

Insurance Business or Insurance Intermediation: Which FINMA Requirements Apply?

Licence, registration or allocation to an insurer

The Insurance Supervision Act (VAG) places two different kinds of actor under FINMA supervision. The first is insurance undertakings: those with a Swiss seat, and foreign insurers for their insurance activity in or from Switzerland. The second is insurance intermediaries **Art. 2 VAG** The supervisory instrument differs in kind, not only in intensity:

- Insurer: needs an institutional licence (Bewilligung) from FINMA before it starts insurance activity **Art. 3 VAG**
- Untied intermediary: needs a registration in the public FINMA register and may not act without it **Art. 41 VAG**
- Tied intermediary: has neither a licence nor a registration of its own. Since 1 January 2024 it can in principle no longer be entered in the public register. For supervisory purposes it is allocated to the insurer to which it is tied

FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherer

The current regime results from the revision of 18 March 2022, in force since 1 January 2024 **Art. 2 VAG** Further intermediary rules followed on 1 September 2024, among them the exclusion of supplementary health insurance from the ancillary-insurance exemption **Art. 1h AVO**. A later amendment on reinsurance intermediation has been adopted but has not entered into force (see the section on pending reforms).

The analysis therefore follows a sequence:

1. Does anyone carry an insurance risk (Step 1)? If so, what does the licence require (Step 2), is an exemption available, and, for a foreign risk carrier, is it active "in Switzerland" and under which treaty regime?
2. Does the distributor intermediate, or only provide information or an exempt ancillary cover (Step 3)?
3. If it intermediates, is it tied or untied (Step 4), and which registration, insurer-side and point-of-sale duties follow?

Step 1: Is the activity insurance business?

The five-element test

The Federal Supreme Court defines insurance by "den folgenden fünf begriffsnotwendigen Merkmalen" (the following five necessary characteristics) **BGE 107 Ib 54**. All five must be present:

1. a risk;
2. a premium paid by the insured;
3. a performance by the insurer;
4. the independence (autonomy) of the operation;
5. the compensation of risks according to statistics, that is, a planned business operation.

The Court restated the test in 2C_410/2010 **2C_410/2010**. The Federal Administrative Court applies it in the same form **b-2808-2009**. It treats risk as an event whose occurrence is possible and uncertain. The fact that the customer can influence the insured event does not

negate the risk **b-2808-2009**.

Substance over form

The rent-deposit guarantee cases show that the label of the contract does not decide the question. A company guaranteed landlords the tenant's obligations under the lease in place of a blocked deposit, financed by an enrolment fee and annual contributions from tenants **6B_917/2014**.

- Federal Administrative Court: rejected the characterisation as a suretyship under Art. 492 ff. OR, because the contracts lacked sufficient subsidiarity. It also rejected the characterisation as a cumulative assumption of debt **b-2808-2009**.
- Federal Supreme Court: held that the company assumed the landlord's risk and offered a standardised product to an indeterminate clientele, so the risks were pooled statistically **2C_410/2010**.

Verfahrensbotschaft 2C_410/2010: Substanz vor Form

- Actuarial methods are not required: "il n'est d'ailleurs pas nécessaire que les calculs intègrent les principes des mathématiques actuarielles" (it is not necessary for the calculations to incorporate actuarial principles) **2C_410/2010**.
- If features typical of an insurance contract under the Insurance Contract Act are missing, that "ne saurait la soustraire à la surveillance" (cannot remove it from supervision) **2C_410/2010**.

Covers bundled with goods or services: the autonomy criterion

For covers bundled with goods or services, the decisive element is autonomy.

The cover was insurance (BGE 107 Ib 54, Lessol). A seller of car-care products guaranteed repair costs on vehicles. Cover did not depend on a defect in its own product **BGE 107 Ib 54**.

