



**COUNTRY
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The Legal 500 Country Comparative Guides

Switzerland

INSURANCE & REINSURANCE

Contributor

MLL Legal



Kevin M. Hubacher

Partner and Co-Head Insurance Industry Group | kevin.hubacher@mll-legal.com

Thomas Nabholz

Partner and Co-Head Insurance Industry Group | thomas.nabholz@mll-legal.com

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 activities (*i.e.*, the writing of insurance and reinsurance contracts and the intermediation thereof) in Switzerland are subject to regulation on a federal level, which is mainly set out in (i) the Swiss insurance supervisory act dated 17 December 2004 (**ISA**), (ii) the ordinance on the supervision of private insurers dated 9 November 2005 (**ISO**), (iii) the ordinance of the Swiss Financial Market Supervisory Authority FINMA (**FINMA**) on the supervision of private insurers dated 9 November 2005 (**ISO-FINMA**), and (iv) the ordinance of FINMA on the bankruptcy of insurers dated 17 October 2012 (**IBO-FINMA**). Furthermore, FINMA regularly issues circulars and guidance letters which set out FINMA's supervisory practice in writing without having a legally binding effect.

Insurance activities in Switzerland are deemed to exist, irrespective of the type and place of conclusion of the contract, if (i) a natural person or legal entity domiciled in Switzerland is one of the policyholders or insured persons, or (ii) property located in Switzerland is insured.

Insurers domiciled abroad without a branch in Switzerland are not subject to insurance supervision if they conclude only the following insurance business in Switzerland: (i) coverage of insurance risks in connection with ocean shipping, aviation and cross-border transportation, (ii) coverage for risks located outside of Switzerland, and (iii) coverage for war risks. In addition, insurers domiciled abroad which only provide reinsurance in Switzerland are exempt from insurance supervision.

Furthermore, insurers that develop and directly distribute insurance products are exempt from supervision if (i) their registered seat is in Switzerland, (ii) their legal form is a corporation or cooperative, (iii) they are subject to an ordinary audit according to the Swiss Code of Obligations dated 30 March 1911 (**CO**), (iv) they only operate certain classes of insurance (e.g., property insurance, credit insurance, legal expenses

insurance), (v) they issue not more than 5,000 policies with a total premium volume of max. CHF 5 million, and (vi) they inform the policyholders that they are exempt from supervision.

The contractual relationships between the policyholders and direct insurers are subject to the Swiss insurance contract act dated 2 April 1908 (**ICA**). Reinsurance and retrocession relationships are not governed by the ICA and are subject to the CO if and to the extent that substantive Swiss law is chosen as the governing law.

Finally, Switzerland has concluded five international treaties concerning insurance business: (i) international treaty with the European Union on direct insurance other than life insurance dated 10 October 1989 (in force since 1 January 1993) (**CH-EU Direct Insurance Agreement**), (ii) international treaty with the Principality of Liechtenstein on direct insurance and insurance intermediation dated 19 December 1996 (in force since 9 July 1998) (**CH-L Direct Insurance Agreement**), (iii) international agreement with the Principality of Liechtenstein on private insurance against natural disasters dated 10 July 2015 (in force since 17 August 2016), (iv) international treaty with the United Kingdom of Great Britain and Northern Ireland on direct insurance other than life insurance dated 25 January 2019 (in force since 1 January 2021), and (v) international treaty with the United Kingdom of Great Britain on the mutual recognition in financial services dated 21 December 2023 (not yet in force) (**Berne Financial Services Agreement**).

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

While the Swiss insurance supervisory regime sets out a general framework for the supervision of all private insurers, different types of insurers are regulated differently depending on their insurance activities. Insurers which insure professional policyholders as well as direct and reinsurance captives benefit from certain exemptions (e.g., establishment of organization fund, tied asset). Furthermore, special rules exist with regard

to (i) legal expenses insurance, (ii) natural hazards insurance, (iii) motor vehicle liability insurance, (iv) reinsurance, and (v) life insurance.

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

Persons, regardless of their designation, who offer or conclude (re-)insurance contracts in the interest of insurers or other persons are deemed insurance intermediaries. Insurance intermediaries are generally subject to supervision, except if the relevant insurer for which they intermediate insurance contracts is not required to obtain a FINMA license. Further, insurance intermediaries which, as a secondary activity, intermediate insurance contracts (i) with an annual insurance premium of not more than CHF 600 (excluding taxes) and (ii) being subordinate to the delivery of a product or the provision of a service by any provider (annex insurances) are exempt from insurance regulation and supervision.

