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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 license requirements of the ISA if their activities in Switzerland are limited to reinsurance only. For the time being, non-Swiss reinsurance companies can conduct business in or from Switzerland (even if via a Swiss branch office) without a FINMA licensing requirement. Only if a subsidiary is incorporated in Switzerland, such entity becomes subject to Swiss regulation. Under the revised ISA, the government (Swiss Federal Council) will be competent to submit Swiss branches of foreign reinsurers to regulation and license requirements as well. If so, only cross-border reinsurance activities (without establishing a subsidiary or a branch office in Switzerland) will be exempt from the regulatory and license requirements of the ISA.

Besides the ISA further requirements and provisions are described in greater 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"), the Insurance Supervision Ordinance ("ISO-FINMA"), and the Insurance Bankruptcy Ordinance-FINMA ("IBO-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, reinsurance contracts are primarily subject to the provisions of the CO.

These most relevant statutes are currently subject to change. While the partially revised ICA has entered into force as of 1 January 2022, the partial revision of the ISA is still under way. In March 2022 Swiss parliament adopted the final text of the draft ISA which is expected to enter into force in the course of 2023 or per 1 January 2024. Also relevant in practice are the revised ISO and respective guidance by FINMA, which drafts are not yet published and may only follow by 2024. Until then aspects of the new law remain to some extent unclear for still some time.

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, applicable to the UK once the EU Direct Insurance Treaty is no longer applicable to the UK, the Agreement between the Swiss Confederation and the UK on Direct Insurance other than Life Insurance of 25 January 2019 ("UK Direct Insurance Treaty")
- 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.

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 protection with regards to reinsurance and life insurance. While cross border reinsurance activities by non-Swiss reinsurers into Switzerland (currently no matter if via a Swiss branch or without Swiss branch, see question 1) 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 provide the insureds with a liability substrate which ensures that their claims under insurance contracts will be satisfied before all other creditors should an insurance company 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 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: Authorization 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, which, however, rarely applies.

With the new law this will change and the scope of non-admitted activities will increase such as in case of insurers only active to insure professional insureds or

insurers with innovative business models (see question 2).

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 true 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. However, this may be different once the revised ISA is in effect, as the Swiss Federal Council will explicitly be competent to subject Swiss branches of foreign reinsurance undertakings to supervision by FINMA, in particular if such move is required to comply with internationally recognized standards (Art. 1 para. 4 et seq. draft ISA).

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 authorization. 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.

8. 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 authorization can be penalized by imprisonment of up to 3 years. A fine of up to CHF 250,000 can be imposed in case of negligence (see Art. 87 ISA and Art. 44 FINMASA).

9. 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 insureds. 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.

Currently, one area of key focus is outsourcing and thereby FINMA in particular focuses on IT (as specified in FINMA Circular 2018/3 - Outsourcing), with a special focus on data retention.

10. 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 the ISO, 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.

11. 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).

12. 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.

13. 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 draft ISA will further strengthen group supervision, for example by a FINMA approval requirement for changes in the board of directors and senior management at group or conglomerate level.

14. 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.

15. 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 penalty. 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 an required audit.

It should be noted that the FINMASA refers to the “acting person” which 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.

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

Yes, certain substance requirements apply, depending on the type of license and business. Insurers and reinsurers must be organised and staffed in a manner that allows it to recognise, 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, it 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 at the end of the year 2015 to periodically conduct corporate governance online surveys with supervised insurance companies. The surveys include questions about company structure, governing bodies and control functions.

17. Are there restrictions on outsourcing services 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 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.

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?

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 that 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.

19. How are sales of insurance supervised or controlled?

Sales of insurance are subject to prudential supervision by FINMA which 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).

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, but not reinsurance, from abroad into Switzerland on a cross-border basis is not permitted (see also questions 1 and 6) but 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.

21. 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.

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.

22. 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.

23. 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 more than two third of the cases. The Ombudsman does not exercise judicial power and cannot impose a solution on the parties.

24. 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).

25. 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 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 be made by means of electronic communication (see question 26).

26. 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 25).

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.

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?

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 in "another form that allows proof by text".

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

The use of customer data is subject to the Data Protection Act ("DPA"), which is currently under revision. The main principles applicable to data processing can be found in Art. 4 DPA. 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 DPA is subject to supervision by the Federal Data Protection and Information Officer ("FDPIC").

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

Pursuant to the DPA as currently in force, 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. 6 DPA). Consent of the affected person and further justifications as described under Art. 6 DPA, however, can justify disclosure of personal data in a country which

does not guarantee a sufficient degree of data protection according to the standard under the DPA.

Under the revised DPA, which is expected to enter into force in late 2023, 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. In the absence of legislation that guarantees adequate protection, personal data may only be transferred outside Switzerland if appropriate protection is guaranteed, for instance by an international treaty, data protection clauses, or binding corporate rules. Furthermore, certain previously known exceptions allow for the transfer of personal data from Switzerland to countries not deemed adequate, 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.

30. To what extent are insurers subject to ESG regulation or oversight? Are there regulations/requirements specific to insurers? If so, briefly describe the range measures imposed.

Swiss regulation does not provide for explicit regulation regarding ESG. However, FINMA assesses risks in connection with ESG as part of its risk management. In 2020, FINMA announced that transparency and disclosure obligations with regard to climate-related financial risks should be expanded. This led to the amendment of FINMA Circular 2016/2 – Public Disclosure that is effective since 1 July 2021. It 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.

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

We would not expect that the Swiss market does deviate from international developments. The past two 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.

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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