- The guarantee therefore had nothing to do with the seller's warranty for defects under Art. 197 ff. OR. It was a genuine insurance benefit that could be separated from the sale **BGE 107 Ib 54**.
- The Court stated the rule for mixed transactions. Such a transaction is insurance if the insurance benefits have a certain significance and are not merely an ancillary clause or a modality of the other part of the contract **BGE 107 Ib 54**.
- Setting aside CHF 100 per guarantee to cover repairs showed that losses were deliberately spread across all holders **BGE 107 Ib 54**.

The cover was not insurance (BGE 76 I 362). A bank waived the annuities on a mortgage if the borrower died. The arrangement had insurance-like features, but it was "lediglich ein Zusatzvertrag zum Darlehensvertrag" (merely a supplementary contract to the loan agreement) and could not be conceived without the loan **BGE 76 I 362**. The Court added that the Act does not apply to merely insurance-like transactions **BGE 76 I 362**.

The resulting test. A promise that only extends the seller's own liability for its own goods or services stays on the side of the sale. A cover becomes insurance if it:

- responds to risks independent of any defect in the seller's own performance;
- could be sold separately; and
- is financed and priced across a pool of customers.

This test concerns the risk carrier. Whether the seller of a third-party cover is an exempt ancillary intermediary is a separate question, addressed in Step 3.

Step 2: What an insurer licence requires

Licence application and business plan

An insurer must file an application with a business plan **Art. 4 VAG**. The plan must contain, among other items:

- the articles of association, the organisation and the geographical scope of activity;
- the financial resources and technical provisions;
- the last three annual accounts, or an opening balance sheet for a new undertaking;
- the holders of at least 10 per cent of the capital or votes;
- the persons responsible for management and supervision and the responsible actuary;
- outsourcing contracts for essential functions;
- the planned branches and types of risk;
- the reinsurance plan, the set-up costs, and planned balance sheets and income statements for three years;
- risk management;
- for occupational pension risks and supplementary health insurance, the tariffs and general conditions **Art. 4 VAG**

Since 2024, an insurer that wants supervisory reliefs must state for each branch whether it writes business with professional policyholders, intra-group business, or business with non-professional policyholders **Art. 4 VAG**. Existing insurers had to make this declaration within six months of the amendment's entry into force **Art. 90a VAG**. FINMA may request further documents **Art. 4 VAG**.

Legal form, capital and solvency

- Legal form: insurers must be companies limited by shares or cooperatives. Lloyd's is reserved **Art. 7 VAG**
- Minimum capital: an insurer with a Swiss seat needs CHF 3 to 20 million, depending on the branches **Art. 8 VAG**. The ordinance sets the figures. Life branches require CHF 5, 8, 10 or 12 million **Art. 7 AVO**. Non-life requires CHF 8 million for most branches and CHF 3 million for branches B9 and B16 to B18 **Art. 8 AVO**. Reinsurance requires CHF 10 million, or CHF 3 million for branch C3 **Art. 9 AVO**. FINMA may depart from these amounts within the statutory range where the risk exposure and planned volume justify it **Art. 10 AVO**.
- Solvency: risk-bearing capital must at least equal target capital **Art. 9 VAG**
- Technical provisions and tied assets: sufficient technical provisions are required for the whole business **Art. 16 VAG** and claims under insurance contracts must be secured by tied assets **Art. 17 VAG**

Fit and proper

The insurer and its board, management and control bodies (or, for a foreign insurer, the general representative) must guarantee proper business conduct and enjoy a good reputation. Qualified shareholders must also have a good reputation and must not exert an influence detrimental to prudent and sound management. The same rules apply where essential functions are outsourced **Art. 14 VAG**.

The Federal Administrative Court treats this assessment as "exclusivement préventif" (exclusively preventive) **2013-56**. It is concrete, linked to the specific function, and based on a forward-looking prognosis. Past events justify a negative finding only if

they are of a certain importance, so that a repetition appears likely **2013-56**. Because these are indeterminate legal concepts with serious reputational consequences, FINMA bears a heightened duty to give reasons. In the case of the general representative of a foreign insurer's Swiss branch, the negative finding was annulled for insufficient reasoning **2013-56**.

