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Switzerland

INSURANCE & REINSURANCE

Contributing firm

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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?

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

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

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

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

Both, the ISA and the ICA are currently under revision. After the Parliament had declined a full revision

(*Totalrevision*) of the ICA in 2013 it mandated the Federal Council (*Bundesrat*) to prepare a partial revision (*Teilrevision*) focussing on certain selected matters. In November 2017 the Federal Council released the draft ICA ("**Draft ICA**"). The Draft ICA was dealt with by the Parliament from the beginning of 2018 until spring 2020. During this time a couple of controversies and differences were discussed between the National Council and the Council of States. A compromise on the final version of the new ICA ("**Revised ICA**") was agreed on 11 March 2020. The Parliament adopted the Revised ICA in June 2020. The Revised ICA will enter into force in January 2022.

The revision of the ISA is at an earlier stage. The Federal Council started its consultation of the stakeholders and published the pre-draft of the revised ISA in November 2018 ("**Pre-Draft ISA**"). The consultation was closed at the end of February 2019. In November 2020 the Federal Council released the draft ISA ("**Draft ISA**")

In the following, we briefly highlight the changes to the ICA (where relevant) and though we cannot foresee whether and what further amendments will be made to the Draft ISA in the course of the parliamentary discussions, we also endeavour to highlight possible changes to the ISA where they affect our answers to the questions below.

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

Reinsurance companies are exempt from certain provisions of the ISA that are aimed at consumer protection (LSA 35). Reinsurers are, *inter alia*, not requested to hold so-called "restricted assets" as direct insurers are. The less intense level of supervision for reinsurance companies is also made apparent by the fact that reinsurance companies having their seat abroad can reinsure Swiss cedants on a cross border basis without any need for a Swiss license. For the time being, foreign reinsurance companies also can conduct reinsurance business in/from Switzerland via a Swiss branch office without any need for a license by FINMA.

Similarly, Swiss reinsurers can do business in EU countries on a cross border basis as the Swiss reinsurance supervision is acknowledged as equivalent by the EU Commission.

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

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

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

Proposed amendments by Draft ISA (not exhaustive):

- Foreign Reinsurers can continue to act via a Swiss branch without any Swiss licence, although in the Pre-Draft a requirement for a licence had been suggested. However, the Federal Council will be granted the right to make such foreign reinsurers the subject of FINMA supervision under consideration of international standards (Draft ISA 2, para 5 lit. a).
- The Federal Council may, with the aim of safeguarding the sustainability of the Swiss financial market, exempt certain small insurance companies from supervision, under strict conditions, Draft ISA 2 para 5 lit b.
- Insurance companies that conclude insurance contracts exclusively with professional customers can, on request, become exempt from certain provisions of the ISA aimed at consumer protection, Draft ISA 30 lit. a-c. Most striking is that such insurance companies will be exempt from the requirement to hold "restricted assets", which have the purpose of securing claims of the insureds. For companies having partly professional and partly non-professional policyholders the relief from regulation shall apply proportionally. It shall not apply, however, in so far as compulsory TPL insurances (that protect non-professional persons) or occupational life insurance schemes are concluded by the insurance company.

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

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

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

To get registered the broker has to demonstrate:

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

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

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

Proposed amendments by Draft ISA (not exhaustive):

- The Draft proposes a clearer distinction between tied and non-tied intermediaries: i.e. intermediaries will cease to be able to work as a tied intermediary for one branch of insurance and as non-tied for another branch of insurance; tied intermediaries shall lose the option to register with the FINMA's intermediary's register. The register shall become a register for non-tied intermediaries only (Draft ISA 42).
- Non-tied intermediaries will have to disclose to the customer any kind/amount of commission they will receive from the insurer before they are allowed to accept such commission. If being paid by the customer, a waiver of the customer will be required or, alternatively the intermediary must pay the whole commission received from the insurer to the customer (Draft ISA 45 lit b).

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?

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

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

- Statutes;
- organisation and local area of activity including, where applicable, the group or conglomerate of insurance companies the companies belong to;
- if activity abroad is envisaged: authorisation or equivalent by the foreign supervisory authority;
- information on capital and reserves;
- balance sheets of the last 3 business years or opening account;
- information on persons holding at least 10 per cent of the share capital in the insurance company or who can influence the company by other means;
- information (including names and CVs) on the persons who are in the senior management and those who are in charge with the supervision and control of the senior management;
- name (including CV) of the appointed actuary;
- agreements by which essential functions of the insurance company shall be outsourced;
- envisaged classes of insurance and kind of risks to be covered;
- where applicable: membership in the national insurance bureau and national guarantee fund;
- where authorisation for assistance is applied for: information on means to perform assistance benefits;
- reinsurance plan and retrocession plan for active reinsurance;
- estimated costs for the set-up of the insurance company;
- budgeted balance sheets and budgeted profit and loss accounts for the first 3 years;
- information on risk management;
- in case of life insurance in connection with occupational schemes and in supplemental health insurance: tariffs and general terms

and conditions.

