

Federal Law  
regarding the Supervision of Insurance Companies  
(Insurance Supervision Law, VAG)

of 17th December 2004

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The Federal Parliament of the Swiss Confederation,  
based on Article 62, Para. 1, 98 Para. 3, 117 Para. 1 and 22 Para. 1 of the Federal  
Constitution<sup>1</sup>,  
having viewed the communication of the Federal Council of 8<sup>th</sup> May 2003<sup>2</sup>  
*resolves:*

**1<sup>st</sup> Chapter: Subject matter, purpose and scope of validity**

**Art. 1** Subject matter and purpose

<sup>1</sup>This law regulates Federal supervision of insurance companies and insurance brokers.

<sup>2</sup>Its purpose is particularly to protect insured parties from insolvency risks of insurance companies and from misuse.

**Art. 2** Scope of validity

<sup>1</sup>Subject to supervision under this law are:

- a. Swiss insurance companies which are active in direct insurance or re-insurance;
- b. insurance companies domiciled abroad for their insurance activities in or from Switzerland, under reserve of deviating regulations in international agreements;
- c. insurance brokers;
- d. insurance groups and insurance conglomerates.

<sup>2</sup>Exempted from supervision under this law are:

- a. insurance companies domiciled abroad that carry out only re-insurance in Switzerland;

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<sup>1</sup> SR 101

<sup>2</sup> BBI 2003 3789

- b. insurance companies to the extent that they are subject to special supervision under Federal law within the scope of this supervision; this applies particularly for those inscribed in the Register for Pension Funds that provide pension plans for employed persons ("BVG");
- c. insurance brokers who/which stand in a relationship of dependence with an insured party, as long as they only pursue the interests of that insured party and any companies controlled by the insured party.

<sup>3</sup>Insurance companies whose insurance activity is of minor commercial importance or in cases in which only a small circle of insured parties could be affected can, if particular circumstances justify it, be exempted from supervision by the authorities.

<sup>4</sup>The Federal Council defines what is to be understood by the exercising of an insurance activity in Switzerland.

## **2<sup>nd</sup> Chapter: Commencement of insurance activity**

### **1<sup>st</sup> Section: Authorisation**

#### **Art. 3** Requirement of authorisation

<sup>1</sup>Every insurance company as per Article 2, Para. 1 Letters a and b which is subject to supervision ("insurance company") requires authorisation from the supervisory authority to commence its insurance activity.

<sup>2</sup>Mergers, spin-offs and conversions of insurance companies also require authorisation.

#### **Art. 4** Application for authorisation and business plan

<sup>1</sup>An insurance company as per Article 2, Para. 1 Letters a and b which wishes to obtain authorisation for insurance activity must submit an application to the supervisory authority, together with a business plan.

<sup>2</sup>The business plan must include the following details and documents:

- a. The articles of incorporation;
- b. The organisation and regional area of activity of the insurance company and, where applicable, of the insurance group or conglomerate to which the insurance company belongs;
- c. For insurance activity abroad: the authorisation of the responsible foreign supervisory authorities or a certificate of equal value;
- d. Details of the financial structure and the provisions;
- e. The annual financial statements of the last three business years or the opening balance sheet of a new insurance company;
- f. Details with regard to the parties which hold directly or indirectly 10 percent of the capital or the voting rights of the insurance company or which can significantly influence its business activity in any other way;

- g. The names of persons entrusted with overall management, supervision, control and executive management or, for foreign insurance companies, the names of persons acting as authorised general representatives;
- h. The name of the responsible actuary;
- i. The name of the external auditors and the persons responsible for the mandate and, if the insurance company is part of an insurance group or conglomerate, the organisation of the mandate of the external auditors of the insurance group or conglomerate;
- j. The contracts or other agreements under which significant functions of the insurance company are to be outsourced or hived off.
- k. The planned types of insurance and the types of risk to be insured;
- l. Where applicable, the declaration of membership of the National Insurance Office and the National Guarantee Fund;
- m. Details regarding the resources for the fulfilment of support payments if an authorisation for the insurance segment "support payments" is requested;
- n. The reinsurance plan and, for active reinsurance, the retrocession plan;
- o. The anticipated costs for the development of the insurance company;
- p. The budgeted balance sheets and income statements for the first three business years;
- q. Details regarding the recording, limitation and supervision of risks;
- r. The tariffs and General Insurance Conditions which will be used in Switzerland in the insurance of all risks in pension plans for employed persons and in the supplementary insurance to the social health care insurance.

<sup>3</sup>If an insurance company which already has authorisation for a type of insurance applies for authorisation for a further type of insurance, the details and documents shown in Para. 2, Letters a-l only need to be submitted if they are to be amended in comparison with those that have already been approved.

<sup>4</sup>The supervisory authority can demand further details and documents if they are required in order to assess the application.

**Art. 5**            Amendment of the business plan

<sup>1</sup>Amendments which affect the elements of the business plan as per Article 4, Para. 2, Letters a, h, i, k and r must be submitted to the supervisory authority for approval prior to being implemented. Also to be submitted for approval are amendments to the business plan which result from mergers, spin-offs and conversions of the insurance company.

<sup>2</sup>Amendments which affect the elements of the business plan as per Article 4, Para. 2, Letters b, c, d, f, g, j, l, m, n and q are to be notified to the supervisory authority; they are deemed to have been approved if the supervisory authority does not institute an examination of the process within four weeks.

**Art. 6**            Granting of authorisation

<sup>1</sup>The authorisation is granted if the legal requirements are fulfilled and the interests of the insured parties are secured.

<sup>2</sup>If the insurance company is part of an insurance group or conglomerate, the authorisation can be made dependent upon a reasonable consolidated supervision by the financial market supervisory authority.

<sup>3</sup>The authorisation is granted for one or several types of insurance. It also provides permission for the conduct of reinsurance in the relevant insurance segments. The Federal Council defines the types of insurance.

<sup>4</sup>The supervisory authority publishes the authorisations which have been granted.

**2<sup>nd</sup> Section: Pre-conditions**

**Art. 7**            Legal form

Insurance companies must have the legal form of a corporation ("Aktiengesellschaft") or a cooperative ("Genossenschaft").

**Art. 8**            Minimum capital

<sup>1</sup>An insurance company domiciled in Switzerland must have a minimum capital which, depending on the types of insurance carried out, must amount to 3-20 million Swiss Francs.

<sup>2</sup>The Federal Council decrees regulations regarding the minimum capital for the individual types of insurance.

<sup>3</sup>The supervisory authority defines the necessary capital in individual cases.

**Art. 9** Equity

<sup>1</sup>The insurance company must be in possession of sufficient free and unencumbered equity to cover its entire activity (solvability margin).

<sup>2</sup>In determining the solvability margin, the risks to which the insurance company is exposed, the types of insurance, the scope of business as well and the geographic area of activity must be taken into consideration under internationally recognised principles.

<sup>3</sup>The Federal Council decrees regulations with regard to the allowable equity. The supervisory authority decrees regulations with regard to the calculation and necessary level of the solvability margin.

**Art. 10** Organisational funds

<sup>1</sup>Apart from the capital, the insurance company must have an organisational fund which enables coverage particularly of the costs of the formation and the development or an extraordinary expansion of the business. The level of the organisational fund usually corresponds, on commencement of the business activity, to as much as 50 percent of the minimum capital as per Article 8.

<sup>2</sup>The Federal Council regulates the level, the application, the duration in which the fund must be maintained and the reconstruction of the organisational fund.

<sup>3</sup>The supervisory authority defines the level of the organisational fund in each individual case.

**Art. 11** Corporate purpose

<sup>1</sup>An insurance company may only carry out other business apart from that of pure insurance if such other business stands in direct association with that insurance activity.