Non-tied insurance intermediaries (i.e., brokers) have a fiduciary relationship with the policyholders and act in their interest. All other insurance intermediaries are deemed to be tied insurance intermediaries (i.e., agents). Non-tied insurance intermediaries must be registered in the public intermediary register administered by FINMA. The registration is subject to the compliance with certain criteria (e.g., seat, domicile or branch in Switzerland, fitness and propriety, professional liability insurance or equivalent financial security). Tied insurance intermediaries are not entitled to be registered in the FINMA register, except for tied insurance intermediaries which are active outside of Switzerland and may therefore be required to be registered with the FINMA register.

Furthermore, insurance intermediaries must fulfil a wide range of obligations concerning education and training, information of policyholders, disclosure of remuneration, good governance and regulatory reporting, whereby certain obligations are not applicable to tied insurance intermediaries.

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?

Each company domiciled in Switzerland or abroad envisaging to operate insurance activities in Switzerland or from Switzerland, other than a foreign insurer which operates only permitted non-admitted business as set

out under Section 6, is required to be licensed by FINMA. For such purpose, a license application together with a business plan has to be filed with FINMA. Key criteria for a company domiciled in Switzerland obtaining a license as insurer are:

- Legal form: corporation or cooperative
- Minimum capital: CHF 3 to 20 million (depending on the operated classes of insurance)
- Solvency: Sufficient solvency
- Organization fund: Establishment of an organization fund, typically in an amount corresponding to up to 50% of the minimum capital
- Non-insurance business: Restriction to operate non-insurance business
- Obligatory separation: Insurers operating direct life insurance are only permitted to operate accident and sickness insurance
- National Bureau of Insurance and National Guarantee Fund: Insurers operating motor vehicle liability insurance must join the National Bureau of Insurance and the National Guarantee Fund
- Fitness and propriety: The insurer and the individuals which are entrusted with the overall management, supervision and control (i.e., the members of the board of directors of the insurer) or the management must satisfy the fitness and propriety requirements
- Conflicts of interest: Insurers must implement organizational precautions to avoid conflicts of interest that may arise in the provision of insurance services or to prevent policyholders from being disadvantaged by conflicts of interest

For insurers domiciled abroad which envisage to open a branch office in Switzerland, the requirements listed above are applicable in addition to the following:

- Authorisation: Foreign insurers must be authorised to conduct insurance activities in their seat jurisdiction
- Branch: Foreign insurers must establish a branch and appoint a general agent as their manager
- Minimum capital / solvency: For the minimum capital and the solvency, the capital at the seat of the foreign insurers is relevant
- Deposit: Foreign insurers must hold a deposit in Switzerland that corresponds to a certain fraction of the domestic business volume

The process of obtaining a license from FINMA to

conduct insurance activities varies depending on the type of insurance business, the complexity of the operations, the completeness of the application and FINMA's workload. Generally, the license process is an iterative process which usually takes at least six months after the formal filing of the application and may last up to one year to complete.

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

Persons holding 10 or more percent of the capital or the voting rights in a FINMA licensed insurer must enjoy a good reputation and ensure that their influence is not detrimental to prudent and sound business activity. Other than that, no specific restrictions concerning the (foreign) ownership or control of insurers licensed by FINMA exist to date. However, any person who intends to acquire a direct or indirect holding in an insurer domiciled in Switzerland must notify FINMA if the holding reaches or exceeds 10, 20, 33 or 50 percent of the capital or voting rights of the insurer. FINMA may prohibit a participation or attach conditions to it if the nature and extent of the participation may jeopardize the insurer or the interests of the insureds.

Finally, the insurer's business plan must contain information on persons who directly or indirectly hold at least 10 percent of the capital or the voting rights in a FINMA licensed insurer or who can significantly influence its business activities in another way. Hence, the acquisition or sale of qualifying stakes warrant an amendment of the insurer's business plan, which must be filed with FINMA and will be deemed approved if FINMA does not launch a formal review within four weeks.

