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Obligations applicable to untied insurance intermediaries under the new Insurance Supervision Act

I. INTRODUCTION

The Federal Insurance Supervision Act (ISA) underwent major revisions in 2024.

In particular, the distinction between "tied" and "untied" insurance intermediaries has been redefined and the requirements these intermediaries must meet have been strengthened, especially for untied insurance intermediaries.

According to the ISA and its implementing ordinance¹, an insurance intermediary is a person who offers or concludes an insurance contract in the interest of an insurance company or another person². Where such an intermediary offers to conclude insurance contracts with persons domiciled in Switzerland, or for assets located in Switzerland, the insurance intermediary is, with few exceptions, subject to supervision³.

II. TIED AND UNTIED INTERMEDIATION

With the entry into force of the new regulations, any insurance intermediary who has a fiduciary relationship with

policyholders and looks after their interest is considered an untied insurance intermediary⁴.

Conversely, any other insurance intermediary, particularly those bound by an employment contract with an insurance company, falls into the residual category⁵ of tied insurance intermediaries.

The pre-existing possibility for an insurance intermediary to maintain affiliations with multiple insurers, which predates 2024, does not appear to have been challenged. Nevertheless, such intermediaries are now subject to enhanced obligations concerning the management of conflicts of interest and the disclosure of information.

The fiduciary relationship with policyholders, which indicates that the intermediary is not acting as an auxiliary of an insurer but as a third party, imposes adherence to heightened organizational and personal obligations introduced under the 2024 revision.

Additionally, these obligations are binding not only on untied insurance intermediaries but also on any intermediary who creates the appearance of acting as an untied intermediary when interacting with policyholders, regardless of its actual legal status⁶.

¹ Federal Insurance Supervision Ordinance (ISO).

² Art. 40 para 1 ISA.

³ Art. 1 para 3 ISO ; exceptions are indicated in art. 1h ISO.

⁴ According to Art. 40 para. 2 ISA.

⁵ According to Art. 40 para. 3 ISA.

⁶ "Apparent status of untied insurance intermediaries", art. 182b ISO (unofficial translation).

III. PROHIBITED CONDUCT AND CONFLICTS OF INTERESTS

Pursuant to Art. 40 para. 2 ISA, untied insurance intermediaries are prohibited from engaging in any collaboration with an insurance company that could compromise their independence and are, under no circumstances, permitted to represent an insurance company.

Furthermore, the legislator has expressly prohibited certain behaviours and conflicts of interest, which untied insurance intermediaries must prevent through the implementation of adequate organizational measures⁷. These restrictions ultimately serve to establish additional criteria for defining untied intermediation, aligning with distinctions set forth under the previous legal framework.

These criteria are the following⁸:

- a. Entering into cooperation agreements or other arrangements with insurers that restrict the intermediary's ability to conduct business on behalf of other insurance companies ;
- b. Direct or indirect ownership, by the insurance intermediary, of more than 10% of the capital of an insurance company;
- c. Direct or indirect ownership, by an insurance company, of more than 10% of the capital of the insurance intermediary;
- d. Exercise of managerial functions or any influence over the operations, of an insurance company by the untied insurance intermediary, or by persons responsible for the intermediary's administration, management, or those holding at least 10% of its capital;
- e. Exercise of managerial functions or any influence over the operations of the insurance intermediary by an insurance company, or by persons responsible for the company's administration, management, or those holding at least 10% of its capital.

⁷ According to Art. 45a ISA.

⁸ These criteria are detailed in Art. 182c ISO.

⁹ These documents include an extract from the commercial register, an extract from the debt enforcement register, a

IV. NEW REQUIREMENTS

The current regulatory framework, which includes the revisions to the ISA and ISO effective January 1st, 2024, and September 1st, 2024, the FINMA Insurance Supervision Ordinance (ISO-FINMA) effective September 1st, 2024, as well as the self-regulation approved by FINMA on August 23, 2024, imposes a number of organizational and personal requirements on untied insurance intermediaries.

1. Registration in the FINMA register

Firstly, as of January 1, 2024, only untied insurance intermediaries are required to register in the FINMA insurance intermediary register. This registration is a prerequisite for carrying out activities as an untied insurance intermediary.

When registering, untied insurance intermediaries must demonstrate compliance with a number of obligations, described below, as well as provide a number of documents, as outlined in Annex 6 of the ISO⁹.

Additionally, registered intermediaries are required to pay registration fees and an annual surveillance fee.¹⁰

It should be noted that tied insurance intermediaries may also register in cases where their registration in the Swiss register is a prerequisite for operating abroad and where the foreign jurisdiction requires such registration.