<sup>2</sup>The supervisory authority can authorise the operation of other business if this does not jeopardize the interests of the insured parties.

**Art. 12** Simultaneous operation of life insurance and other types of insurance

Insurance companies which carry out direct life insurance may only carry out accident and health care insurance in addition.

**Art. 13** Membership of the National Insurance Office and the National Guarantee Fund

Companies which wish to operate within the insurance sector of motor vehicle third party liability insurance must join the National Insurance Office and the National Guarantee Fund as per Articles 74 and 76 of the Road Traffic Act of 19<sup>th</sup> December 1958<sup>3</sup>.

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<sup>3</sup> SR 741.01

**Art. 14** Guarantee of an impeccable business activity

<sup>1</sup>The following persons must enjoy a good reputation and provide the guarantee of an impeccable business activity:

- a. Those persons responsible for the overall management, supervision and control as well as executive management;
- b. In the case of foreign insurance companies, the persons or person acting under a general power of attorney.

<sup>2</sup>The Federal Council defines which professional qualifications the persons mentioned under Para. 1 must possess.

<sup>3</sup>The outsourcing of significant functions of the insurance company to other persons is subject to the sense of Para. 1.

**3<sup>rd</sup> Section:**  
**Supplementary pre-conditions for foreign insurance companies**

**Art. 15**

<sup>1</sup>A foreign insurance company which intends to commence an insurance activity in Switzerland must, in addition:

- a. be authorised to carry out an insurance activity in its home state;
- b. establish a permanent establishment in Switzerland and appoint as its manager a person with a general power of attorney;
- c. have at its headquarters an amount of capital as per Article 8 and a solvability margin as per Article 9 which also encompass the business activity in Switzerland;
- d. be in possession in Switzerland of an organisational fund as per Article 10 and the corresponding assets;
- e. deposit a collateral amount in Switzerland which corresponds to a defined proportion of the solvability margin attributable to the business within Switzerland. The supervisory authority defines this proportion and the calculation, the place at which the deposit is kept and the allocable assets.

<sup>2</sup>Any deviating regulations in international agreements remain under reserve.

**3<sup>rd</sup> Chapter: Conduct of insurance activity**  
**1<sup>st</sup> Section: Financial structure**

**Art. 16** Actuarial provisions

<sup>1</sup>The insurance company is obliged to build sufficient actuarial reserves for its entire business activity.

<sup>2</sup>The Federal Council defines the principles for the calculation of the actuarial reserves. It can delegate the regulation of details with regard to the type and scope of actuarial provisions to the supervisory authority.

**Art. 17** Bound assets

<sup>1</sup>The insurance company must secure the claims arising from insurance policies by means of bound assets.

<sup>2</sup>It is not obliged to secure its foreign insurance liabilities as per Para. 1 if collateral of the same quality is required to be deposited abroad.

**Art. 18** Positive total of bound assets

The positive total of the bound assets corresponds to the actuarial provisions as per Article 16 and an appropriate excess. The supervisory authority defines the level of this excess.

**Art. 19** Commitment of bound assets

<sup>1</sup>The values of the bound assets are used for the claims to be secured by the bound assets.

<sup>2</sup>In the case of a transfer of insurance policies to another insurance company, the items of the bound assets or the relevant values are transferred to the insurance company which is taking over the insurance policies, to the extent that the supervisory authority does not demand any other regulation.

**Art. 20** Regulations regarding bound assets

The Federal Council decrees regulations with regard to the appointment, location, coverage, amendments to and control of the bound assets. It can transfer the regulation of the technical details to the supervisory authority.

**Art. 21** Investments

<sup>1</sup>An insurance company domiciled in Switzerland which intends to invest in other companies must communicate such intention to the supervisory authority if the investment amounts to or exceeds 10, 20, 33 or 50 percent of the capital or voting rights of the other company.

<sup>2</sup>A party which intends to invest directly or indirectly in an insurance company with its domicile in Switzerland must notify the supervisory authority if the investment amounts to or exceeds 10, 20, 33 or 50 percent of the capital or voting rights of the insurance company.

<sup>3</sup>A party which intends to reduce its investment in an insurance company with its domicile in Switzerland to lower than the thresholds of 10, 20, 33 or 50 percent of the capital or the voting rights or to amend the investment in such a way that the insurance company is no longer a subsidiary, must notify the supervisory authority of such intention.

<sup>4</sup>The supervisory authority can forbid an investment or link it to a condition if the investment in type and scope could jeopardize the insurance company or the interests of the insured parties.

## **2<sup>nd</sup> Section: Risk management**

### **Art. 22**

<sup>1</sup>The insurance company must be organised in such a way that it can, in particular, record, limit and monitor all significant risks.

<sup>2</sup>The supervisory authority decrees regulations regarding the kinds of risk to be recorded and their monitoring by the insurance company.

## **3<sup>rd</sup> Section: Responsible actuary**

### **Art. 23**      Appointment and function

<sup>1</sup>The insurance companies must appoint a responsible actuary and provide him or her with access to all business documents.

<sup>2</sup>The responsible actuary must enjoy a good reputation, be professionally qualified and in a position to make a correct assessment of the financial consequences of the activity of the insurance company. The Federal Council defines which professional qualifications the responsible actuary must possess.

<sup>3</sup>The insurance company must inform the supervisory authority without delay in the case of dismissal or resignation of the responsible actuary.



**Art. 24** Responsibilities

<sup>1</sup>The responsible actuary is responsible for ensuring the following:

- a. That the solvability margin is correctly calculated and the bound assets correspond to the stipulations set forth by the supervisory authority;
- b. That appropriate accounting principles are applied; and
- c. That adequate technical provisions are built.

<sup>2</sup>If he or she determines any inadequacies, he or she shall immediately inform the executive management of the insurance company.

<sup>3</sup>In addition, he or she shall prepare a regular report for the attention of the executive management, or in the case of foreign insurance companies, for the attention of the person acting under a general power of attorney. The report must show the inadequacies that have been determined, the suggested measures and the measures which are actually implemented.

<sup>4</sup>The supervisory authority decrees more detailed stipulations with regard to the tasks of the responsible actuary and the contents of the report.

**4<sup>th</sup> Section: Reporting**

**Art. 25** Business report and supervision report

<sup>1</sup>The insurance companies prepare annually, as at 31<sup>st</sup> December, the business report, comprised of the annual financial statements, the annual report and, if required by law, consolidated financial statements. If the insurance company is part of an insurance group or conglomerate, consolidated financial statements must in any case be submitted.

<sup>2</sup>In addition, they prepare an annual supervision report. The supervisory authority defines which requirements must be fulfilled by this report and set forth the information and documents which are to be enclosed.

<sup>3</sup>The insurance companies submit to the supervisory authority the business report and the supervision report with regard to the concluded business year at the latest by 30<sup>th</sup> April of the following year. The insurance companies which conduct solely reinsurance submit the reports by 30<sup>th</sup> June at the latest.

<sup>4</sup>The foreign insurance companies submit for their business in Switzerland a separate business report and a separate supervision report for the concluded business year.

<sup>5</sup>The annual financial statements are published in the report of the supervisory authority (Art. 48).

<sup>6</sup>The supervisory authority can demand reporting for periods of less than a business year. They can also define special requirements for the business report.

**Art. 26** Special regulations with regard to accounting

<sup>1</sup>Insurance companies are required to build the general reserve as per Articles 671 and 860 of the Swiss Code of Obligations (OR)<sup>4</sup> in accordance with their business plan. The corporate-legal regulations with regard to the building and release of hidden reserves do not apply for actuarial provisions. The transparency and the insurance protection remain guaranteed.