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

Insurance activities in Switzerland on a non-admitted basis are allowed as follows:

- Foreign insurers may operate reinsurance business if they only operate reinsurance business in Switzerland
- Foreign insurers without a branch in Switzerland may operate insurance activities in Switzerland relating exclusively to the coverage of (i) risks in connection with ocean shipping, aviation and cross-border

- transportation, (ii) risks located outside of Switzerland, and/or (iii) war risks
- Swiss insurers if they are exempt from supervision as outlined under Section 1

While technically speaking not qualifying as non-admitted insurance business, UK insurers will be permitted to conduct certain insurance activities in Switzerland without having to obtain a FINMA license based on and subject to the entry into force of the Berne Financial Services Agreement. Insurers domiciled in the Principality of Liechtenstein are also permitted to conduct certain insurance activities in Switzerland without a FINMA license if certain conditions are fulfilled pursuant to the CH-L Direct Insurance Agreement.

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?

Branches of foreign insurers conducting direct insurance (together with reinsurance) in Switzerland are subject to the same regulatory framework as Swiss insurers. However, additional requirements exist for branches of foreign insurers (see Section 4).

Branches of foreign insurers which only conduct reinsurance activities in Switzerland are exempt from insurance regulation and supervision while Swiss insurers only conducting reinsurance activities in Switzerland are subject to regulation and supervision.

Generally, foreign non-tied insurance intermediaries must have a branch office in Switzerland, except for non-tied insurance intermediaries of the Principality of Liechtenstein based on the CH-L Direct Insurance Agreement and the United Kingdom, which will be exempt from such localization requirement once the Berne Financial Services Agreement enters into force. Swiss branches of foreign non-tied insurance intermediaries are subject to the same regulation and supervision as Swiss non-tied insurance intermediaries.

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

Swiss branches of foreign insurers must satisfy certain additional requirements (see Section 1). In particular, Swiss branches must appoint a general agent as its manager who must be resident in Switzerland and be responsible for the actual management of the branch

office for all Swiss business activities.

Insurers domiciled in the Principality of Liechtenstein must only comply with the eased requirements under the CH-L Direct Insurance Agreement. Furthermore, UK insurers will not be required to establish a branch office in Switzerland once the Berne Financial Services Agreement enters into force and if the envisaged insurance activities are within the scope of the Berne Financial Services Agreement. Finally, special requirements apply to EU insurers based on the CH-EU Direct Insurance Agreement, although these are largely equivalent to those applicable to foreign insurers.

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

Any person who willfully carries out an insurance activity without having obtained a license from FINMA (if required) is subject to a custodial sentence not exceeding three years or a monetary penalty. Anyone who acts negligently is liable to a fine of up to CHF 250,000.

Furthermore, any person who intentionally (a) concludes or intermediates insurance contracts for insurers that have not obtained a license from FINMA (if required) or (b) distributes insurance contracts through an insurance intermediary who is not registered with FINMA (if required) is subject to a custodial sentence not exceeding three years or a monetary penalty. Anyone who acts negligently is liable to a fine of up to CHF 250,000.

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

FINMA is known to rigorously apply the supervisory regime and regularly launches investigations and enforcement proceedings if it has indications of illegal conduct. Furthermore, FINMA's level of scrutiny with regard to license applications is high and FINMA regularly carries out on-site inspections and stress tests. FINMA follows a risk-based supervisory regime which means that it concentrates on insurers and areas where the risk is greatest. Thus, FINMA defined five supervisory categories based on the potential risks for creditors, investors, insureds and the Swiss financial market as such. The supervisory categories range from category 1 for very large, major and complex insurers with very high risks to category 5 for small and low risk insurers.

FINMA focuses on the following key areas:

- Solvency
- Consumer protection (with a focus on distribution and claims handling)
- Risk management (in particular concerning interest rate risks, credit risks in general and regarding mortgages, credit spread, liquidity and refinancing risks, cyber risks, money laundering and sanctions as well as outsourcing risks)
- Corporate governance
- Financial and non-financial reporting (in particular concerning environmental, social and governance (ESG) matters and climate risks)

In 2024, FINMA is expected to be very busy implementing the revised ISA and ISO. We further expect FINMA to issue circulars and guidelines on the revised ISA and ISO. One of the main topics arising out of the revised insurance supervisory regime is the revised supervision of insurance intermediaries which strengthened FINMA's supervisory competence in this area and resulted in a number of additional duties of tied and non-tied insurance intermediaries.

