest rate, tariff calculation, surplus participation, surrender values and information duties apply to life insurance companies (see Art. 36 ISA in connection with Art. 120 et seq. ISO). Further, life insurance companies must not conduct other lines of insurance business, except for health and accident insurance (see Art. 12 ISA). Collective life insurance business in conjunction with occupational pension schemes is subject to additional regulation (see Art. 37 ISA) which includes separate accounting for such particular type of life insurance as well as prior tariffs and terms approval by FINMA.

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

Insurance intermediaries in Switzerland are subject to regulation (Art. 40 et seqq. ISA in connection with Art. 182 et seq. ISO). In particular, intermediaries that are not legally or economically tied to an insurance company (so-called brokers) must register in the public FINMA register for intermediaries and have to meet certain requirements such as professional qualifications (Art. 184 ISO), personal integrity (Art. 185 ISO) as well as professional indemnity insurance up to at least CHF 2

million or equivalent financial security (Art. 186 ISO).

In connection with the revision of the ISA, there will be certain fundamental changes with respect to intermediaries:

- The notions of tied versus non-tied insurance intermediaries are redefined and intermediaries can no longer act simultaneously as tied and non-tied intermediaries.
- The registration of non-tied intermediaries is subject to new requirements including the proof of guarantee of irreproachable business activity and the proof of sufficient education and advanced training.
- Tied insurance intermediaries can no longer be registered with the public FINMA register for intermediaries, unless they demonstrate that they wish to take up an activity abroad for which the relevant state requires an entry in the Swiss register.
- Insurance intermediaries will be subject to stricter information and disclosure obligations and non-tied insurance intermediaries must expressly inform the insureds of all compensation they receive from an insurance undertaking or from third parties (e.g. commission, rebate or similar financial benefits) in connection with the provision of their services.

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

Swiss domiciled insurers and reinsurers as well as non-Swiss insurers active in direct insurance activities must obtain a FINMA license for regulated activities in or from Switzerland (see question 1). To this effect, a license application must be submitted to FINMA, along with a business plan containing the information and documentation specified in Art. 4 para. 2 ISA.

To commence insurance operations, insurance companies must initially have their business plan approved by FINMA in line with Art. 4 para. 1 ISA and have to abide the submitted plan going forward. In case of an adjustment of the approved plan, the proposed changes must be notified to FINMA, allowing FINMA to object within four weeks. Certain changes such as amendments to the articles of association must even be pre-approved by FINMA.

The business plan requires the following documentation

(non-exhaustive and simplified):

- Organization and governance: Articles of association and documentation on corporate governance, including information on the members of the board of directors, the senior management and its qualified shareholders (means shareholders holding above 10% of the capital and voting rights or having other means to influence the insurance undertaking), as well as of the risk management function and the appointed actuary (including CVs);
- Capital and financials: Information on capital and reserves and balance sheets for the last three business years (or opening accounts) as well as the expected commercial business plan (expected balance sheets and profit and loss statements);
- Foreign regulatory status: Authorisation by foreign supervisory authority;
- Outsourcing agreements;
- Type of insurance and risks written;
- Reinsurance plan and retrocession plan for active reinsurance.

The duration of the FINMA licensing process depends on various factors, including quality and completeness of the documentation submitted to FINMA, complexity of the business model as well as workload of FINMA. Until a license is granted, at least three to six months should be expected but also it cannot be excluded that a licensing process can take up to one year. In any way, early communication with FINMA and a well-organized approach is highly recommended.

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

With respect to particular restrictions on foreign ownership, there are no insurance regulatory restrictions for foreign persons to acquire all or part of the shares in an insurer or reinsurer domiciled in Switzerland.

However, no matter what origin the acquirer is, based on Art. 21 ISA, anyone intending to acquire or sell, a direct or indirect interest in an insurance or reinsurance undertaking domiciled in Switzerland, must notify FINMA if the interest reaches, exceeds, or falls short of 10, 20, 33, or 50% of the capital or voting rights. In case of such qualifying holdings, the legislation does not specify a pre-approval requirement per se, but FINMA may prohibit acquisitions or impose conditions if the transaction may endanger the interests of the insured

persons. In practice, insurers usually obtain FINMA's prior consent (before signing the transaction agreements or as a condition precedent in case the agreements are signed before FINMA approval is obtained). Once notified, for material participations, FINMA will for example assess whether the fit and proper requirements of the acquirer's board and management are met.