<sup>2</sup>The costs of formation, capital increases and organisation are to be debited to the organisational fund in the year in which they arise.

<sup>3</sup>The Federal Council can, under reserve of transparency, decree for insurance companies regulations which deviate from the OR in terms of the valuation of assets and liabilities as well as the structuring of the annual financial statements.

**5<sup>th</sup> Section: Audit**

**Art. 27** Internal supervision of business activity

<sup>1</sup>The insurance company sets up an effective internal control system which encompasses the entire business activity. In addition, it appoints an internal auditor (inspectorate) which is independent from the company's management.

<sup>2</sup>In justified, individual cases, the supervisory authority can grant an insurance company exemption from the requirement to appoint an inspectorate.

<sup>3</sup>The inspectorate draws up a report on its activity at least once each year and submits it to the external auditors.

**Art. 28** External auditors

<sup>1</sup>The insurance company shall appoint external auditors to examine its management.

<sup>2</sup>Mandated to carry out the external work can only be auditing firms and auditors which/who:

- a. provide the guarantee of an impeccable audit from a professional and personal point of view;
- b. are independent of the insurance company and, if it is an insurance group or conglomerate, of its companies; and
- c. are recognized by the supervisory authority for the audit of insurance companies.

<sup>3</sup>The Federal Council defines the prerequisites for recognition as per Para. 2. It can leave the regulation of the technical details to the supervisory authority.

**Art. 29** Duties of the external auditors

<sup>1</sup>The external auditors examine whether the annual financial statements comply in terms of form and content with the legal requirements, the articles of incorporation and the regulations. In addition, they examine, in accordance with the instructions of the supervisory authority, adherence to the stipulations of this law and the execution ordinances.

<sup>2</sup>They prepare a report on their findings. One copy of the report is submitted by the external auditors to the supervisory authority.

<sup>3</sup>The supervisory authority can instruct the auditors to carry out additional work and can demand special audits. The costs are payable by the insurance company.

<sup>4</sup>The insurance company grants the auditors at any time access to its books and accounting vouchers, provides them with the necessary documents in order to enable examination and assessment of the assets and liabilities and provides all information which the auditors require in order to carry out their work.

**Art. 30** Compulsory notification by the external auditors

The external auditors shall notify the supervisory authority immediately if they become aware of the following:

- a. Criminal acts;
- b. Severe irregularities;
- c. Infringements of the principles of an impeccable business activity;
- d. Circumstances which could jeopardize the solvency of the insurance company or the interests of the insured parties.

**6<sup>th</sup> Section**  
**Special regulations for individual types of insurance**

**Art. 31** Restrictive stipulations

The Federal Council can decree restrictive stipulations for the various types of insurance in order to protect the insured parties.

**Art. 32** Legal protection insurance

<sup>1</sup>An insurance company which wishes to provide legal protection insurance at the same time as other types of insurance must:

- a. transfer the handling of cases of damage for legal protection insurance to a legally independent company (damage regulation company); or
- b. grant the insured persons the right to transfer the protection of their interests, as soon as they can demand that the insurance company becomes active based on the insurance policy, to an independent lawyer of their choice or, to the extent

permitted by the applicable process decree, to another person who fulfils the qualifications required by that decree.

<sup>2</sup>The Federal Council regulates the relationship between the insurance company and the damage regulation company. It furthermore decrees stipulations regarding the form and content of the legal protection insurance policy, namely the procedure which is to be followed if the insurance company or the damage regulation company cannot agree with the insured person with regard to measures which are to be undertaken to settle the case of damage.

**Art. 33**      Natural hazard insurance

<sup>1</sup>An insurance company may only cover the risk of fire for risks located in Switzerland if the coverage also includes natural hazards within the fire insurance.

<sup>2</sup>The scope of coverage and the premium tariff for natural hazard insurance is standardised and binding for all insurance companies.

<sup>3</sup>The supervisory authority checks whether, based on the tariffs submitted by the insurance companies and the relevant calculation documents, the derived premiums are appropriate for the risks and costs involved.

<sup>4</sup>The Federal Council decrees more detailed stipulations with regard to:

- a. the bases for the calculation of the premiums;
- b. the scope of the natural hazard coverage and its limits;
- c. the type and scope of the statistics to be presented by the insurance companies.

<sup>5</sup>It can:

- a. if necessary define the insurance conditions;
- b. adopt the necessary measures to achieve the balance of damage burdens among the insurance companies, and in particular instruct membership of one of the private-legal organisations operated by the insurance companies themselves.

**Art. 34**      Motor vehicle third party liability insurance

Insurance institutes which provide motor vehicle third party liability insurance must notify the supervisory authority of the name and address of the appointed damage regulation agent in each state of the European economic region in accordance with Article 79b of the Road Traffic Act of 19<sup>th</sup> December 1958<sup>5</sup>.

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<sup>5</sup> SR 741.01

**Art. 35** Reinsurance

<sup>1</sup>For insurance companies which exclusively provide reinsurance, Articles 15, 17-20, 32-34, 36, 37, 55-59 and 62 are not applicable.

<sup>2</sup>The other regulations are applicable in their intended sense.

**Art. 36** Life insurance

<sup>1</sup>For insurance companies which provide direct individual or collective life insurance and which must satisfy life insurance policies with an interest guarantee, the Federal Council decrees stipulations for calculation of the maximum technical interest rate.

<sup>2</sup>For insurance companies which provide direct individual or collective life insurance and which must satisfy life insurance policies with a participation in surpluses, the insured persons must be provided each year with a comprehensible statement of the participation in the surplus. This statement must, in particular, show the basis on which the surpluses are calculated and under which principles they are distributed.

<sup>3</sup>The Federal Council can decree stipulations for the insurance companies as per Para. 2 with regard to:

- a. the manner in which the required information is to be shown in the statement;
- b. the bases for calculation of the surpluses;
- c. the bases for the extent and distribution of the surpluses.

**Art. 37** Special regulation for business with pension funds for employed persons

<sup>1</sup>Insurance companies which carry out the business of pension funds for employed persons shall create special, bound assets for their obligations within the framework of such pension arrangements.

<sup>2</sup>They shall keep separate, annual operating accounts for pension funds for employed persons. These must show in particular:

- a. any withdrawal from provisions for future surplus participation;
- b. the premiums, divided into savings, risk and cost premiums;
- c. the benefits;
- d. any bindingly allocated surplus participations which have been paid out to the insured parties during the reporting year;
- e. the capital income as well as unrealized profits and losses on capital investments;
- f. the costs and income from the derivative financial instruments used;
- g. the proven closure and administrative costs;

- h. the proven costs of asset management;
- i. the premiums and benefits from reinsurance of disability, death and other risks;
- j. the building and release of proven technical provisions and proven, purpose-bound fluctuation reserves.

<sup>3</sup>The Federal Council decrees stipulations with regard to:

- a. the manner in which the required information is to be shown in the separate operating accounts;
- b. the bases for calculation of the surplus participation;
- c. the principles for distribution of the calculated surplus participation.

<sup>4</sup>The surplus participation shown shall amount to at least 90 percent of the surplus participation calculated as per Para. 3, Letter b.

<sup>5</sup>If the operating accounts show a loss, no surplus participation shall be distributed for the relevant business year. The loss shown shall be transferred to the following year and taken into account then for calculation of the surplus participation.

**Art. 38** Examination of the tariffs subject to approval

The supervisory authority examines within the approval process on the basis of the tariff calculations submitted by the insurance companies whether the premiums foreseen are within a range which on the one hand guarantees the solvency of the individual insurance institute and on the other hand protection of the insured persons against misuse. Article 33, Para. 3 remains under reserve.