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

In general, FINMA supervises the solvency of the insurers and reinsurers. The solvency supervision is based on the following elements:

- Swiss Solvency Test (SST): Risk-based assessment of the solvency requirements based on the SST, the Swiss equivalent to Solvency II. The SST is a risk-based capital adequacy regime and determines the capital resources (solvency) that an insurer must have to protect policyholders against the insolvency risks of the insurer to an appropriate extent (level of protection) to fulfil their guaranteed claims from insurance contracts. The SST is based on three core principles: (i) market conform valuation of its assets, (ii) risk-based determination of the target capital (i.e., the minimum capital an insurer must maintain to remain financially unscathed even in a worst-case scenario), and (iii) the acknowledgment of the insurer's balance sheet as a whole (in particular the interdependencies between the risks attached to assets and liabilities)
- Responsible actuary: Insurers must appoint a

responsible actuary, which must fulfil the applicable fitness and propriety requirements, and grant him or her access to all business documents. The responsible actuary must calculate and determine the liabilities at market values or at values close to market values, the insurance risks in the context of solvency and the technical provisions. Furthermore, the responsible actuary must assess whether the target amount of the tied assets complies with the supervisory requirements

- Reporting and disclosure: Insurers and reinsurers must regularly report their financial condition and solvency to FINMA
- Supervisory reviews: FINMA regularly reviews the solvency of the insurers and reinsurers, including by assessing the quality of the risk management, the adequacy of the capital reserves and the compliance with regulatory requirements
- Enforcement: FINMA may impose sanctions, issue corrective measures, or revoke the license if an insurer or reinsurer fails to maintain adequate solvency levels

process with capital protection, minimum interest rate and pension conversion rate guarantee)

- Non-life insurers:
 - CHF 8 million for non-life insurers providing insurance in the following classes of insurance: Accident (B1), sickness (B2), hull (B3-B6), transported goods (B7), fire and natural hazards (B8), liability (including motor vehicle liability) (B10-B13), credit (B14) and deposits (B15)
 - CHF 10 million for non-life insurers providing insurance in the following classes of insurance: Other property losses (B9), various financial losses (B16), legal expenses (B17) and legal assistance (B18)
- Reinsurers:
 - CHF 10 million for reinsurers (except for reinsurance captives)
 - CHF 3 million for reinsurance captives

12. What are the minimum capital requirements?

Insurers domiciled in Switzerland must have a minimum capital of CHF 3 to CHF 20 million depending on the classes of insurance operated by the insurer, whereby the following applies:

- Life insurers:
 - CHF 5 million for life insurers that exclusively cover death or that waive the premium in the event of disability
 - CHF 8 million for life insurers which also provide a capital guarantee with interest guarantee or other guarantees in addition to the coverage of death and the waiver of the premium in the event of disability
 - CHF 10 million for life insurers that provide group life insurance as part of the occupational benefits insurance
 - CHF 12 million for life insurers that provide group life insurance as part of occupational benefits insurance as well as “full coverage” (i.e., occupational pension savings

In special circumstances, FINMA may deviate from the amounts set out above but may not request a minimum capital that would be higher than CHF 20 million.

13. Is there a policyholder protection scheme in your jurisdiction?

The insurers must secure the promised claims arising from insurance contracts through assets which are earmarked as tied assets. If an insurer fails, the insureds have first priority of the tied assets. The tied assets must always correspond to the technical provisions and an appropriate safety margin. The tied assets must be invested based on the prudent person principle and comply with a number of dedicated regulatory requirements. The insurer may file a list of assets that are suitable for allocation to tied assets (individual list) with FINMA for approval. If the insurer does not have an individual list, it may base the allocation of assets to tied assets based on the list set out in the ISO. FINMA strictly monitors compliance of the insurers with the tied assets requirements. FINMA may take appropriate measures, which may include revocation of the license or putting the insurer into bankruptcy, if the insurer does not comply with the tied assets regulation.

In addition, if a motor vehicle liability insurer is liable to pay benefits for damage caused by motor vehicles and trailers registered in Switzerland and such insurer is

subject to bankruptcy proceedings or a restructuring proceeding and the competent authority orders a reduction in claims payments, the Swiss National Guarantee Fund covers the part of the claims for which (i) the bankruptcy administration issued a certificate of loss or (ii) the amount by which the claims payments have been reduced.

14. How are groups supervised if at all?

Two or more companies form an insurance group under the ISA if (i) at least one company is an insurer, (ii) the group of companies as a whole is mainly active in the insurance sector, and (iii) the group of companies form an economic unit or are otherwise linked by influence or control. FINMA may subject an insurance group to which a company in Switzerland belongs to group supervision if the insurance group (x) is actually managed from Switzerland, or (y) is actually managed from abroad, but is not subject to equivalent group supervision there. Group supervision is supplementary to the individual supervision of an insurer.