Changes in the shareholding basis may further constitute an amendment of the business plan and must therefore be notified to FINMA on the basis of a business plan amendment (see question 4) as well.

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

While non-Swiss reinsurance companies can offer reinsurance cover to Swiss cedants from abroad on a non-admitted basis, for direct insurance this is currently essentially not permissible. As a basic rule, direct insurance contracts covering a risk located in Switzerland, can only be written by a FINMA licensed insurance company. Non-admitted direct insurance by companies domiciled abroad are only permitted in the following exceptional cases (Art. 1 para. 2 ISO):

- Cover of risks in connection with shipping on the high-seas, aviation and cross-border transportation;
- Cover for risks located outside Switzerland if the policyholder is based in Switzerland; and
- Cover for war risks.

Special rules further apply to public insurance undertakings (e.g. in the field of export insurance), undertakings regulated by special federal legislation (such as pension related matters) and certain insurance co-operatives.

In addition, the current ISA provides for a *de-minimis* exception. Under this exception, the Swiss Financial Market Supervisory Authority (FINMA) may exempt from supervision insurance undertakings whose insurance activities are either of minor economic importance or concern only a small group of insured persons. This exception, however, rarely applies. With the revised ISA, the scope of application of this exception will be codified in the implementing ordinance. In particular, insurers with innovative business models (see question 2) may be partially or totally exempted from supervision. The first draft of the implementing ordinance kept this exception relatively narrow and limited to a number of specific insurance sectors.

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

Yes, this is currently true with respect to direct insurance. With respect to reinsurance, this is not the case as only Swiss incorporated reinsurers are subject to regulation while, as per current practice, reinsurance activities of a foreign insurer via a Swiss branch are not regulated (see question 1).

8. Are there any restrictions/substance limitations on branches established by overseas insurers?

While the supervisory standard applicable to branches of non-Swiss direct insurers is generally similar to Swiss licensed insurers, such branches need to follow some additional requirements and must for example designate a branch head and demonstrate being duly licensed and adequately capitalized in their home jurisdiction. As an exception, Liechtenstein insurance companies may establish branches in Switzerland with no further need for authorisation. For non-life insurance companies domiciled in the EU or in the UK, certain privileges apply when it comes to the establishment of a Swiss branch. For the remainder of insurance companies, the establishment of a branch in Switzerland is comparable to the establishment of a Swiss subsidiary. The same holds true for insurance brokers.

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

In case of intention, individuals acting for insurers that are conducting insurance business in Switzerland without authorisation can be penalized by imprisonment of up to 3 years or a monetary fine of up to CHF 540,000. A monetary fine of up to CHF 250,000 can be imposed in case of negligence (see Art. 87 ISA and Art. 44 FINMASA).

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

FINMA places rather high demands on license applications and regularly opens investigations if companies are conducting regulated business without a

proper license.

Once a license is granted, FINMA applies a prudential supervision to protect the interests of the insured. In addition to the general regulatory controls, some years back FINMA started to conduct so-called on-site supervisory reviews. These in-depth reviews are topic-related controls and usually take place every second or third year (depending on previous performance of the respective entity). FINMA thereby rigorously analyses compliance with certain (pre-defined) regulatory requirements and in the event of dissatisfaction, measures are taken. These measures range from follow-up inspections, to the creation and approval of an action plan, to license revocation.

For some time, one area of key focus has been outsourcing with FINMA focusing in particular on IT (as specified in FINMA Circular 2018/3 – Outsourcing) and data retention. As evidenced by FINMA's yearly risk monitor, the growing cyber risks have become another major concern. Furthermore, FINMA has started to closely monitor how Swiss insurance companies (and other financial institutions) integrate ESG matters into their processes and reporting (see question 31).

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

In order to provide insurance or reinsurance activities in Switzerland, solvency requirements must be met in line with Art. 9 ISA. Pursuant to Art. 24 ISA, an appointed actuary must calculate the solvency margin at any time. Adequacy of solvency margin is supervised by FINMA via annual reports (see Art. 25 ISA).

The solvency margin of insurance companies is assessed in accordance with the Swiss pendant of Solvency II, the Swiss Solvency Test ("SST"). Specifically, the solvency margin is determined by the categories of insurances operated, the volume and geographic scope of business, internationally recognized principles, the respective risk exposure, and the creditable (to the solvency margin) own capital (risk bearing capital) of the insurance company (see Art. 21 et seq. ISO and FINMA Circular 2017/3 – SST).