**Art. 39** Minimum benefits

Insurance companies to which ownership has been transferred of the assets of the pension funds which they have set up and which are economically or organisationally dependent upon them must provide at least the benefits of the mandatory pension fund for employees.

**4<sup>th</sup> Chapter: Insurance brokers**

**Art. 40** Definition

Insurance brokers are, independently of their title, persons who offer or conclude insurance policies in the interests of insurance companies or other persons.

**Art. 41** Forbidden brokerage activity

Insurance brokers are forbidden from carrying out an activity in favour of insurance companies which are subject to this law but are not authorised to carry out an insurance activity.

**Art. 42** Register

<sup>1</sup>The supervisory authority maintains a register of insurance brokers (Register).

<sup>2</sup>The Register is public.

<sup>3</sup>The Federal Council regulates the details.

**Art. 43** Inscription in the Register

<sup>1</sup>Insurance brokers that are bound neither legally nor economically nor in any other way to an insurance company must have themselves inscribed in the Register.

<sup>2</sup>The other insurance brokers have the right to have themselves inscribed in the Register.

**Art. 44** Pre-requisites for inscription in the Register

<sup>1</sup>Inscribed in the Register are only those which:

- a. have adequate professional qualifications or, in the case of legal entities, can prove that a sufficient number of its employees possess those qualifications; and
- b. have concluded a professional insurance policy or deposited financial collateral of equal value.

<sup>2</sup>The Federal Council defines the required professional qualifications and the minimum level of financial collateral. It can delegate regulation of the technical details to the supervisory authority.

**Art. 45** Duty to provide information

<sup>1</sup>As soon as insurance brokers establish contact with insured parties, they must provide them with at least the following information:

- a. Their identity and their address;
- b. Whether the insurance coverage they are offering for a particular type of insurance stems from one single or from several insurance companies, and which company/companies is/are involved;
- c. Their contractual relationships with the insurance companies for which they are active, together with the names of those companies;

- d. The person who can be held liable for negligence, errors or incorrect information in connection with their brokerage activity;
- e. The processing of personal data, in particular the objective, extent and recipients of the data and its storage.

<sup>2</sup>The information as per Para. 1 is to be handed over in the form of a permanent data-carrier which can be accessed by the insured persons.

<sup>3</sup>The Federal Council regulates the details.

## **5<sup>th</sup> Chapter: Supervision**

### **1<sup>st</sup> Section: General**

#### **Art. 46** Duties

<sup>1</sup>The supervisory authority has the following duties:

- a. It supervises that there is compliance with the insurance and supervision legislation.
- b. It checks whether the insurance companies guarantee an impeccable business activity.
- c. It supervises adherence with the business plan.
- d. It supervises that the insurance companies are solvent, that they build technical provisions in accordance with the stipulations and that they administer and invest the assets in an orderly manner.
- e. It supervises the orderly completion of damage regulation as defined in the stipulations of the Road Traffic Act of 19<sup>th</sup> December 1958<sup>6</sup> regarding the motor vehicle third party liability insurance.
- f. It protects the insured parties against misuse by the insurance companies and the insurance brokers.
- g. It takes action against circumstances which jeopardize the interests of insured parties.

<sup>2</sup>The supervisory authority can at any time involve third parties to examine adherence to this law. The costs are payable by the insurance company. The mandated third parties are released from the obligation of secrecy vis-à-vis the supervisory authority.

<sup>3</sup>The Federal Council decrees implementation regulations with regard to the individual duties.

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<sup>6</sup> SR 741.01



**Art. 47**      Audit authority and duty to provide information

<sup>1</sup>The supervisory authority can carry out audits at any time.

<sup>2</sup>The insurance companies, the insurance brokers as well as the external auditors must provide the supervisory authority with all information and documents which the supervisory authority requires for its job. Auditors are released from their duty of confidentiality in dealings with the supervisory authority.

<sup>3</sup>The executive management of the insurance company must inform the supervisory authority immediately of any occurrences which are relevant for the supervision.

<sup>4</sup>If an insurance company outsources or hives off significant functions to other private individuals or legal entities, those parties are equally subject to the duty to provide information.

**Art. 48**      Reporting by the supervisory authority

The supervisory authority publishes an annual report on their activity and the insurance companies which are under their supervision.

**Art. 49**      Publication of decisions

<sup>1</sup>The supervisory authority regularly publishes decisions with regard to the insurance law.

<sup>2</sup>The Swiss courts are obliged to provide the supervisory authority with a cost-free copy of all decisions which relate to regulations of the insurance policy law.

**Art. 50**      Financing of insurance supervision

<sup>1</sup>The supervisory authority charges fees for its decisions and services. In order to cover the supervision costs which are not financed by the fees, it charges an annual supervision fee to the supervised insurance companies, insurance groups and insurance conglomerates as well as insurance brokers as per Article 43, Para. 1.

<sup>2</sup>The supervision fee is based on the costs of the financial year and is calculated by the proportion of premium revenues of the individual insurance company compared with the overall premium revenues of all insurance companies or by costs incurred.

<sup>3</sup>The Federal Council regulates the details. It determines in particular the chargeable supervision costs and the underlying premium revenues and defines the fee rates.

## **2<sup>nd</sup> Section: Safety measures**

### **Art. 51** Principle

<sup>1</sup>If an insurance company or a broker does not comply with the stipulations of this law, an ordinance or an instruction issued by the supervisory authority, or if it appears that the interests of the insured parties are jeopardized in any other way, the supervisory authority shall institute safety measures which the authority regards as necessary in order to protect the interests of the insured parties.

<sup>2</sup>It can, in particular:

- a. forbid free disposal over the assets of the insurance company;
- b. instruct lodgement or blocking of assets;
- c. transfer the authorities of the governing bodies of an insurance company fully or partially to a third party;
- d. transfer the insurance portfolio and the assets bound therewith to another insurance company with that other company's approval;
- e. instruct realisation of the bound assets;
- f. instruct dismissal of the persons entrusted with overall management, supervision, control or executive management or of the person acting under a general power of attorney as well as the responsible actuary and forbid them from any further insurance activity for a maximum of five years;
- g. delete a broker from the Register as per Article 42.

### **Art. 52** Liquidation

If an insurance company enters into liquidation, the supervisory authority can appoint the liquidator.

### **Art. 53** Opening of bankruptcy proceedings

<sup>1</sup>The opening of bankruptcy proceedings over an insurance company requires the approval of the supervisory authority. It will grant its approval if there is no possibility of a turnaround.

<sup>2</sup>The powers in accordance with Article 170 of the Federal Law of 11<sup>th</sup> April 1889<sup>7</sup> regarding Debt Enforcement and Bankruptcy (SchKG) are vested in the supervisory authority.

### **Art. 54** Conduct of bankruptcy

<sup>1</sup>The supervisory authority can appoint a special bankruptcy administration for conduct of the bankruptcy proceedings and transfer all the powers of the General Meeting of Creditors to that administration; in addition, it can empower a person to represent the insurance portfolio vis-à-vis the bankruptcy administration.

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<sup>7</sup> SR 281.1

<sup>2</sup>It can issue special instructions for the "call to creditors" which deviate from the stipulations of the SchKG<sup>8</sup>.

<sup>3</sup>Claims from insured persons which can be determined from the books of the insurance company are deemed to have been submitted.

<sup>4</sup>From the proceeds of the bound assets, claims from insurance policies, for which collateral has been deposited as per Article 17, shall be covered first. A surplus falls into the bankruptcy estate.

### **3<sup>rd</sup> Section: Additional safety measures for life insurance**

#### **Art. 55** Bankruptcy of the insurance company

<sup>1</sup>In contrast to the regulation of Article 37, Para. 1 of the Federal Law of 2<sup>nd</sup> April 1908<sup>9</sup> regarding the Insurance Policy, the life insurances secured by the bound assets are not liquidated when bankruptcy proceedings are instituted.