Proportionality reliefs

The revised regime scales supervision in several ways:

- Professional policyholders: an insurer that insures exclusively professional policyholders is exempted on application from, among others, the organisational-fund and tied-assets rules (Arts. 10 and 17 to 20). In mixed business the relief covers only the professional segment. It never applies where compulsory-insurance claims of non-professionals could arise, and occupational pension risks always require tied assets **Art. 30a VAG**
- Captives: insurers that only cover risks of their own non-insurance group are relieved from a broader list of provisions, again limited to that business and subject to the compulsory-insurance reservation **Art. 30d VAG**
- Small insurers (categories 4 and 5): direct insurers in these categories obtain reporting reliefs only if all of the following conditions are met **Art. 1c AVO**:
 - an SST ratio of at least 250 per cent;
 - tied assets covered at 130 per cent;
 - minimum capital covered at 150 per cent;
 - no loss carried forward;
 - no FINMA measures or proceedings.
- New category 5 licensees: may receive further solvency and organisational reliefs for up to three years **Art. 1e AVO**.

Exemptions for risk carriers

Statutory exclusions

The VAG does not apply to the following **Art. 2 VAG**

- foreign insurers that carry on only reinsurance in Switzerland;
- undertakings under special federal supervision, to the extent of that supervision, in particular registered occupational pension institutions;
- foreign state or state-guaranteed export-risk insurers;
- certain insurance cooperatives that existed on 1 January 1993. The conditions are cumulative and include a Swiss seat, membership-only cover, activity limited to Switzerland and gross premiums never above CHF 3 million;
- associations, cooperatives and foundations that conclude guarantee-type contracts (such as sureties) with their own members or beneficiaries, if the activity is limited to Switzerland and profits go to the contracting parties.

The innovation exemption

Art. 2 para. 5 lit. b VAG allows the Federal Council to exempt insurers wholly or partly from supervision, in particular to keep the Swiss financial centre fit for the future. The exemption may be subject to conditions on seat, collateral and information duties. The relevant factors are the business model, the low economic importance and low risk of the product, the business volume and the circle of insured persons **Art. 2 VAG**.

Art. 1f AVO implements this power for insurers that develop and directly distribute their own products. The conditions are cumulative **Art. 1f AVO**:

- a Swiss seat;
- the form of a company limited by shares or a cooperative;
- an ordinary audit;
- products only in branches B3 to B9 and B14 to B18;

- at most 5,000 policies with total premiums of at most CHF 5 million;
- an undertaking to inform policyholders that the insurer is not supervised by FINMA.

The version of the AVO in force since 26 February 2026 left Art. 1f unchanged **AVO (2026-02-26)**.

Exemptions are construed restrictively

The general exemption in former Art. 2 para. 3 VAG, for low economic importance or a small circle of insured persons, was repealed with effect from 1 January 2024 **Art. 2 VAG**. The case law on it still shows how exemptions are approached.

In BVGE 2008/11, a foreign direct-insurance captive covered only group risks. The court refused an exemption **2008-11**:

- The risk assumption, although purely intra-group, could affect the interests of injured third parties.
- The exemption had to be construed restrictively.
- The applicant offered no evidence of special circumstances.

BGE 107 Ib 54 likewise refused the former exemption for undertakings of minor economic importance, because the circle of insured persons was not small **BGE 107 Ib 54**. Today, an exemption must be found in a specific statutory exclusion or in Art. 1f AVO. The earlier case law suggests that the burden of showing each condition lies with the applicant.

Foreign insurers: territorial reach and the branch requirement

When there is insurance activity "in Switzerland"

Insurance activity in Switzerland exists, regardless of the type or place of contract conclusion, if **Art. 1 AVO**:

- a person domiciled in Switzerland is a policyholder or an insured person; or
- property located in Switzerland is insured.