Today, the SST rules are mostly based on material provisions in the ISO (risk based capital adequacy or solvency margin) and the rules enacted by the government (Swiss Federal Council) by way of an ordinance. With the revision of the ISA, the new law will provide for a formal basis of the SST rules. While there are also some changes (such as Swiss Federal Council's authority to introduce additional capital requirement for insurance undertakings with international activities in

order to meet international capital standards) the new law will not bring substantial deviations from today's practice.

Also, insurance companies must have an organizational fund to cover the costs in connection with establishment, set-up or extraordinary expansion of business. Such amount of organizational fund typically amounts to 50% of the required solvency margin (see Art. 10 ISA). Further, insurance undertakings must secure claims under insurance contracts with tied assets (Art. 17 ISA and see question 2) and, maintain sufficient liquidity to also satisfy its payment obligations in a worst-case scenario (Art. 98a. ISO). These requirements that ring-fence the solvency rules will also remain in place under the new law.

12. What are the minimum capital requirements?

The minimum capital requirements depend on the type of insurance business conducted. Pursuant to Art. 7 ISO, for life insurance companies, they amount to:

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

Pursuant to Art. 8 ISO, for non-life insurance companies, the minimum capital requirements amount to:

- CHF 8 mio. for most classes of non-life insurance business;
- CHF 3 mio. for class B9 (other property losses), B16 (various financial losses), B17 (legal cost insurance) as well as B18 (assistance).

Pursuant to Art. 9 ISO, for reinsurance companies, the minimum capital requirements amount to:

- CHF 10 mio. (CHF 3 mio. for captive reinsurers, respectively).

13. Is there a policyholder protection

scheme in your jurisdiction?

No, in principle, there is no specific legal policyholder protection in Switzerland. However, as a general overriding principle, the ISA and the prudential supervision of FINMA aims to protect the interests of the insured, for example by providing for solvency requirements (see question 10) and rules on tied assets (see questions 2 and 18). Also, new rules allowing the restructuring of a (re)insurance company come into law with the revised ISA. In order to protect the interests of the insured, these rules allow for example a transfer of a (re)insurance portfolio to another (re) insurer or rescue company or the conversion of specific debt into equity rights or material adjustment of (re)insurance contracts to the benefit of the troubled insurer. FINMA may approve such a restructuring plan if, inter alia, no creditor is placed in a worse position than in the event of an immediate bankruptcy.

14. How are groups supervised if at all?

The ISA provides for a consolidated group supervision of both insurance (and reinsurance) groups in case of complex structures with two or more entities if at least one member of the group is an insurance company and the group, as a whole, is primarily engaged in the field of insurance (Art. 64 et seq. ISA).

Conglomerate supervision may apply if two or more entities form an economic unit or are otherwise connected with each other by control or similar influence and such group is primarily engaged in the field of insurance with at least one is an insurance or reinsurance company and at least one is a bank or securities firm of considerable economic importance (Art. 72 et seq. ISA).

In case of effective management of an insurance group in Switzerland, FINMA may (but does not have any obligation to) take over the lead for the group supervision. The same applies if the group is managed outside of Switzerland, provided that it is not subject to equivalent group supervision in the pertinent country (see Art. 65 ISA).

The rules for groups and conglomerates are essentially the same. Group or conglomerate supervision applies in addition to the individual supervision of an insurance company and puts its main focus on organizational matters, consolidated solvency and risk management at the group level. For example, FINMA must be notified in advance of any intended acquisition or sale of a significant participation by any group company as well as of important intra-group matters such as for example loans, guarantees, cost-sharing agreements or other risk

transfer instruments that significantly impact the financial situation of the group or certain group companies. Further, the supervised group must provide FINMA with a consolidated SST as well as with a report on group-wide risk concentrations and management and a consolidated risk and solvency assessment. The revised ISA further strengthens group supervision, for example by a FINMA approval requirement for changes in the board of directors and senior management at group or conglomerate level.

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

The persons entrusted with the ultimate direction, supervision and control and management must enjoy a good reputation and ensure sound business practices. Therefore, both members of the board of directors and senior management must pass the fit and proper test and be approved by FINMA. The same requirements apply to the actuary appointed. Further details can be found in Art. 14 ISA as well as Art. 23 para. 2 ISA in connection with Art. 12 et seqq. ISO.