<sup>2</sup>For the insurances as per Para. 1, the supervisory authority can:

- a. forbid the buy-back, the use as collateral as well as pre-payments and, in the case of Article 36 of the Federal Law of 2<sup>nd</sup> April 1908 regarding the Insurance Policy, the pay-out of the coverage capital; or
- b. grant deferral to the insurance company for its liabilities and the insured parties for premium payments.

<sup>3</sup>During the period of deferral of premium payments, insurance policies can only be cancelled or converted into premium-free insurance at the written request of the insured party.

#### **Art. 56** Realisation of bound assets in bankruptcy

If the supervisory authority does not institute any particular measures, it shall instruct the bankruptcy administration to realise the bound assets. When instructions are issued for realisation, the insurance policies lapse. The insured parties and those entitled to make claims can then claim from Article 36, Para 3 of the Federal Law of 2<sup>nd</sup> April 1908<sup>10</sup> regarding the Insurance Policy as well as claims from insurances due for payment and credited shares of surpluses.

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<sup>8</sup> SR 281.1

<sup>9</sup> SR 221.229.1

<sup>10</sup> SR 221.229.1

#### **4<sup>th</sup> Section: Additional safety measures for foreign insurance companies**

**Art. 57** Exclusion of claims from third parties

For foreign companies, the value of the bound assets and the deposit represent a mandatory pledge for claims arising from insurance policies out of the insurance portfolio which must be secured in accordance with this law. These values can only serve to satisfy the claims of third parties if the claims of the insured parties have been fully satisfied.

**Art. 58** Place of prosecution and forced realisation

<sup>1</sup>A foreign insurance company is to be prosecuted for claims from insurance policies arising out of the insurance portfolio which are to be secured in accordance with this law at the place at which its Swiss branch is located (Art. 151 et. seq. SchKG<sup>11</sup>). If the supervisory authority releases a real estate property for realisation, the prosecution is to be continued where the real estate property is located.

<sup>2</sup>If application is made for realisation of collateral, the Debt Enforcement Office shall notify the supervisory authority within three days.

<sup>3</sup>If the insurance company does not prove within 14 days after receipt of the application for realisation of collateral that it has fully satisfied the creditor, the supervisory authority, after hearing the insurance company, shall notify the Debt Enforcement Office which values of the bound assets and of any collateral deposit can be released for realisation.

**Art. 59** Restrictions to free disposal

If the supervisory authority of the state of domicile of the insurance company has limited or forbidden free disposal over the assets of the insurance company, the Swiss supervisory authority can, on demand, institute the same measures against the insurance company for the entire Swiss business.

#### **5<sup>th</sup> Section: Termination of insurance activity**

**Art. 60** Renunciation

<sup>1</sup>The insurance company which renounces a licence must submit a winding up plan to the supervisory authority for approval.

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<sup>11</sup> SR 281.1

<sup>2</sup>The winding up plan must include details with regard to:

- a. the winding up of financial liabilities from the insurance policies;
- b. the resources made available therefor; and
- c. the person responsible for this task.

<sup>3</sup>If the insurance company fails to comply with the approved winding up plan, Article 61, Para. 2 is applicable in its intended sense.

<sup>4</sup>The insurance company that has renounced a licence may not conclude any new insurance policies within the relevant types of insurance; existing insurance policies may not be extended nor expanded in terms of the scope of their coverage.

<sup>5</sup>The insurance company which has fulfilled the requirements under the supervision law shall be released from supervision and shall receive a refund of the collateral deposits.

**Art. 61**      Withdrawal of licence/authorisation

<sup>1</sup>The supervisory authority can withdraw the licence/authorisation to carry out an insurance activity for individual or all types of insurance from an insurance company if it:

- a. no longer fulfils the pre-conditions for granting of a licence; or
- b. terminated its business activity more than six months earlier.

<sup>2</sup>The supervisory authority undertakes all measures, particularly those as per Article 51, which are required in order to protect the interests of the insured parties.

<sup>3</sup>After withdrawal of the licence, an insurance company may not conclude any new insurance policies; existing insurance policies may not be extended nor expanded in terms of the extent of coverage.

**Art. 62**      Transfer of insurance portfolio

<sup>1</sup>If an insurance company transfers its Swiss insurance portfolio fully or partly to another insurance company based on a contractual agreement, this requires the approval of the supervisory authority. The supervisory authority only approves the transfer if the interests of the insured parties are fully protected.

<sup>2</sup>If the supervisory authority orders the transfer of a portfolio, it defines the conditions.

<sup>3</sup>The insurance company taking over the portfolio is obliged to inform the insured parties individually within 30 days after granting of the authorisation of the transfer of the portfolio as well the right to terminate existing policies. The insured parties have the right to terminate their policies within three months after receiving their individual information.

<sup>4</sup>The supervisory authority can order exclusion of the right to terminate if the transfer of the portfolio in a commercial sense does not lead to a change of the contractual partner of the insured parties.

**Art. 63**      Publication

<sup>1</sup>The supervisory authority publishes at the cost of the insurance company a renouncement of the licence to carry out business activity or its withdrawal.

<sup>2</sup>It publishes at the cost of the acquiring insurance company permission for the transfer of a portfolio.

**6<sup>th</sup> Chapter**  
**Special regulations regarding the supervision of insurance groups and insurance conglomerates**

**1<sup>st</sup> Section: Insurance groups**

**Art. 64**      Insurance group

Two or more companies constitute an insurance group if:

- a. at least one of them is an insurance company;
- b. they are collectively mainly active in the field of insurance; and
- c. they build an economic unit or are associated with each other in another way through influence or control.

**Art. 65**      Subjection to group supervision

<sup>1</sup>The supervisory authority can subject an insurance group which belongs to a company in Switzerland to group supervision if the insurance group:

- a. is factually managed from Switzerland;
- b. is factually managed from abroad but is not subject to any group supervision of the same kind in the foreign country.

<sup>2</sup>If at the same time foreign authorities claim the full or partial supervision of the insurance group, the supervisory authority, under respect of its competences and under consideration of a possible conglomerate supervision, agrees with the foreign authorities the responsibilities, modalities and subject matter of the supervision. Before reaching their decision, they consult those companies of the insurance group which have their domicile in Switzerland.

**Art. 66**      Relationship to individual supervision

Group supervision as per this section takes place as a supplement to individual supervision of an insurance company.

**Art. 67** Guarantee of an impeccable business activity

For persons who are responsible for overall management, supervision, control and executive management of the insurance group, as well as for the risk management of the insurance group, Articles 14 and 22 apply in their intended sense.

**Art. 68** Supervision of risks

The supervisory authority can decree regulations for the supervision of group-internal transactions and group-wide risk concentration.

**Art. 69** Equity

<sup>1</sup>The Federal Council defines the allocable equity group-wide.

<sup>2</sup>The supervisory authority defines the required equity. It bases itself on the existing, internationally recognized principles for the field of insurance and takes into consideration the significance of the other fields of business as well the risks associated with them.

**Art. 70** External audit

Insurance groups must have external auditors. Articles 28 and 29 apply in their intended sense.

**Art. 71** Duty to provide information

If insurance companies belong to insurance groups, the duty to provide information as per Article 47 applies for all companies of the group.

**2<sup>nd</sup> Section: Insurance conglomerates**

**Art. 72** Insurance conglomerates

Two or more companies constitute an insurance conglomerate if:

- a. at least one of them is an insurance company;
- b. at least one of them is a bank or a securities dealer of major economic significance;
- c. together, they are mainly active in the field of insurance; and
- d. they build an economic unit or are associated with each other in another way through influence or control.