The insurance group and the persons entrusted with the management and the ultimate direction, supervision and control of the insurance group must satisfy the fitness and propriety requirements. Furthermore, insurance groups must have a proper organization to identify, limit and monitor all material risks and must establish stabilization plans. FINMA may establish resolution plans for insurance groups, which set out the implementation of a restructuring or liquidation of an insurance group. In addition, FINMA may issue regulations on the monitoring of intra-group transactions and group-wide risk concentration. Finally, insurance groups must have a sufficient solvency and appoint a licensed audit firm.

All companies of an insurance group are obliged to provide FINMA with all the information and documents it requires to perform its duties. Furthermore, each company must notify FINMA immediately of any events that are of material importance for supervision. Lastly, changes to the group parent company which may affect elements of the business plan must be submitted to FINMA for approval. As concerns other material group companies, FINMA may impose an approval requirement.

The same rules apply to insurance conglomerates which exist for the purposes of the Swiss insurance supervisory regime if (i) at least one company is an insurer, (ii) at least one company is a bank or an investment firm of considerable economic significance, (iii) the conglomerate as a whole is mainly active in the insurance sector, and (iv) the conglomerate is an economic unit or is otherwise linked by influence or control.

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

Yes. The persons entrusted with the overall management, the supervision and control (i.e., members of the board of directors), the persons entrusted with the day-to-day management (and the general agent of the Swiss branch of a foreign insurer) as well as the responsible auditor must meet the fitness and propriety requirements. The afore-mentioned persons must be approved by FINMA in connection with the license application based on business plan form G. Later personnel changes concerning the board of directors, the day-to-day management and the responsible auditor must be notified to FINMA, which may object to such change within four weeks by initiating a formal review proceeding.

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

Members of the board of directors and persons entrusted or involved in the day-to-day management of an insurer (i.e., even if they are not formally a member of the senior management) can be held personally liable for regulatory breaches if they act intentionally or negligently. The extent of personal liability may vary based on the specific circumstances. In general, the following mechanisms exist to hold a member of the board of directors or a person entrusted with or involved in the day-to-day management of an insurer liable:

- Civil liability: Members of the board of directors and persons entrusted with or involved in the day-to-day management of an insurer are liable to the insurer, the shareholders and the company's creditors for all damages caused by a negligent or intentional breach of their duties
- Criminal liability: Members of the board of directors and persons entrusted with or involved in the day-to-day management of an insurer who intentionally or negligently, in breach of a regulatory duty, fail to avert an infringement by an employee or to remedy such infringement may be subject to the same criminal provisions that apply to the perpetrator. Punishable offenses and misdemeanors include, among others, the breach of information duties, the breach of notifying FINMA about certain events, the conduct of insurance business without a license, the intermediation of insurance

contracts for insurers which have not obtained a license of FINMA (if required), the distribution of insurance contracts through insurance intermediaries that are not registered with FINMA (if required), the withdrawal or encumbrance of tied assets resulting in the target amount no longer being covered and the taking of actions resulting in the reduction of the security of the tied assets

- Regulatory measures: FINMA may impose various regulatory measures against individuals breaching regulatory requirements. As ultima ratio, FINMA may even have an individual be subject to professional disqualification preventing such individual from taking any similar position in the financial industry for a certain period of time (up to five years)

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

Insurers are either required to have their registered seat in Switzerland or to open a branch office in Switzerland, subject to the conduct of permitted non-admitted business (see Section 6). Furthermore, the insurer or its Swiss branch must establish (i) a proper organization to conduct its insurance business (namely with regard to the risk management) and (ii) ensure that the necessary resources are available to ensure proper risk management, compliance and financial accounting. There is no specific requirement for the number of employees to be based in Switzerland. However, insurers will have to demonstrate in the license application process that they have the capacity to manage their operations and fulfil regulatory requirements effectively. In addition, FINMA has issued its circular 2017/2 on corporate governance of insurers setting forth specific corporate governance requirements.

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

Yes. Contracts for the outsourcing of material functions of an insurer are part of the business plan (business plan form J). Hence, the outsourcing must be initially approved by FINMA as part of the license application. Afterwards, changes to the outsourcing must be notified to FINMA which may object to such changes within four

weeks by initiating a formal review proceeding. Furthermore, outsourcing partners must also meet the fitness and propriety requirements applicable to the members of the board of directors and the persons entrusted with or involved in the day-to-day management of the insurer.