The eligibility of members of the board of directors and senior management is assessed during the license application process as part of the business plan in line with Art. 4 para. 2 lit. g and h ISA. Later changes in the composition must be notified vis-à-vis FINMA with FINMA having the possibility to object (in case of the actuary even a pre-approval is required) as per Art. 5 ISA.

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

Based on general corporate law, board members or senior management may become personally liable in case of breach of fiduciary duties which can also be triggered by regulatory breaches. Pursuant to Art. 33 FINMASA, in case of serious violations of supervisory law, FINMA can prohibit the person responsible from acting in a management capacity for any person or entity subject to prudential supervision.

Also, serious violations are considered criminal offences that may result in personal liability. Pursuant to Art. 87 ISA and Art. 44 FINMASA, a person willfully conducting insurance business in Switzerland without the prerequisite license can be held liable to a custodial sentence of up to three years or to a monetary fine. The same applies to a person that willfully provides FINMA, an audit company or agent with false information (see

Art. 45 FINMASA) or if a person fails to have the required financial statements or a required audit.

We point out that the FINMASA refers to the “acting person” who not necessarily needs to be a member of the senior management. In practice, courts will examine in the individual cases who bears the responsibility for such breaches but typically nevertheless target members of senior management.

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

Yes, certain substance requirements apply, depending on the type of license and business. Insurers and reinsurers must be organized and staffed in a manner that allows them to recognize, limit and monitor all significant risks (see Art. 22 ISA). The ISO substantiates this requirement with detailed provisions on risk management and liquidity planning (see Art. 96 to 98a, ISO and FINMA Circular 2017/2 – Corporate Governance – Insurers). Pursuant to Art. 23 ISA, an insurance undertaking must appoint a responsible actuary and provide this person with access to all business records. Further, it must establish an effective internal control system and an internal audit function, which is independent from management (see Art. 27 ISA). In addition, the insurance undertaking must appoint a licensed audit firm to review its conduct of business (see Art. 28 ISA).

As part of its governance assessment tool, FINMA started in 2015 to periodically conduct corporate governance online surveys with supervised insurance companies. The surveys include questions about company structure, governing bodies and control functions.

18. Are there restrictions on outsourcing services, third party risk management and/or operational resilience requirements relating to the business?

If certain requirements are met, essential functions (with the exemption of senior management) of an insurance company can be outsourced to other insurance companies or third-party providers. Outsourcings are part of the business plan, which needs to be approved by FINMA and essential outsourcing agreements must be submitted to FINMA in the course of the continuous licensing process (Art. 4 ISA). Further clarifications can be found in FINMA Circular 2018/3 – Outsourcing that

outlines all specific requirements.

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

Different from the Swiss regulatory regime applicable to pension funds, Swiss law does not provide rules for type of investments that insurance and reinsurance undertakings may make. The general solvency supervision requirements that asset management by insurance and reinsurance undertakings must be in line with best market practices nevertheless apply.

Detailed provisions, however, exists on types and amounts of assets belong to "tied assets". Assets belonging to "tied assets" must be invested in accordance with the provisions in Art. 76 et seq. ISO. Permitted assets are assets that are deemed relatively safe by the Swiss Federal Council and include cash and other money market investments, bonds, structured products, securitized debt and other promissory debt, shares in a liquid market, Swiss real estate under certain conditions, debt secured by Swiss real estate property, funds/collective investment schemes including hedge funds and private equity as well as unleveraged financial derivatives for hedging purposes (Art. 79 ISO).

Other assets including risk bearing assets (see Art. 47 ISO) are not subject to specific investment restrictions. Volatility and risk-exposure of investment, however, must be taken into account in models as defined by FINMA or internal models as defined by the insurance companies in the SST when determining whether the risk bearing assets are sufficient to cover the target capital.

20. Are there requirements or regulatory expectations regarding the management of an insurer's reinsurance risk, including any restrictions on the level / type of reinsurance utilised?

Swiss insurance regulation does not *per se* limit the amount of insurance risks that insurers may cede to reinsurer. Moreover, as a rule of thumb, insurers must continue to account for the full technical reserves for the ceded risks and maintain a pool of tied assets as a function of the gross amount of the full technical reserves.