**Art. 73** Subjection to conglomerate supervision

<sup>1</sup>The supervisory authority can subject an insurance conglomerate to which a company in Switzerland belongs to conglomerate supervision if it:

- a. is factually managed from Switzerland;
- b. is factually managed from abroad but is not subject to any conglomerate supervision of the same kind in the foreign country.

<sup>2</sup>If at the same time foreign authorities claim the full or partial supervision of the insurance conglomerate, the supervisory authority, under respect of its competences and under consideration of a possible group supervision, agrees with the foreign authorities the responsibilities, modalities and subject matter of the supervision. Before reaching their decision, they consult those companies of the insurance conglomerate which have their domicile in Switzerland.

**Art. 74** Relationship to individual supervision

Conglomerate supervision as per this section takes place as a supplement to individual supervision and to supervision of an insurance or finance group by the relevant responsible authorities.

**Art. 75** Guarantee of an impeccable business activity

For persons who are responsible for overall management, supervision, control and executive management of the insurance conglomerate, as well as for the risk management of the insurance conglomerate, Articles 14 and 22 apply in their intended sense.

**Art. 76** Supervision of risks

The supervisory authority can decree regulations for the supervision of conglomerate-internal transactions and conglomerate-wide risk concentration.

**Art. 77** Equity

<sup>1</sup>The Federal Council defines the allocable equity conglomerate-wide.

<sup>2</sup>The supervisory authority defines the required equity. It bases itself on the existing, internationally recognized principles for the fields of insurance and finance and takes into consideration the significance of these fields of business as well the risks associated with them.

**Art. 78** External audit

Insurance conglomerates must have external auditors. Articles 28 and 29 apply in their intended sense.

**Art. 79** Duty to provide information

If insurance companies belong to insurance conglomerates, the duty to provide information as per Article 47 applies for all companies of the conglomerate.



## 7<sup>th</sup> Chapter: Co-operation and procedure

### Art. 80 National exchange of information

The supervisory authority is authorised to provide publicly unavailable information and documents to other Swiss financial market supervisory authorities and the Swiss National Bank to the extent required by them in order to carry out their duties.

### Art. 81 Co-operation with foreign supervisory authorities

<sup>1</sup>For the enforcement of this law, the supervisory authority can request foreign financial market supervisory authorities to provide information and documents.

<sup>2</sup>It can only provide publicly unavailable information and documents to foreign financial market supervisory authorities to the extent that those authorities are bound to professional or official secrecy and the information provided:

- a. is only used for direct supervision in their field of competence; and
- b. is only passed on with prior permission of the Swiss supervisory authority or on the basis of a general authorisation in a state agreement to the responsible authorities and to bodies which are entrusted with supervisory duties in the public interest.

<sup>3</sup>The supervisory authority refuses to give its approval if the information is to be passed on to criminal justice authorities and legal aid in criminal matters would be excluded. The supervisory authority decides in agreement with the Swiss authorities responsible for legal aid.

<sup>4</sup>To the extent that information to be provided by the supervisory authority relates to individual insured parties, the Federal Law of 20<sup>th</sup> December 1968<sup>12</sup> regarding the Administrative Process applies.

<sup>5</sup>Within the framework of Para. 2, the Federal Council is authorised to regulate co-operation with foreign financial market supervisory authorities in state agreements.

### Art. 82 Cross-border audits

<sup>1</sup>To enforce this law, the supervisory authority can itself or through auditors carry out direct audits of foreign branches of insurance companies for whose consolidated supervision it is responsible within the framework of supervision of insurance groups and insurance conglomerates in the sense of this law.

<sup>2</sup>It can permit foreign insurance and financial market supervisory authorities which are responsible for consolidated supervision of the audited insurance companies within the framework of group and conglomerate supervision to carry out direct audits of Swiss branches

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<sup>12</sup> SR 172.021

of foreign insurance companies as long as those authorities are bound to official or professional secrecy and the information received:

- a. is only used for consolidated supervision of insurance companies and other financial intermediaries who must be licensed; and
- b. is only passed on with the prior agreement of the Swiss supervisory authority or on the basis of a general authorisation in a state agreement to responsible authorities and bodies which are entrusted with supervisory duties in the public interest.

<sup>3</sup>The supervisory authority refuses to give its approval if the information is to be passed on to criminal justice authorities and legal aid in criminal matters would be excluded. The supervisory authority decides in agreement with the Swiss authorities responsible for legal aid.

<sup>4</sup>In direct, cross-border audits only those details may be gathered which are necessary for consolidated supervision of insurance companies or financial intermediaries. These include in particular details as to whether an insurance company or a financial intermediary group-wide:

- a. is suitably organised;
- b. appropriately records, limits and monitors the risks inherent in its business activity;
- c. is managed by persons who offer a guarantee for an impeccable business activity;
- d. fulfils the stipulations with regard to equity and risk distribution on a consolidated basis; and
- e. correctly carries out its reporting obligations vis-à-vis the supervisory authorities.

<sup>5</sup>The supervisory authority can accompany the foreign insurance and financial market supervisory authorities in their direct audits in Switzerland or have them accompanied by appointed auditors. The relevant insurance company can demand accompaniment.

<sup>6</sup>Deemed as branches of insurance companies in the sense of this Article are:

- a. subsidiaries, branches and representations of insurance companies;
- b. other companies to the extent that their activity is included in consolidated supervision by insurance or financial market supervisory authorities.

<sup>7</sup>The branches organised under Swiss law are obliged to provide the foreign supervisory authorities for insurance companies or financial intermediaries and the supervisory authorities which are carrying out the direct audits or official aid through the supervisory authority with the necessary information and must grant them access to the books of account.

<sup>8</sup>The Federal Council is authorised to regulate co-operation with foreign supervisory authorities for financial markets in state agreements.

**Art. 83** Appeals commission

<sup>1</sup>The appeals commission for supervision of private insurance decides as the first instance on complaints against decisions made by the supervisory authority in application of this law and other decrees with regard to insurance supervision.

<sup>2</sup>Its decisions are subject to the Administrative Court Appeal to the Federal Supreme Court.

**Art. 84** Procedure

<sup>1</sup>Notification is published in the "Bundesblatt" when decrees are made regarding tariffs which affect current insurance policies. The notification includes a summarised description of the subject matter and the content of the decree and applies for the insured parties as an opening of the decree in accordance with Article 36 of the Federal Law of 20<sup>th</sup> December 1968<sup>13</sup> regarding the Administrative Process.

<sup>2</sup>An appeal is to be lodged within 30 days after notification of the decree.

<sup>3</sup>Complaints against appeals regarding tariffs do not have any suspending effect.

**Art. 85** Courts

<sup>1</sup>Private-legal disputes between insurance companies or between insurance companies and insured parties are decided by the court.

<sup>2</sup>For disputes arising from supplementary insurance to the social health care insurance as per the Federal Law of 18<sup>th</sup> March 1994<sup>14</sup> regarding Health care Insurance, the cantons foresee a simple and rapid procedure in which the court determines the circumstances ex officio and recognizes the evidence at its own discretion.

<sup>3</sup>For disputes in the sense of Para. 2, the parties may not be charged any process costs; if however the suit is wanton, the court can charge all or part of the costs to the relevant party.