A foreign insurer without a Swiss branch is not supervised if it writes exclusively the following business in Switzerland **Art. 1 AVO**:

- marine, aviation and cross-border transport risks;
- risks located abroad;
- war risks.

The Federal Administrative Court read the marine exemption broadly. It held that it also covers the compulsory sickness and accident insurance of a seagoing ship's crew, and rejected FINMA's restriction to property risks **b-255-2011**. The absence of a Swiss branch is a separate, cumulative condition. The court referred that question back to FINMA **b-255-2011**.

Requirements for a foreign insurer active in Switzerland

Beyond the general licence conditions, a foreign insurer must **Art. 15 VAG**

- be authorised in its home state;
- establish a branch in Switzerland, register it in the commercial register and appoint a general representative to head it;
- hold capital under Art. 8 at head office and show solvency that also covers the Swiss business;
- hold an organisational fund in Switzerland;
- deposit a security (Kaution) in Switzerland corresponding to a fraction of its Swiss business volume, as determined by FINMA.

Deviating treaty provisions are reserved **Art. 15 VAG**

The general representative must be resident in Switzerland and actually manage the whole Swiss business **Art. 16 AVO**. The representative represents the insurer before FINMA and third parties, but cannot bind it on certain fundamental matters, such as the transfer

of the Swiss portfolio **Art. 17 AVO**. A foreign insurer that runs only foreign business from Switzerland is subject to the same supervision as a branch with Swiss business. Business counts as run "from Switzerland" where policyholders domiciled abroad are party to the contract **Art. 20 AVO**.

Treaty regimes

- Switzerland and the EU (non-life direct insurance): a branch of an insurer seated in the other contracting party is admitted on submission of **Art. 10 0.961.1**:
 - its statutes;
 - a home-supervisor certificate;
 - a business plan with three years of accounts;
 - the appointment of a general representative who is resident in the host territory.

For certain risks the agreement bars systematic prior approval of policy conditions and tariffs **Art. 10 0.961.1**. Third-country insurers face the minimum conditions in Protocol No. 4, including separate local accounts and assets of at least half the minimum guarantee fund, a quarter of which must be deposited **Art. 1 0.961.1**.

- Switzerland and Liechtenstein: the agreement grants insurers, on a reciprocal basis, freedom of establishment and freedom to provide services for direct insurance. It also lets registered intermediaries operate in the other state **Art. 1 (SR 0.961.514)**.

Step 3: Is the distributor an insurance intermediary?

The functional definition

An intermediary is any person who, "unabhängig von ihrer Bezeichnung" (irrespective of its designation), offers or concludes insurance contracts in the interest of insurers or other persons **Art. 40 VAG**. The ordinance adds that the definition includes persons who advise policyholders with a view to concluding a contract, and persons who propose contracts **Art. 182a AVO**.

Persons who "nur Daten oder Informationen zur Verfügung stellen" (merely provide data or information) are not intermediaries **Art. 182a AVO**.

Digital channels and comparison platforms

The definition is technology-neutral. A person who has an economic interest in offering or concluding contracts via a website or other electronic medium is an intermediary if it does either of the following **Art. 182a AVO**:

- provides information on contracts according to individualised criteria, from which the user can choose; or
- produces a ranking of insurance products, including a price and product comparison.

FINMA states that this brings intermediation via websites, comparison platforms or apps within scope, even without any physical presence at the point of sale

FINMA Guidance 04/2023: Action plan for insurance intermediaries

The leading application is BVGer B-5886/2023 of 5 July 2024 (comparis.ch). The court upheld FINMA's order that the platform apply for registration. Four points carry the reasoning:

- Active participation: the platform built an individualised search profile, matched it against market offers, displayed a product list, and let users request quotes through links on its site. This went beyond mere data transmission and actively promoted conclusion of contracts **b-5886-2023**.
- Economic interest despite restructuring: before 1 July 2023 insurers paid the platform for leads. From that date a registered group company, Optimatis, concluded the commission agreements instead. The court held that the two companies'

contributions were "wirtschaftlich zwingend voneinander abhängig" (economically necessarily interdependent) **b-5886-2023**. Inserting the group company therefore did not change the platform's classification **b-5886-2023**.