21. How are sales of insurance supervised or controlled?

Sales of insurance are subject to prudential supervision by FINMA who may intervene in case of inappropriate selling techniques that in particular includes disadvantaging of a potential insured that cannot be justified from a legal or actuarial point of view (see Art. 46 ISA in connection with Art. 117 ISO).

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

Sale of direct insurance, but not reinsurance, from abroad into Switzerland on a cross-border basis is generally not permitted (see also questions 1 and 6). However, Liechtenstein insurance companies can conduct cross-border insurance business into Switzerland. For the time being, there are no specific rules for online sales of insurance.

23. Are insurers in your jurisdiction subject to additional requirements or duties in respect of consumers? Are consumer policies subject to restrictions, including any pricing restrictions? If so briefly describe the range of protections offered to consumer policyholders

The ICA contains specific mandatory consumer protection provisions, for instance minimum information requirements, a 14-day withdrawal right for new insurance contracts, and a termination right for long-term insurance contracts.

The revised ISA contains additional specific information duties for so-called qualified life insurance policies (e.g. unit-linked policies and capitalization policies). These duties do not depend on the characteristics of the policyholder but on the type of insurance only.

Furthermore, the use of general terms and conditions ("GTC") by insurers is subject to Art. 8 of the Unfair Competition Act ("UCA"). Under this provision, the use of GTC that, to the detriment of consumers and contrary to the requirement of good faith, provide for a significant and unjustified imbalance between contractual rights and contractual obligations, is prohibited. Art. 8 UCA only protects consumers; it is not applicable towards persons

using insurance services that are related to their commercial or professional activities.

24. Is there a legal or regulatory resolution regime applicable to insurers in your jurisdiction?

Yes. If an insurance undertaking's financial conditions deteriorate, FINMA monitors the situation closely. If there is a risk of insolvency, it evaluates the chances of a successful restructuring or initiates bankruptcy proceedings.

If regulatory requirements are breached in the insurance sector, FINMA will attempt to restore compliance with the law. It gives the insurance company an appropriate period for this and monitors the insurance company's recovery efforts. The recovery essentially serves the policyholders' interest in continuing their insurance relationship. FINMA can order accompanying protective measures, such as the blocking of tied assets or by prohibiting the insurance company to take on new clients. The insurance company can also opt for a solvent winding-down of its operations on a voluntary basis (run-off). If stabilization attempts are unsuccessful and there is a risk of insolvency, FINMA takes the necessary measures. If there is a prospect of a successful restructuring, FINMA can order this. Otherwise, if there are grounds for bankruptcy, it initiates bankruptcy proceedings.

Bankruptcy proceedings for insurance undertakings are summarily regulated in the ISA currently in force which refers to the general principles contained in the Swiss Debt Collection and Bankruptcy Act ("DEBA"; see Art. 53 et seq. ISA; Art. 54 ISA referring to Art. 197-220 and 221-270 DEBA). FINMA as bankruptcy administrator is granted extensive powers to regulate the proceedings and to issue administrative orders.

The revised ISA will restate the bankruptcy and resolution regime applicable to the insurance sector. Under the revised ISA, the Swiss resolution regime will be similar to the one already applicable to banks and consist of three stages of intervention by FINMA. If there are reasonable grounds for concern that an insurance undertaking is over-indebted or has serious liquidity problems, FINMA may order (Art. 51a of the revised ISA):

- protective measures (e.g. deferment and deferral of maturity of claims);
- restructuring proceedings; or
- the bankruptcy liquidation of the insurance undertaking.

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

Private law disputes between insurers and insureds and between different insurers, respectively, are subject to the jurisdiction of civil courts (Art. 85 ISA). Regulatory matters such as wrongdoings by insurers that endanger the interests of insureds fall within the remit of the FINMA (Art. 46 ISA).

Swiss civil courts are very experienced and adept at handling complex commercial claims, especially those four Cantons (Zurich, Aargau, Berne and St. Gallen) having specialized commercial courts. Some commercial courts, in particular the Zurich Commercial Court, have expert judges for insurance matters. A commercial dispute is to be qualified as a 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 register (Art. 6 para. 2 of the Swiss Civil Procedure Code). If only the defendant is registered in the Swiss Commercial Register or in an equivalent foreign register, but the other conditions are still met, the plaintiff may choose between jurisdiction of Commercial Court and the ordinary court.