**8<sup>th</sup> Chapter: Penalty regulations**

**Art. 86** Infringements

<sup>1</sup>A party shall be fined up to 100,000 Swiss Francs that:

- a. violates an obligation as per Article 13;
- b. violates a duty of notification as per Article 21;
- c. fails to submit the business report and the supervisory report as per Article 25 within the legally permissible period;

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<sup>13</sup> SR 172.021

<sup>14</sup> SR 832.10

- d. fails to build the technical provisions stipulated by supervisory law or those approved in individual cases;
- e. violates a duty to provide information as per Article 45;
- f. violates the orderly completion of damage regulation in the motor vehicle third party liability insurance as per Article 79c, Para. 1 of the Road Traffic Law of 19<sup>th</sup> December 1958<sup>15</sup>;
- g. infringes an implementation regulation whose infringement is declared by the Federal Council to be subject to penalty; or
- h. infringes a decree which points out the threat of penalty as per this article.

<sup>2</sup>If the infringement is due to negligence, the penalty is a fine of up to 50,000 Swiss Francs.

<sup>3</sup>The supervisory authority pursues and judges these infringements in accordance with the stipulations of the Federal Law of 22<sup>nd</sup> March 1974<sup>16</sup> regarding the Administrative Penalty.

**Art. 87**      Offences

<sup>1</sup>A party shall be imprisoned or fined up to 1,000,000 Swiss Francs which:

- a. carries out insurance activity without the prescribed licence/authorisation;
- b. concludes or brokers insurance policies for an insurance company that is not licensed to carry out insurance activity in Switzerland;
- c. fails to have himself, herself or itself inscribed in the Register as an insurance broker although he, she or it is obliged to do so, or carries out the activity of an insurance broker after being deleted from the Register;
- d. incorrectly describes or hides from the supervisory authority the business circumstances of insurance companies, insurance brokers or persons to whom significant functions have been outsourced or hived off;
- e. makes incorrect or incomplete statements in the business plan or in a report which must be prepared in accordance with this law;
- f. fails to submit amendments to the business plan as per Article 5, Para. 1 for approval or fails to inform the supervisory authority about amendments to the business plan as per Article 5, Para. 2.
- g. falls below the minimum requirements of equity under supervisory law or in individual cases;
- h. withdraws or encumbers values within the bound assets so that the required amount is no longer covered;

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<sup>15</sup> SR 741.01

<sup>16</sup> SR 313.0

- i. incorrectly presents significant facts with regard to the bound assets or misinforms the supervisory authority in any other way with regard to the bound assets or capital investments;
- j. carries out any acts which reduce the safety of the bound assets;
- k. as a responsible actuary, fails to comply with the legal obligations as per Articles 23 and 24;
- l. as an auditor acting for the statutory auditors, fails to comply with the legal obligations as per Articles 29 and 30.

<sup>2</sup>If the act is the result of negligence, the penalty is a fine of up to 100,000 Swiss Francs.

<sup>3</sup>The court can ban for up to five years a person who has been sentenced to prison from any activity in a management position for another insurance company subject to this law. The period of imprisonment shall not be offset against the period of the ban. In other respects, Article 54 of the Criminal Law applies<sup>17</sup>.

<sup>4</sup>For offences in business operations, Articles 6 and 7 of the Federal Law of 22<sup>nd</sup> March 1974<sup>18</sup> regarding Administrative Criminal Law apply.

<sup>5</sup>Investigation and assessment of the elements of an offence under this Article are the responsibility of the cantons.

## **9<sup>th</sup> Chapter: Closing conditions**

### **Art. 88** Execution

<sup>1</sup>The Federal Council is instructed to execute this law. It appoints the supervisory authority.

<sup>2</sup>Prior to decreeing stipulations, the Federal Council hears the view of the interested organisations.

<sup>3</sup>The cantons have the right to decree stipulations required by the police for fire insurance. They can charge fire insurance companies for the Swiss insurance portfolio reasonable amounts for fire protection and the prevention of natural hazards and for this purpose, gather from them details about the fire insurance sums that exist in their cantonal territory.

### **Art. 89** Cancellation and amendment of previous law

The cancellation and amendment of previous law is regulated in the notes.

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<sup>17</sup> SR 311.0

<sup>18</sup> SR 313.0

**Art. 90** Transitional conditions

<sup>1</sup>Insurance companies which have received a licence/authorisation for the operation of types of insurance in supplement to other types of business can use that licence independently when this law takes effect and within its limitations.

<sup>2</sup>The deadlines for the submission of reports as per Article 25 are to be observed for the first time for the business year which follows the date on which this law takes effect.

<sup>3</sup>The insurance brokers as per Article 43, Para. 1 must apply to the supervisory authority for entry into the Register within six months of this law taking effect.

<sup>4</sup>The Federal Council can foresee a transitional period for the acquisition of professional qualifications for the persons mentioned in Articles 23, 28 and 44.

<sup>5</sup>Insurance companies which have a lower capital than the one stipulated in Article 8 must increase it within two years of this law taking effect.

<sup>6</sup>Those who factually manage an insurance group or an insurance conglomerate from Switzerland without carrying out any insurance activity within Switzerland itself must report to the supervisory authority within three months of this law taking effect.

<sup>7</sup>Existing insurance groups or insurance conglomerates must adapt to the new stipulations within two years of this law taking effect.

<sup>8</sup>The supervisory authority can extend the timeframes as per Paras. 5, 6 and 7 on justified request.

**Art. 91** Referendum and effective date

<sup>1</sup>This law is subject to the facultative referendum.

<sup>2</sup>The Federal Council defines the date on which this law takes effect.

Upper House of Parliament  
17<sup>th</sup> December 2004

Lower House of Parliament  
17<sup>th</sup> December 2004

The President: Bruno Frick  
The Secretary: Christoph Lanz

The President: Jean-Philippe Maitre  
The Secretary: Christophe Thomann

Date of publication: 28<sup>th</sup> December 2004<sup>19</sup>  
Expiry of referendum period: 7<sup>th</sup> April 2005

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<sup>19</sup> BBI 2004 7289

## **Cancellation and amendment of previous law**

### **I**

The following Federal laws are cancelled:

1. Federal law of 4<sup>th</sup> February 1919<sup>20</sup> regarding the Security Deposits for foreign insurance companies;
2. Securing Law of 25<sup>th</sup> June 1930<sup>21</sup>;
3. Insurance Supervision Law of 23<sup>rd</sup> June 1978<sup>22</sup>
4. Damage Insurance Law of 20<sup>th</sup> March 1992<sup>23</sup>
5. Life Insurance Law of 18<sup>th</sup> June 1993<sup>24</sup>

### **II**

The following Federal laws are amended as follows:

#### **1. Swiss Code of Obligations<sup>25</sup>**

*Art. 671, Para. 6 and 860, Para. 4*

*Cancelled*

#### **2. Accident Prevention Contribution Law of 25<sup>th</sup> June 1976<sup>26</sup>**

*Art. 10*          Supervision and sanctions

<sup>1</sup>The Federal Office for Private Insurance supervises the charging and payment of the accident prevention contribution in accordance with the legislation regarding insurance supervision.

<sup>2</sup>Article 86 of the Insurance Supervision Law of 17<sup>th</sup> December 2004<sup>27</sup> is applicable.

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<sup>20</sup> BS 10 296, as 1978 1836, 1992 2363, 1993 3209, 1995 1227

<sup>21</sup> BS 10 303, as 1978 1836, 1992 288 2363, 1993 3211, 1995 1227

<sup>22</sup> AS 1978 1836, 1988 414, 1992 288 733 2363, 1993 3204, 1995 1328, 3517 5679, 2000 2355, 2003 232

<sup>23</sup> AS 1992 2363, 1993 3247

<sup>24</sup> AS 1993 3221

<sup>25</sup> SR 220

<sup>26</sup> SR 741.81

<sup>27</sup> SR ...; AS... (BBI 2004 7289)

<sup>3</sup>In the case of serious violation, the Federal Office for Private Insurance can demand of the third party liability insurer, under threat of withdrawal of the licence, that it complies with its obligations. If the demand does not lead to success within the defined period of time, the supervisory authority shall withdraw the licence for the operation of motor vehicle third party liability insurance.