FINMA has issued circular 2018/3 on the outsourcing for insurers which sets forth the terms and conditions for an outsourcing (i.e., inventory of outsourced functions, selection, instruction and monitoring of service provider, responsibility, security, audit and supervision, and content of the outsourcing contract). In general, direction, supervision and control by the board of directors, central executive management functions and functions that involve decision-making regarding strategy and the commencement as well as the termination of business relationships cannot be outsourced. Operational risk management and compliance tasks may be outsourced.

In contrast, outsourcing the management of direct and reinsurance captives with registered offices in Switzerland (including central executive management functions) or of branches of foreign direct insurance captives to companies appropriately specialized in the management of captives is admissible.

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?

Insurers must invest their assets in accordance with the prudent person principle and comply with certain specific requirements set out in the ISO. Among others, the insurers may only invest in assets and instruments whose risks they can adequately assess, evaluate, monitor, manage and include in their reporting. Furthermore, the assets must ensure the security, quality, liquidity and profitability of the portfolio as a whole. The location of the assets must guarantee their availability. In addition, the ISO sets out specific asset classes which may be earmarked as tied assets.

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?

There are no limitations on the amount of insurance risks which an insurer may cede to a reinsurer. However, the

ceding of all insurance risks does not relieve the ceding insurer from maintaining the same level of tied assets. Finally, the insurer's risk management must address the reinsurance risk.

21. How are sales of insurance supervised or controlled?

Generally, the sale of insurance is supervised through the supervision of the insurance intermediaries (which include in-house agents). Furthermore, FINMA protects policyholders and insureds against abuses by insurers and insurance intermediaries and intervenes against abuses that jeopardize the interests of insureds. Hence, FINMA supervises the insurer's sales activities and may intervene if it has reason to believe that the sale activities violate the interests of the policyholders and insureds.

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?

Any activity relating to the intermediation (i.e., distribution) of insurance contracts to policyholders domiciled in Switzerland is generally subject to regulation and supervision to the extent no exemption from regulation and supervision is applicable (see Section 1). Thus, cross-border distribution of insurance contracts is only permitted in case of non-admitted business activities (see Section 6) or concerning insurers and insurance intermediaries domiciled in the Principality of Liechtenstein or, after the entry into force of the Berne Financial Services Agreement, the UK (see Section 7).

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

Generally, the ICA sets forth a number of mandatory provisions which aim to protect the consumer policyholders (e.g., information duty of insurer, provision cover note, commandments of humanity, termination right for long-term insurance contracts, right of

withdrawal). Moreover, the ISA stipulates additional information duties (e.g., concerning conflicts of interest, insurance intermediaries and their remuneration) and sets out specific assessment, information and documentation duties regarding the sale of qualified life insurances (i.e., life insurance policies under which the policyholder bears a risk of loss in the savings process as well as capitalization and tontine policies).

Finally, the general terms and conditions of direct insurance contracts are subject to the Swiss Federal Unfair Competition Act according to which the use of general terms and conditions that provide for a significant and unjustified imbalance between contractual rights and contractual obligations to the detriment of consumers in a manner that violates good faith is unfair.

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

Yes, the revised ISA introduced a specific restructuring and bankruptcy regime for insurers. FINMA may initiate restructuring proceedings if there is a reasonable prospect of restructuring the insurer or continuing individual insurance services. If there are reasonable grounds for concern that the insurer is overindebted or has serious liquidity problems and if there is no prospect of restructuring or if such restructuring has failed, FINMA shall, however, withdraw the insurer's license, initiate bankruptcy proceedings and inform the public accordingly.

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

Disputes between the insurers and the policyholders or insureds are subject to the jurisdiction of civil law courts. Regulatory matters are handled by FINMA, the Swiss Federal Administrative Court or the Swiss Federal Supreme Court. In general, Swiss courts are adept to handling complex commercial claims. This is particularly true with regards to the specialized commercial courts (e.g., in Aargau, Bern, St. Gallen and Zurich), which do have expert judges for insurance matters, the Swiss Federal Administrative Court and the Swiss Federal Supreme Court. In order for a specialized commercial court to have jurisdiction, (i) the dispute must concern a commercial activity of one party, (ii) the decision must be subject to appeal in civil matters to the Swiss Federal Supreme Court and (iii) the parties must be registered with a commercial register in Switzerland or in a comparable foreign register. If only the defendant is

registered in a commercial register in Switzerland or in a comparable foreign register, but the other requirements are met, the plaintiff has the choice between the commercial court and the ordinary court.