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

Alternative dispute resolution, including arbitration and mediation proceedings, are well established in Switzerland. Reinsurance contracts subject to Swiss law frequently contain mediation and arbitration clauses. Direct commercial insurance contracts usually refer to state courts with the exception of international commercial insurance programs, which often contain arbitration clauses.

Furthermore, the Ombudsman for Private Insurance and Suva was established by the Swiss Insurance Industry ("SIA") in 1972. The Ombudsman Office assists insured parties with questions related to insurance law and provides an independent and impartial solution-oriented mediation for disputes. Recent data shows (2021) that the Ombudsman was able to improve the situation between the parties in more than two third of the handled cases. The Ombudsman does not exercise judicial power and cannot impose a solution on the parties.

27. Is there a statutory transfer mechanism available for sales or transfers

of books of (re)insurance? If so briefly describe the process

Pursuant to Art. 62 ISA, Swiss direct insurance portfolios and related tied assets can be transferred to other Swiss insurance companies without consent of the policyholders and without further conveyance actions (tied assets), subject to FINMA approval. As a matter of principle, the legal entity taking over the insurance portfolio, or parts thereof, takes over the position of the transferring company, i.e. all rights and liabilities as well as the related tied assets are transferred. This means that the transfer is only legally effective with the order of FINMA, whereupon policyholders need to be informed about the transfer and are granted the right to terminate the contracts. Art. 62 ISA does not apply to reinsurance portfolios (however, the same transfer mechanism can apply in case of restructuring, see question 12).

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

The Swiss insurance market is well established and covers all areas from non-life, life to reinsurance. New market entrants therefore have to lure customers away from existing competitors which is considered relatively difficult from a commercial perspective, especially in the soft market of the past years. Nevertheless, various new reinsurers have settled in Switzerland over the past decades. Increasingly, InsurTechs are also trying to gain a foothold in Switzerland. Due to significant licensing requirements, today, in Switzerland, InsurTech players often either act as brokers or offer services in close collaboration with an (licensed) insurer. With such set up only the insurer provides the insurance coverage and is, therefore, subject to (full) regulation while the InsurTech startups are not directly subject to insurance license requirements and usually provide a (digitalized) entry point for customers and/or serve to facilitate processes within the insurance offering and damage handling, often qualifying as a regulatory relevant outsourcing or insurance intermediary. Examples, which already received “unicorn” status are wefox (formerly known as ONE) or bolttech (which acquired the Swiss InsurTech insurance in 2021).

In our experience, regulators are generally supportive of new market entrants. The revised ISA will facilitate the market entry of innovative business models as a lower standard of regulation may apply (see question 2). Further, the recently revised ICA facilitates digitalization driven operations as most declarations can now be made by means of electronic communication (see question

28).

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

The Swiss insurance market has seen many cooperations and joint ventures between established insurers and start-up companies over the past decade. Insurers are also active as investors in financing rounds of start-ups. Further, in an attempt to attract younger customers, established insurance companies are increasingly trying to digitalize their direct insurance offerings by building digital platforms (see also question 26). Such platforms are often offering embedded insurance products (annex insurance, InsurTech), creating links to other financial services providers or even to providers active in non-financial sectors.

The revised ISA aims at safeguarding the future viability of the Swiss financial center, in particular by offering new opportunities to companies with innovative business models, similar to the regulations in the financial sector. This should further strengthen Switzerland's attractive environment for insurers and reinsurers.

30. How is the digitization of insurance sales and/or claims handling treated in your jurisdiction, for example is the regulator in support (are there concessions to rules being made) or are there additional requirements that need to be met?

With the revised ICA that entered into force on 1 January 2022, the use of electronic means in connection with insurance contracts is to a large extent permissible. The exchange of information and declarations can follow by way of e-mail, website or even mobile app.

For example, the old ICA required that all circumstances that could be relevant for the assessment of the risk have to be asked by the insurer by way of a questionnaire or otherwise in writing, causing online sale of underwritten insurance product to be rather difficult. Since the entry into force, however, all risk-relevant circumstances can be asked for either in writing or in “another form that allows proof by text”, which includes e-mail or chat communication.

31. To what extent is insurers' use of customer data subject to rules or

regulation?