- Validity of the ordinance: Art. 182a para. 1 and para. 2 lit. a AVO merely give concrete form to Art. 40 para. 1 VAG and are lawful. The court expressly left open whether the ranking rule in para. 2 lit. b exceeds the delegation **b-5886-2023**.
- Applicable law: for the registration duty, the court applied the facts and law at the time of the judgment, that is, the law in force since 1 January 2024 **b-5886-2023**.

The decision shows that splitting a distribution chain between group companies does not take the customer-facing entity out of the intermediary regime if it still steers users towards conclusion.

Embedded insurance: the ancillary-intermediation exemption

Intermediaries are outside supervision if their activity concerns insurance of minor importance that complements a product or service. The Federal Council sets the criteria **Art. 2 VAG** Art. 1h AVO requires three cumulative conditions **Art. 1h AVO**:

- the annual premium for the cover does not exceed CHF 600, excluding taxes;
- the cover is a subordinate service accompanying the supply of a product or service, by any provider; and
- intermediation is carried on as a secondary activity.

Since 1 September 2024 the exemption does not apply to supplementary insurance to social health insurance **Art. 1h AVO**.

The Federal Council's message gives typical examples of such an "Annexversicherung" (ancillary insurance): glass-breakage cover when buying a mobile phone, and travel-cancellation cover when booking a trip **BBi 2020 8967**. The message left the conditions to the Federal Council **BBi 2020 8967**. The operative criteria are therefore those of Art. 1h AVO, not the examples.

Three limits matter for embedded models:

1. The exemption concerns the distributor only. The risk carrier remains an insurer requiring a licence under Step 1. A retailer that carries the risk itself is not an "ancillary intermediary"; under BGE 107 Ib 54 it may be an unlicensed insurer **BGE 107 Ib 54**.
2. Each condition must be met separately. A premium above CHF 600, a cover that is the main reason for the purchase, or a distributor whose core business is selling insurance falls outside the exemption **Art. 1h AVO**.
3. Exempt activity is excluded from supervision altogether. The VAG states that such intermediaries are not subject to it **Art. 2 VAG**.

Other activities outside the intermediary regime

- In-house brokers: intermediaries in a relationship of dependence on one policyholder are not supervised, insofar as they pursue only the interests of that policyholder and the companies it controls **Art. 2 VAG**
- Activity abroad: intermediation that an intermediary with a Swiss seat or domicile carries on abroad is not subject to Swiss supervision **Art. 182 AVO**. Such an intermediary may nevertheless be registered voluntarily where a foreign state requires a Swiss register entry **Art. 42 VAG**
- Foreign-oriented business: the territorial rules of Art. 1 AVO apply to intermediation by analogy **Art. 1 AVO**.

Step 4: Tied or untied?

The statutory distinction and its practical test

Untied intermediaries "stehen in einem Treueverhältnis zu den Versicherungsnehmerinnen und -nehmern" (are in a fiduciary relationship with policyholders) and act in their interest. All other

intermediaries are tied **Art. 40 VAG**. Tied status is therefore the residual category

FINMA-Aufsichtsmittelung 05/2024: Pflichten der Versicherungsunternehmen

The Federal Administrative Court has made the outward presentation decisive. Classification "hängt somit nicht vom Vorhandensein von allfälligen vertraglichen Bindungen an ein oder mehrere Versicherungsunternehmen ab" (does not depend on the existence of any contractual ties to one or more insurers). What matters above all is whether such ties are openly disclosed to potential policyholders and made recognisable **b-5886-2023**. Whoever does not disclose them is treated as untied **b-5886-2023**.