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

Alternative dispute resolution (ADR) is well established in Switzerland, which is known worldwide as a leading arbitration hub. The Swiss Arbitration Centre and the International Chamber of Commerce are the leading arbitration institutions in Switzerland. The Swiss Code of Civil Procedure and the Swiss Federal Act on Private International Law set the framework for arbitration and mediation proceedings. One of the strengths of the Swiss arbitration framework is that an arbitral award rendered by a tribunal with its seat in Switzerland can only be appealed to the Swiss Federal Supreme Court to a very limited extent. Furthermore, Switzerland is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) facilitating the recognition and enforcement of arbitral awards internationally.

While direct insurance contracts generally provide for the jurisdiction of state courts, reinsurance and retrocession contracts and international insurance programs predominantly provide for arbitration proceedings, sometimes combined with mediation.

Finally, on 2 June 1972, the Swiss Insurance Association (SIA) established the Ombudsman Office for private insurers (later joined by Suva, Switzerland's largest accident insurer). The Ombudsman Office supports insureds free of charge in case of a disagreement with an insurer being a member of the Ombudsman Office based on a written complaint of the insureds to the Ombudsman Office. The purpose of the Ombudsman Office is to facilitate the settlement of a dispute. However, the Ombudsman Office does not initiate any court proceedings on behalf of the insureds and has no judicial authority.

27. Is there a statutory transfer mechanism available for sales or transfers of books of (re)insurance? If so briefly describe the process

Insurers may transfer their Swiss insurance portfolio to another insurer on the basis of a contractual agreement upon approval from FINMA. The consent of the policyholders or the insureds to the transfer of the Swiss insurance portfolio is not required. FINMA will only

approve the transfer if the interest of the insureds is fully safeguarded.

The acquiring insurer is obliged to inform the policyholders individually about the portfolio transfer and their termination right within 30 days after receipt of the approval from FINMA. The policyholders have the right to terminate the insurance contract within three months after receipt of the respective information of the acquiring insurer. However, FINMA may decide to exclude the right of termination if the transfer of the portfolio does not lead to a change in the policyholder's contractual partner in economic terms (i.e., concerning group internal transfers, whereby FINMA will assess the solvency of the acquiring group entity).

Reinsurance portfolios are not subject to the aforementioned transfer framework and must be transferred in accordance with the Swiss Code of Obligations and the terms agreed in the reinsurance contracts.

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

New market entrants may face various challenges given that the Swiss direct and reinsurance insurance market are mature markets with well-established players. Thus, one of the challenges is to maneuver a highly competitive market with numerous established players. Furthermore, the regulatory requirements concerning solvency and compliance are quite high and the application process typically lasts between six and twelve months.

In general, FINMA is supportive of new market entrants but will scrutinize the license application in detail focusing on solvency, compliance and consumer protection. Furthermore, the revised ISA aims to incentivize innovative insurers to enter the Swiss insurance market and exempts them from insurance supervision (see Section 1).

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

The Swiss insurance market is challenged by digital innovation but at the same time adapts rather quickly to the digital challenges. Thus, major well-established players have started long ago to digitize their value chains, have invested into insurtechs and/or are actively collaborating with insurtechs and are constantly introducing new innovations to the market (such as

chatbots, automatized damage identification etc.). Furthermore, the regulatory framework as well as the framework for direct insurance contracts (ICA) is designed to be technology-neutral allowing the supervised insurers to quickly adapt to digital innovation (e.g., providing consumer information online rather than on paper), often with the support of FINMA.

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?

The exchange of information and the delivery of certain declarations to and by the policyholders can to a large extent be made by electronic means (e.g., this applies to the information duty of the insurer, the policyholder's application form, the termination of the insurance contract, the dunning notice for unpaid premiums).

The distribution of insurance contracts through digital channels is permitted. The same applies to the handling of claims. However, the revised ISA and ISO stipulate that any person who has a commercial interest in offering or concluding insurance contracts via a website or another electronic medium and who (i) provides information on the basis of individualized criteria about one or more insurance contracts that a policyholder can choose via this website or other electronic medium, or (ii) create a raking list of insurance products, including a price and product comparison, is deemed an insurance intermediary and subject to insurance regulation and supervision (unless the exemption for the intermediation of annex insurance applies; see Section 3).