The use of customer data is subject to the Federal Data Protection Act ("FDPA"), which has recently been revised. The revised FDPA will come into force on 1 September 2023 in order to update Swiss data protection rules, bringing them closer to the standards set by the EU's General Data Protection Regulation. The main principles applicable to data processing can be found in Art. 6 of the revised FDPA (formerly Art. 4). As a general principle, data processing must be carried out in good faith and must be proportionate. Personal data may only be processed for the purpose that was indicated at the time of collection, that is evident from the circumstances, or that is provided for by law. Furthermore, the collection of personal data and, in particular, the purpose of its processing must be evident to the data subject. Compliance with the FDPA is subject to supervision by the Federal Data Protection and Information Commissioner ("FDPIC").

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

Pursuant to the FDPA, personal data must not be disclosed abroad if the disclosure would seriously endanger the privacy of the data subject, in particular if the legislation of the relevant country does not guarantee an adequate level of protection (see Art. 16 FDPA, formerly Art. 6).

Under the revised FDPA, the list of countries offering an adequate level of data protection will be contained in an ordinance adopted by the Federal Council (previously, this list was published by the FDPIC). Personal data may only be transferred to countries not on this list if the data exporter takes appropriate contractual or organizational measures, for instance by concluding data protection clauses with the data importer, or by adopting binding corporate rules. Further exceptions apply, for instance if disclosure is necessary to exercise a legal right or if the data subject has expressly agreed to the disclosure of his or her personal data in the individual case.

Finally, the revised FDPA requires data controllers to inform the data subjects about the regions or countries to which they export their personal data (enhanced transparency requirement).

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

regulations/requirements, including in connection with managing climate change and climate change related financial risks specific to insurers? If so, briefly describe the range of measures imposed.

As of the business year starting in 2023, insurance and reinsurance companies must annually report on environmental (in particular climate), social, and labor matters, as well as on human rights and anti-corruption (so-called non-financial reporting) if they (together with all Swiss or foreign companies controlled by them) in two consecutive business years (i) have an annual average of at least 500 full-time positions (FTE) and (ii) exceed at least one of the following two thresholds: balance sheet total of CHF 20 million or revenues of CHF 40 million (see art. 964a et seqq. CO).

In addition, FINMA started to integrate climate-related financial risks into its supervisory activity in a strategic, proportionate and risk-based manner. In 2020, FINMA announced that transparency and disclosure obligations with regard to climate-related financial risks should be expanded. This led to an amendment of FINMA Circular 2016/2 "Disclosure – insurers" that is effective since 1 July 2021. The circular now foresees that systemically important insurance companies (i.e. insurance companies in supervisory category 2 or higher and insurance groups with insurance companies in supervisory category 2 or higher) have to disclose information on their climate-related financial risks and management of such risks on a consolidated and annual basis. FINMA conducted a first review on how insurance companies complied with these new requirements in late 2022 and communicated the improvements it expects to the institutions concerned. Most recently, in FINMA Guidance 01/2023, FINMA announced that it plans to make annual enhancements to its supervision of climate risk management at banks and insurers; in doing so, it would be focusing in particular on the institutions in supervisory categories 1 and 2.

34. Is there a legal or regulatory framework in respect of diversity and inclusion to which (re)insurers in your jurisdiction are subject?

Since 1 January 2021, all listed Swiss corporations must ensure that the level of representation of each gender must reach at least 30 per cent of the board of directors and 20 per cent of the executive board. If these levels are not reached, the corporation must explain in its annual remuneration report the reasons why genders are not represented as required and the measures being

taken to increase representation of the less well represented gender (Art. 734f of the Swiss Code of Obligations).

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

We would not expect that the Swiss market to deviate from international developments. The past two to three years, the insurance industry in Switzerland was primarily concerned about pandemic-related risk. Going forward we expect cyber insurance will be in the spotlight for a longer period. The challenge is often seen to offer meaningful protection with sufficient exclusions, the latter being necessary to avoid uninsurable risks due to large-scale cyber-attacks on insureds. The recent

increases in inflation, in particular should higher inflation persist, may shift management attention to the resulting challenges in asset management.

Furthermore, insurers will see an increased demand in insurance against climate-related risks, maybe with parametric insurance products to be offered to a greater extent. As risks increase due to increasingly unpredictable weather, exclusion of climate-related risks will also be subject to many treaty reinsurance negotiations.

In operational terms, digitization is likely to have an increased impact and lead to insurance policies with professional insurers also becoming increasingly digitized. In particular, also insurance policies for large risks are likely to be drafted partly AI-based in the future.

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