The duration of the licensing process depends on various issues, including the quality and completeness of the documents submitted to the FINMA, the complexity of the envisaged business, whether authorisation is sought for a newly established insurance company with its seat in Switzerland or for a branch of an EU-based insurance company (the latter profit from a certain liberalisation) communication with FINMA and, last but not least FINMA's workload. On average, once the documentation has been completed and lodged, one should expect that it may take between 3 and 6 months before a licence is granted.

Proposed amendments by Draft ISA (not exhaustive):

- The Draft exempts certain types of companies from supervision and thus from the authorisation requirement (Draft ISA 2 para 2):
 - Foreign state export credit insurance;
 - mutuals, clubs and similar entities providing certain guarantees to its members.
- In addition, certain types of companies may become exempt on application:
 - Small insurers with innovative business models.

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

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

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

Risks located in Switzerland can be covered on a non-

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

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

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

Proposed amendments by Draft ISA (not exhaustive): see at no. 4 above.

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. Only Insurance companies from Liechtenstein are free to establish branches in Switzerland without any further need for authorisation. For non-life insurance companies having their seat in the EU or in the UK certain privileges apply to the process of establishing a branch in Switzerland. For all other Insurance companies, the establishment of a Swiss branch is usually as complicated as the establishment of a Swiss subsidiary. The supervisory standard that applies to branches of foreign insurers and to Swiss licensed insurers is very similar. The same is true for insurance brokers.

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

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

9. How rigorous is the supervisory and

enforcement environment? What are the key areas of its focus?

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

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

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

In the course of the ongoing business of the insurance company, an appointed actuary is responsible for the calculation of the solvency margin at any time, ISA 24. FINMA supervises the adequacy of the solvency margin regularly through annual reports that have to be provided to FINMA, ISA 25.

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

Proposed amendments by Draft ISA (not exhaustive):

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

11. What are the minimum capital requirements?

The applicable minimum capital requirements depend on

the type of insurance business conducted by an insurance company. In life insurance (Art 7 ISO) they are:

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

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

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

In reinsurance (ISO 9) they are:

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

Proposed amendments by Draft ISA (not exhaustive):

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

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

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

Proposed amendments by Draft ISA (not exhaustive):

Draft ISA 52 lit a et seq. set out new provisions on the restructuring of insurance companies. These include the possibility to transfer an insurance portfolio (or a part of it) to another legal entity, which shall be in the position to manage the portfolio through a well-regulated run-off.

13. How are groups supervised if at all?

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

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

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

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

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

- Organisation, group structure and internal processes.
- Risk management on a group level.
- Consolidated solvency on a group level (group SST).

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

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

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

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

Proposed amendments by Draft ISA (not exhaustive):

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

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

If FINMA detects a serious violation of supervisory provisions, it may prohibit the person responsible from acting in a management capacity for any person or entity subject to its supervision, Art 33 FINMASA.

In addition, severe breaches are considered criminal offences resulting in personal liability: A person who wilfully conducts insurance business in Switzerland, without the required license can be held liable to a custodial sentence of up to three years or to a monetary penalty, Art 44 FINMASA. The same applies if a person wilfully provides FINMA or an audit company or an agent with false information, Art 45 FINMASA or if a person fails to have required financial statements or an ordered audit.

The FINMASA refers to the “acting person” and does not directly address the senior management. Thus, courts would examine in the individual cases who bears the responsibility for breaches. Nonetheless, such liability typically lies with the senior management.

16. Are there minimum presence requirements in order to undertake insurance activities in your jurisdiction

(and obtain and maintain relevant licences and authorisations)?

It must be ensured that the insurance company and/or the branch of a foreign insurance company can be effectively administered from its registered seat/office.

17. Are there restrictions on outsourcing services relating to the business?

Agreements by which the “essential functions” of an insurance company are outsourced to service providers (“Outsourcing Agreements”) are considered to be a part of the business plan of an insurance company.

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

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

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

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

18. 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?

Assets belonging to the class of so-called restricted assets (assets covering the reserves) must be invested in line with the provisions set out in ISO 76 et seq. The types of assets, which are allowed as investments are listed in ISO 79. The permitted classes of assets have in common that they are deemed relatively safe by the Federal Council.

The other assets, i.e. risk bearing assets (assets covering the target capital) (ISO 47) are not subject to any particular investment restrictions. However, volatility and risk-exposure of investments are taken into account in models (standard model as defined by FINMA or internal models as defined by the insurance companies) in the Swiss Solvency Test (SST) when determining whether the risk bearing assets are sufficient to cover the target capital.

19. How are sales of insurance supervised or controlled?

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

20. 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 from abroad on a cross border basis is not allowed in Switzerland. Exclusively Insurance companies having their seat in Liechtenstein can conduct insurance business on a cross border basis in Switzerland (and actively market such business).

Swiss law does not provide for any specific rules in case of distance selling or online sales of insurance.

However, in the course of the revision of the ICA a couple of provisions, which require a certain form for information to be provided by insurer to the policyholder and vice versa (including precontractual disclosure, ICA

4) have been amended from "written form" (requiring a signature) to "text form" including email/online forms, etc.). This will certainly facilitate and promote the online sale of insurance products.