The ordinance codifies the same idea. Anyone who gives the impression of acting as an untied intermediary must meet the requirements for untied intermediaries **Art. 182b AVO**. FINMA draws the consequence that a tied intermediary appearing untied becomes subject, in particular, to the registration duty

FINMA-Aufsichtsmittelung 05/2024: Pflichten der Versicherungsunternehmen

Conduct incompatible with untied status

The ordinance lists links to insurers that are impermissible for untied intermediaries because of conflicts of interest **Art. 182c AVO**:

- cooperation or other agreements that restrict the freedom to work with other insurers;
- a direct or indirect holding of more than 10 per cent in an insurer's capital, or the reverse;
- management functions, or other possibilities of influence, across the two businesses.

FINMA treats any such situation as tied activity in every case

FINMA-Aufsichtsmittelung 05/2024: Pflichten der Versicherungsunternehmen. An intermediary may not act as tied and untied at the same time **Art. 44 VAG**

Requirements for untied intermediaries: registration

Registration conditions

The applicant must prove **Art. 41 VAG**

- a seat, domicile or branch in Switzerland;
- a good reputation and the guarantee (Gewähr) of fulfilling the duties under the VAG;
- the necessary skills and knowledge under Art. 43 VAG or, for employers, a sufficient number of qualified employees; and
- professional liability insurance or equivalent financial security.

The registration duty covers sole proprietorships and partnerships, legal persons, and employed natural persons **Art. 183 AVO**. FINMA charges a registration fee of CHF 750 for legal entities and CHF 350 for individuals

FINMA Guidance 04/2023: Action plan for insurance intermediaries

Absolute bars and the individualised assessment of good repute

Registration is refused in the following cases **Art. 41 VAG**

- an intentional conviction under Arts. 86 or 87 VAG;
- a criminal-record entry for property offences under Arts. 137 to 172ter of the Criminal Code;
- an activity ban or professional ban under the FINMA Act.

The positive and negative conditions are cumulative **b-199-2025**.

Beyond these bars, good repute is lacking in particular where any of the following has an unexpunged conviction for conduct incompatible with intermediation, or has loss certificates linked to such conduct **Art. 187 AVO**:

- the intermediary itself;

- its managers;
- holders of more than 10 per cent.

The case law requires an individualised assessment outside the absolute bars:

- Assessment required (B-618/2024). Drug-law convictions led to a refusal. The court held that FINMA's link to future harm to clients was speculative, given the lapse of several years and the absence of concrete indications **b-618-2024**. The court stated: "Bei Taten, die weder Vermögens- noch Konkurs- oder Betreibungsdelikte sind, drängt sich vor diesem Hintergrund eine sorgfältige Würdigung der konkreten Umstände besonders auf" (for offences that are neither property, bankruptcy nor debt-enforcement offences, a careful assessment of the specific circumstances is particularly called for against this background) **b-618-2024**. The decision applied the pre-2024 ordinance **b-618-2024**.
- Loss certificates are not an automatic bar (BVGE 2008/45). Under the former ordinance, loss certificates did not automatically exclude registration. The authority had to show a concrete risk of abuse towards policyholders, and a fixed CHF 30,000 threshold was "zu undifferenziert" (too undifferentiated) **2008-45**.

Professional liability insurance

The intermediary must hold professional liability insurance for financial loss. Minimum annual aggregate cover depends on the number of employees who place contracts for it **Art. 189 AVO**:

Employees placing contracts Minimum cover per year
--- ---
Fewer than 2 CHF 2 million
2 to 4 CHF 3 million
5 to 8 CHF 4 million
More than 8 CHF 5 million

Further rules apply **Art. 189 AVO**:

- Digital scaling: where IT systems or other media increase the volume of contracts placed to the equivalent of more employees, the cover must be raised accordingly.
- Policy terms: the policy must be taken out with an insurer subject to the VAG and carry an ordinary notice period of at least three months.
- Run-off: it must cover claims made within five years after expiry for damage caused during its term.
- Alternatives: the duty lapses if the intermediary is included in a third party's policy. An equivalent financial security may replace the insurance, as FINMA decides case by case.