2. Organizational obligations

In addition to the prevention of conflicts of interest outlined in III above, untied insurance intermediaries must comply with the following organizational requirements.

a. Presence in Switzerland

Art. 41 para. 2 lit. a ISA and 186 ISO require untied insurance intermediaries to have a domicile, registered office, or branch in Switzerland, and their employees must carry out insurance intermediation activities from a location situated within Switzerland.

This new requirement effectively prevents foreign intermediaries operating without a physical presence in Switzerland from conducting business in the Swiss market. Exceptions may only be granted for legitimate reasons,

description of the activities and insurance provided, and various declarations relating to organizational and personal obligations.

¹⁰ For 2024, the registration fee is CHF 350 for individuals and CHF 750 for corporate bodies, and the tax is CHF 475.

provided the intermediary's home state enforces equivalent regulations or if an international treaty provides for such exceptions.

b. Governance

Untied insurance intermediaries must meet minimum governance standards appropriate to their size, complexity, legal structure, the nature of the insurance services offered, and the associated risks.

In particular¹¹, it is imperative to ensure a clear allocation of responsibilities, competencies and reporting lines. In addition, operational functions must be separated from control functions. Untied insurance intermediaries must also maintain appropriate documentation, in particular to demonstrate compliance with their disclosure obligations under Art. 45 ISA. Furthermore, they must establish principles, processes and structures to ensure compliance with legal, regulatory and internal obligations. Specific expectations regarding employee conduct, qualifications, and knowledge must also be defined, alongside mechanisms for monitoring and managing risks related to third-party contractors mandated by the intermediary.

3. Personal obligations

a. Civil capacity and good reputation

Pursuant to Art. 41 para. 2 lit. b ISA and Art. 187 ISO, insurance intermediaries must possess full civil capacity and maintain a good reputation.

The obligation of good reputation applies both to the insurance intermediary and, as of January 1st, 2024, to the individuals in charge of its administration and management, as well as those holding a direct or indirect ownership interest exceeding 10% of its capital. In particular, these persons must not have been criminally convicted of offenses incompatible with the activities of an insurance intermediary, and any such convictions must no longer appear in the criminal record. They must not be the subject to debt enforcement measures linked to acts incompatible with the activity of insurance intermediary.

Although the wording of Art. 41 ISA suggests that this obligation applies only to untied insurance intermediaries, Art. 46 para. 1 lit. b ISA and, ultimately, art. 187 ISO suggest that this obligation extends to all insurance intermediaries.

b. Financial guarantees

Under Art. 41 para. 2 ISA and Art. 189 ISO, insurance intermediaries must obtain professional liability insurance from an insurance company subject to the ISA, with minimum cover amounts and conditions specified in the regulation. The minimum coverage is CHF 2 million and increases incrementally based on the number of employees within the intermediary.

Alternatively, insurance intermediaries may provide equivalent financial guarantees, subject to an approval from FINMA on a case-by-case basis, or be covered by the policy of a third-party insurer whose coverage extends to the insurance intermediary; this latter arrangement is typically applicable to tied insurance intermediaries.

4. Information obligations

a. Prior to the conclusion of an insurance contract

The duty to provide information referred to in Art. 45 ISA continues to apply under the new law. These disclosures must be provided to the policyholder in a comprehensible form before the insurance contract is concluded. This includes, in particular, the fact that the insurance intermediary is tied or untied.

Additionally, under Art. 45a ISA, any conflict of interest where a disadvantage to the policyholder cannot be excluded must be disclosed to the prospect prior to the conclusion of the insurance contract.

b. In the event of a conflict of interest

If, despite the organizational measures in place, it is not possible to avoid placing a policyholder at a disadvantage, or only with disproportionate effort, the insurance intermediary must adequately inform the concerned policyholder.

To this end, the intermediary must describe the conflict of interest arising from the provision of the insurance service in question, and present, in a general and comprehensible manner, the circumstances giving rise to the conflict of interest, the risks it could pose to the policyholder, and the measures taken by the insurance intermediary to mitigate said risks.

¹¹ Art. 188 para. 2 ISO.

c. Disclosure of remuneration

According to Art. 45b ISA, untied insurance intermediaries may only accept remuneration (*e.g.*, brokerage commissions, provisions, discounts, financial benefits) from insurance companies or other third parties if they have duly informed the policyholders of such remuneration.

Furthermore, when untied insurance intermediaries are remunerated by policyholders, they may accept remuneration from insurance companies or third parties only if the full amount is transferred to the policyholder, or if the policyholder has explicitly waived this transfer after being duly informed.

This notification by the untied insurance intermediary must be made prior to the provision of the service or the conclusion of the contract. Moreover, it must include the type of remuneration and its amount or, if not possible, the method of calculation and an estimated amount. Upon request, insurance intermediaries must disclose the actual amounts received.

d. Communications to FINMA

Registered insurance intermediaries, *i.e.*, mostly untied insurance intermediaries, are required to annually confirm that the information provided to FINMA is accurate and up-to-date.