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

The insurance supervisory framework does not stipulate specific rules on the use of customer data. Hence, the use of customer data is mainly subject to the Swiss Federal Act on Data Protection, which is to a large extent equivalent to the EU's General Data Protection Regulation. Most importantly, personal data must be processed lawfully and the processing must be carried out in good faith and proportionately. Furthermore, personal data may only be obtained for a specific purpose that is recognizable to the consumer and may only be processed in a way that is compatible with this

purpose. Personal data must be destroyed or anonymized as soon as they are no longer required for the purpose of processing. If the consent of the customer for the processing of the data is required, which is generally the case if the data processing is not directly linked to the conclusion and performance of the insurance contract, the consent is only valid if it is given voluntarily for one or more specific processing operations after appropriate information has been provided. An explicit consent is required for the processing of particularly sensitive personal data (as is the case in the context of life, accident and sickness insurance).

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

Personal data may only be disclosed abroad if the Swiss Federal Council has determined that the legislation of the country concerned or the international body guarantees adequate protection (e.g., the EU member countries, Canada, Norway and the United Kingdom are deemed to have equivalent data protection regimes in place). In the absence of such a decision by the Swiss Federal Council, personal data may only be disclosed abroad if appropriate data protection is guaranteed by, for example, a data protection contract between the controller or processor and its contractual partner, which have been filed with the Federal Data Protection and Information Commissioner (**FDPIC**) beforehand, or standard data protection clauses that the FDPIC approved, issued or recognized in advance. Of course, data may also be transferred abroad if the individual has provided its consent to such transfer.

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.

Insurers of the supervisory category 2 (or higher) and insurance groups with an insurer of the supervisory category 2 (or higher) are obliged to disclose the management of climate-related financial risks in the report on the financial position based on FINMA's circular 2016/2 concerning public disclosure.

Furthermore, Swiss insurers (in the form of corporations)

are obliged to report annually on non-financial matters if they (i) together with domestic or foreign companies controlled by them, have an annual average of at least 500 full-time employees in two consecutive financial years, and (ii) together with the domestic or foreign companies controlled by them, exceed at least one of the following figures in two consecutive financial years: (x) balance sheet total of CHF 20 million or (y) turnover of CHF 40 million. The report on non-financial matters provides an account of environmental matters (particularly CO2 targets), social matters, employee matters, respect for human rights and fight against corruption. In addition, since 1 January 2024, the aforementioned companies must also produce a report on climate matters. In particular, the climate report must include, among others and if possible and appropriate, CO2 targets and targets for other greenhouse gases as well as an indication of all greenhouse gas emissions.

In addition, FINMA has recently launched a consultation on a new circular concerning the management of nature related financial risks. The new circular will most likely stipulate certain duties with regard to the management of nature related financial risks, the implementation of such risks in the insurer's own risk and solvency assessment (ORSA) as well as the corporate governance structure.

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

There is no specific legal or regulatory framework in respect of diversity and inclusion for insurers and reinsurers in place. However, if one of the genders is not represented by at least 30 percent of the members of the board of directors and at least 20 percent of the members of the management, Swiss corporations that are listed on a stock exchange (with certain exceptions) must report in the annual remuneration report (i) the reasons for not reaching the afore-mentioned thresholds and (ii) measures which the company envisages to take to strengthen the representation of the

underrepresented gender.

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

We see the following market trends in the next five years, depending on how the international markets and the global as well as regional market stability develops:

- Digitization: The digitization of the whole insurance value chain will continue and become more mature. This trend is certainly boosted by numerous insurtechs focusing on areas such as artificial intelligence, blockchain and data analytics
- Ecosystems: Ecosystems will become established and play a more important role in how insurance contracts will be distributed. This has mainly an impact on insurance intermediaries and the role of businesses that were typically not involved in the distribution of insurance contracts in the past (such as retail stores and online shops)
- Specialized Niche Insurers: Specialized Niche Insurers may try to enter specific market segments such as cyber insurance and climate risk insurance to address unique risks
- Captives: While the Swiss tax regime is still not favorable to (re)insurance captives, we still expect a certain increase in Swiss domiciled captives
- Run-off Legacy Insurance Market: While other run-off legacy insurance markets such as those of the United Kingdom and Germany are much more mature, we expect the Swiss run-off legacy insurance market to keep track and develop further for example through new market entries
- ESG-focus: Insurers, partly driven by domestic and international initiatives, will more strongly prioritize ESG considerations and adapt their product offering and investment practices accordingly

Contributors

Kevin M. Hubacher

**Partner and Co-Head Insurance
Industry Group**

kevin.hubacher@mll-legal.com



Thomas Nabholz

**Partner and Co-Head Insurance
Industry Group**

thomas.nabholz@mll-legal.com