### **3. Federal Law of 25<sup>th</sup> June 1982<sup>28</sup> regarding the Old Age, Surviving Dependents' and Disability Insurance for employed persons**

*Art. 68 Para. 2*

*Cancelled*

### **4. Federal Law of 18<sup>th</sup> March 1994<sup>29</sup> regarding Health care Insurance**

*Art. 11, indent b*

The mandatory health care care insurance is conducted by:

- b. the private insurance companies which are subject to the Insurance Supervision Law of 17<sup>th</sup> December 2004<sup>30</sup> (VAG) which provide health care insurance and have a licence in accordance with Article 13.

### **5. Federal Law of 20<sup>th</sup> March 1981<sup>31</sup> regarding Accident Insurance**

*Art. 68 Para. 1, indent a*

<sup>1</sup>Persons for whose insurance the SUVA is not responsible are insured against accident under this law by:

- a. private insurance companies which are subject to the Insurance Supervision Law of 17<sup>th</sup> December 2004<sup>32</sup> (VAG);

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<sup>28</sup> SR **831.40**

<sup>29</sup> SR **832.10**

<sup>30</sup> SR ...; AS ... (BBI **2004** 7289)

<sup>31</sup> SR **832.20**

<sup>32</sup> SR ...; AS ... (BBI **2004** 7289)



## **6. Banking Law of 8<sup>th</sup> November 1934<sup>33</sup>**

### *Art. 3b*

If a bank is part of a financial group or a financial conglomerate, the Banking Commission can make its licence dependent upon the existence of an appropriate consolidated supervision by a financial market supervisory authority.

### *Art. 3c*

<sup>1</sup>A financial group of two or more companies is deemed if:

- a. at least one of them is active as a bank or securities dealer;
- b. they are mainly active in the financial field; and
- c. they form a commercial unit or, based on other circumstances, it is to be assumed that one or more companies under individual supervision is/are legally or factually obliged to support group companies.

<sup>2</sup>A bank- or security dealing-dominated financial conglomerate is deemed to represent a financial group as per Para. 1 if it is mainly active in the banking and securities dealing field and has at least one insurance company of significant commercial significance within its structure.

### *Art. 3d*

<sup>1</sup>The Banking Commission can subject a financial group or a bank- or securities dealer-dominated financial conglomerate to group or conglomerate supervision if it or they:

- a. runs/run a bank or securities dealership organised under Swiss law in Switzerland; or
- b. is/are factually managed from Switzerland.

<sup>2</sup>If other domestic or foreign authorities simultaneously claim full or partial supervision of the financial group or financial conglomerate, the Banking Commission shall, under observation of its competences, agree the responsibilities, modalities and subject matter of the group or conglomerate supervision. It shall consult, prior to its decision, with the companies of the financial group or the financial conglomerate incorporated in Switzerland.

### *Art. 3e*

<sup>1</sup>Group supervision by the Banking Commission takes place in supplement to the individual supervision of a bank.

<sup>2</sup>Conglomerate supervision by the Banking Commission takes place in supplement to the individual supervision of a bank or an insurance company and to supervision of a financial or insurance group by the responsible supervisory authorities in each case.

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<sup>33</sup> SR 952.0

*Art. 3f*

<sup>1</sup>The persons entrusted by the financial group or the financial conglomerate with executive management on the one hand and overall management, supervision and control on the other hand must enjoy a good reputation and offer the guarantee of impeccable business activity.

<sup>2</sup>The financial group or the financial conglomerate must be organised in such a way that it can, in particular, record, limit and monitor all significant risks.

*Art. 3g*

<sup>1</sup>The Banking Commission is authorised to decree stipulations with regard to equity, liquidity, risk distribution, group-internal risk positions and accounting/reporting for financial groups.

<sup>2</sup>The Banking Commission is authorised to decree stipulations with regard to equity, liquidity, risk distribution, group-internal risk positions and accounting/reporting for financial conglomerates which are dominated by banking or securities dealing activity or to define such stipulations in individual cases. With regard to the necessary equity, the Banking Commission takes into consideration the existing rules for the fields of finance and insurance, as well as the relative importance of both fields within the financial conglomerate and the associated risks.

*Art. 3h*

<sup>1</sup>Financial groups and financial conglomerates must have recognised, independent and qualified external auditors. The Banking Commission regulates the special requirements for the auditors and the content of the audit report.

<sup>2</sup>The Banking Commission can instruct the external auditors or qualified third parties to carry out special audits. The costs are payable by the companies of the financial group or the financial conglomerate that are incorporated in Switzerland.

<sup>3</sup>The companies of the financial group or the financial conglomerate and their governing bodies must provide the Banking Commission with all information and documents which the Commission requires in order to carry out its work.

*Art. 3<sup>bis</sup> Para. 1<sup>bis</sup>*

<sup>1<sup>bis</sup></sup> If a bank is part of a financial group or a financial conglomerate, the Banking Commission can make the licence to operate dependent upon the agreement of the relevant foreign supervisory authorities.

<sup>1</sup>Those who factually manage a financial group or a financial conglomerate from Switzerland without operating a bank in Switzerland itself must report to the Banking Commission within three months of this amendment taking effect.

<sup>2</sup>Existing financial groups and financial conglomerates must adapt with the new stipulations within two years of this amendment taking effect.

<sup>3</sup>The Banking Commission can extend these deadlines on the basis of a timely and justified application.

## **7. Stock Exchange Law of 24<sup>th</sup> March 1995<sup>34</sup>**

*Art. 10 Para. 5*

<sup>5</sup>If a securities dealer is part of a financial group or a financial conglomerate, the prerequisites for a licence under the Banking Law of 8<sup>th</sup> November 1934<sup>35</sup> regarding Financial Groups and Financial Conglomerates apply in their intended sense.

*Art. 14 Consolidation*

The stipulations of the Banking Law of 8<sup>th</sup> November 1934<sup>36</sup> apply in their intended sense.

## **8. Money Laundering Law of 10<sup>th</sup> October 1997<sup>37</sup>**

*Art. 2 Para. 2 indent c and 3 indent d*

<sup>2</sup>Financial intermediaries are:

- c. insurance institutes in accordance with the Insurance Supervision Law of 17<sup>th</sup> December 2004<sup>38</sup> (VAG) which provide direct life insurance or offer or distribute participations in investment funds as well as insurance brokers in accordance with Article 43, Para. 1 VAG;

<sup>3</sup>Financial intermediaries are also persons who professionally accept and retain third party assets or help to invest or transfer them: in particular persons, who:

- d. *abolished*

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<sup>34</sup> SR 954.1

<sup>35</sup> SR 952.0

<sup>36</sup> SR 952.0

<sup>37</sup> SR 955.0

<sup>38</sup> SR...; AS... (BBI 2004 7289)

*Art. 13 Para. 2*

<sup>2</sup>The supervision can be carried out by a supervisory authority under special law if:

- a. the financial intermediary belongs to a group which is subject to supervision under special law as per Article 12 which encompasses supervision of compliance with the obligations under this law;
- b. the financial intermediary complies with the pre-conditions of Article 14, Para. 2;
- c. the financial intermediary provides the supervisory authority under special law with all information and documents which the authority requires to carry out its work; and
- d. the group assures that it will monitor and enforce compliance by the financial intermediary with the obligations under this law.

*Art. 14 Para. 1*

<sup>1</sup>Financial intermediaries as per Article 2 Para. 3 which are neither members of a recognised self-regulating organisation nor subject to supervision under special law as per Article 13 Para. 2 must obtain a licence from the control authority for the exercising of their activity.