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

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

Amendments by Revised ICA (not exhaustive):

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

- Withdrawal right, Revised ICA 2a.
- Statutory regulation of preliminary coverage, Revised ICA 9.
- Admission of retroactive insurance, Revised ICA 10 (which currently is not allowed and thus void).
- Deletion of the current ICA 12 (according to which discrepancies in the policy from the agreed content of an insurance contract are deemed permitted if the policyholder does not object within 4 weeks).
- Prolongation of the period of limitation, Revised ICA 46.

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

The Swiss court system is both experienced and adept at handling even complex commercial claims. In four Cantons (Zurich, Aargau, Berne and St. Gallen) there are even specialised commercial courts having jurisdiction as sole cantonal court in commercial matters. According to Article 6 (2) of the Swiss Civil Procedure Code a commercial dispute is to be qualified as commercial matter if it concerns the commercial activity of at least

one party and if the parties are registered in the Swiss Commercial Register or in an equivalent foreign commercial register, Additionally, the value of dispute exceeds 30,000 Swiss Francs. If only the defendant is registered in the Swiss Commercial Register or in an equivalent foreign register, but all the other conditions are met, the plaintiff may choose between the Commercial Court and the ordinary court.

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

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

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

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

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

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

VAG 62 provides for the possibility of a transfer of a Swiss direct insurance portfolio to another Swiss insurance company. Such portfolio transfer is subject to the approval by FINMA. The FINMA approval replaces the consent of the individual policyholder. Nonetheless the

acquiring company needs to inform each policyholder individually and each is entitled to terminate their policy following such portfolio transfer.

ISA 62 applies to direct insurance portfolios; it does not apply to reinsurance.

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

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

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

Several InsurTech start-ups have been established within the last years and we believe that further start-ups will follow. FINMA tries to make Switzerland a FinTech/InsurTech hub and gradually provides for a proper regulatory environment. We also observe that traditional insurance companies have recently started to take digital innovation seriously and that they have invested a considerable amount of time and money in connected projects. Most notably, Swiss insurers and reinsurers play an eminent role in the Blockchain Insurance Industry Initiative (B3i).

27. 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?

Up to now the online sale of underwritten insurance products has been difficult, because the current LCA requires 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. The applicant must also answer such questions in writing. "In writing", within in the meaning of the LCA means on paper with a "wet" signature. If the insurer asks for risk relevant circumstances in a web-based questionnaire and if the applicant provides wrong or

incomplete information via the internet the insurer cannot rely on the remedies the LCA grants in case of non-disclosure (cancellation and non-payment of claims). Therefore, only simple products without any underwriting are eligible for online sale. However, the legislator is aware of this obstacle and has made corresponding adaptations to the LCA during the partial revision. From January 2022 all risk-relevant circumstances can be asked for in writing or in "another form that allows proof by text". In addition, several other provisions of the LCA have been adapted to make the law more digital friendly. We expect that these change in the LCA will strengthen digital sales solutions in Switzerland.

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

The use of customer data is subject to the rules of the Swiss Data Protection Act (*Datenschutzgesetz, DSG* (**DPA**). The core principle applying to data processing in Switzerland is set out in Art 4 of the DPA: Data processing must be carried out in good faith and must be proportionate. In line with this principle, the DPA sets out a variety of regulation preventing the misuse of policyholder data. The compliance with data protection rules is supervised by the Federal Data protection and Information Officer (**FDPIC**). (Note: the DPA has been recently revised in. After 3 years of discussions between different stakeholders, the Parliament adopted the revised version of the DPA on 25. September 2020. It is expected that it will enter into force in the course of the year 2022).

However, unlike the law regulating banks, the ISA does not provide for any insurance secrecy.

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

According to the current DPA, data must not be disclosed

abroad if the personal data of the affected person would be heavily endangered, this is the case if the legislation of the relevant State does not guarantee an adequate level of protection (Art 6 DPA). However, data protection clauses, the consent of the affected person and further reasons set out in Art 6 can justify the disclosure of personal data in a country, which does not guarantee a sufficient degree of data protection (according to the DPA's standards).

According to the new DPA, personal data may be disclosed abroad if the Federal Council has determined that the legislation of the relevant state or international body guarantees an adequate level of protection. If this is not the case, personal data may be disclosed abroad only if appropriate protection is guaranteed by

- an international treaty;
- data protection provisions of a contract between the controller or the processor and its contracting partner, which were communicated beforehand to the FDPIC;
- specific safeguards prepared by the competent federal body and communicated beforehand to the FDPIC;
- standard data protection clauses previously approved, established or recognised by the FDPIC;
- binding corporate rules on data protection which were previously approved by the FDPIC, or by;
- foreign authority which is responsible for data protection and belongs to a state which guarantees adequate protection.

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

We are neither brokers nor fortune-tellers. We think, however, that in a market like the Swiss market where banks, securities dealers, asset managers and other financial institutions have a predominant position, financial lines insurance is an important business line and it may gain importance within the coming years. Moreover, digitalisation after January 2022 and the control of data may become decisive factors for business success in insurance.

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