Furthermore, pursuant to Art. 91, para 1 and 2 ISO-FINMA, these intermediaries must immediately inform FINMA of any changes to the facts underpinning their registration, as soon as they become aware of said changes – *i.e.*, information and documents specified in Annex 6 of the ISO, as outlined in IV.1 above.

Moreover, according to Art. 185, para 2 ISO, an authorization from FINMA must be obtained prior to continuing activities if such changes are of "critical importance."

Although this concept has not been defined by the legislator, nor further developed by FINMA in the context of insurance intermediation, we believe that a parallel can be drawn with the requirements for financial intermediation, in particular with the concept of "changes of material significance" under Art. 8, para 2 FinIA and 10 FinIO. Specifically, any acquisition of a qualified participation in the capital of the registered insurance intermediary should, in our view, be

notified to and authorized by FINMA prior to the acquisition

Furthermore, FINMA is entitled to request additional information and documents if deemed necessary to validate the registration or any updates to the registry."

e. Reporting to FINMA

As of December 31, 2024, unrelated insurance intermediaries are required to submit an annual report to FINMA.¹²

These reports will include key indicators and information that FINMA deems necessary for monitoring the activities of intermediaries. A list of such information is available on the authority's website¹³. According to the explanatory report¹⁴, the aim of this provision is to enable "preventive supervision" in order to effectively protect customers from abuses.

FINMA is committed to ensuring proportionality in the collection of such indicators and information. The type and scope of the data requested will depend, in particular, on the risks to which policyholders are actually exposed, and the type of clientele, *i.e.* private or business.

As for tied insurance intermediaries, FINMA will only be able to collect indirectly the indicators and information on their reputation and compliance with their obligations, as part of its supervision activities over insurance companies.

5. Training obligations

Before January 1st, 2024, insurance intermediaries were already required to possess the skills and knowledge necessary to carry out their business.

With this reform, the legislator has provided for this aspect to be put into practice through self-regulation. Indeed, the responsibility for establishing minimum standards for initial and continuing education ("training and further education" as per FINMA) has been delegated to the industry.

The "Association pour la formation professionnelle en assurance" (AFA) has issued such standards. Pursuant to art. 190 ISO, these standards cover requirements in the areas of customer acquisition, advice and follow-up, knowledge of the insurance sector and specificities related to the intermediary's business activity (*e.g.* life insurance, non-life

¹² Pursuant to Art. 190b ISO and 93 ISO-FINMA.

¹³ < <https://www.finma.ch/en/supervision/versicherungsvermittler/berichterstattung-an-die-finma/> >

¹⁴ Explanatory report on the amendment to the ISO, published by the Federal Department of Finance (FDF) on June 2, 2023

insurance, reinsurance). The AFA has also defined the examination procedures to certify the initial and continuing training of intermediaries.

For untied insurance intermediaries, completion of initial training is a prerequisite for registration in the FINMA register. However, insurance intermediaries already registered on January 1st, 2024 have been granted a transitional period of two years following the entry into force of the new regulations, to enable them to meet the continuing education requirements¹⁵.

On August 23, 2024, FINMA approved the minimum standards issued by the AFA, which took effect on October 1st, 2024. These minimum standards are therefore legally binding, and the AFA is responsible for their technical implementation.

6. Special provisions applicable to supplementary health insurance

Effective September 1st, 2024, supplementary provisions were introduced into the ISO, arising from a sectoral agreement between santésuisse and curafutura¹⁶.

These provisions relate to the field of supplementary health insurance supplementary, and establish detailed requirements regarding the preparation of written minutes following every advisory meeting, as well as the remuneration of insurance intermediaries.

Moreover, pursuant to this sectoral agreement, insurance companies and their intermediaries are expressly prohibited from soliciting prospects by telephone. This prohibition applies to individuals with whom no customer relationship exists, former clients whose relationship ended more than 36 months ago, individuals who have exercised their right to opt out, or cases where the contact is not based on a referral from a third party known to the prospective client.

V. CONCLUSION

The year 2024 marks a profound transformation of the regulatory framework governing insurance intermediation in Switzerland. The legislative revisions effective in January 2024, the subsequent amendments in September, and the approval of minimum standards by FINMA have significantly strengthened the supervisory framework applicable to insurance intermediaries and enhanced quality standards, particularly in the realm of untied intermediation. These reforms aim to bolster consumer

confidence in the services provided by insurance intermediaries.

The legislator has established a robust foundation for heightened supervision while enabling the industry to self-regulate and to establish sectoral agreements independently. In our view, this approach should promote the development of a more pragmatic regulatory regime within this newly established framework.

¹⁵ According to Art.216c para. 7 ISO

¹⁶ See Annex 7 of the ISO.

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