The insurer providing cover must inform FINMA without delay if the cover is suspended, ends, or falls below the minimum **Art. 185 AVO**.

Under the former law, the Federal Administrative Court held that both the insurance and any equivalent security must come from a company authorised to do business in Switzerland. A time-limited guarantee from an unauthorised foreign insurer was insufficient **2008-11**. The current requirement that the insurer be subject to the VAG reflects the same idea **Art. 189 AVO**.

Training and continuing education

All intermediaries, tied and untied, must have the skills and knowledge necessary for their activity. Minimum standards are set by the industry, with the Federal Council intervening only where adequate standards are lacking **Art. 43 VAG**. The standards must cover the following, and proof is given by an examination or an equivalent certificate. Continuing education may also be shown by documented learning activities **Art. 190 AVO**:

- customer acquisition, advice and servicing;
- basic insurance knowledge;
- activity-specific knowledge, including legal and product knowledge.

Industry bodies with recognised standards must report intermediaries

who no longer meet the continuing-education requirements

Art. 190a AVO

The requirements of Art. 43 VAG had to be met within two years of the revision's entry into force **Art. 90a VAG**. FINMA therefore treats them as binding from 1 January 2026

FINMA Guidance 04/2023: Action plan for insurance intermediaries

Earlier case law shows that transitional periods are applied strictly. Under the former regime, pre-2006 experience could replace a qualification only until 31 December 2007 **b-6958-2015**, and the same deadline applied to tied intermediaries seeking registration **b-2101-2008**. In the latter case, however, insisting on a further electronic filing was excessive formalism **b-2101-2008**.

Seat requirement and foreign intermediaries

Untied intermediaries acting in their own name need a seat, domicile or branch in Switzerland. Employed individuals are treated as domiciled at their employer's seat or branch **Art. 186 AVO**. FINMA may grant exceptions in the following cases **Art. 186 AVO**:

- reciprocity;
- a treaty;
- intermediaries placing exclusively reinsurance in Switzerland.

FINMA requires all foreign intermediaries to provide a Swiss domicile for service, and gave foreign intermediaries until 30 June 2024 to comply

FINMA Guidance 04/2023: Action plan for insurance intermediaries

Liechtenstein is a special case. Intermediaries registered there may start working in Switzerland once they have notified the Liechtenstein authority. They remain subject to the Liechtenstein information and advice duties **Art. 35 (SR 0.961.514)**.

Ongoing duties of registered intermediaries

- Organisation: proportionate internal rules and organisation, including the following **Art. 188 AVO**:
 - a separation of operations and control;
 - documentation of compliance with the information duty;
 - control mechanisms covering third parties engaged.
- Changes: every change in the facts underlying registration must be reported. Material changes require FINMA's prior approval to continue the activity **Art. 185 AVO**.
- Annual reporting: FINMA collects key figures annually, scaled to size and risk, to verify the registration conditions **Art. 190b AVO**.
- Supervisory fee: FINMA levied a uniform supervisory fee of CHF 475 for 2024

FINMA Guidance 04/2023: Action plan for insurance intermediaries

Deletion from the register

FINMA may strike an intermediary from the register. This corresponds in substance to withdrawal of registration under Art. 37 FINMAG **b-274-2025**. Two recent decisions under the revised law confirm a strict line:

- B-274/2025. The intermediary knowingly concealed a conviction and other proceedings in the mandatory re-documentation required after the revision. The court found that he lacked both good repute and the guarantee of compliance, the latter being a prognosis of future conduct **b-274-2025**.
- B-199/2025. Unreported convictions for property offences were an absolute bar. The failure to report them to FINMA could on its own be a serious breach **b-199-2025**. Milder measures such as a warning or registration "on probation" are "a priori nicht zielführend" (not suitable from the outset), given the transparency function of the public register **b-199-2025**.

In both cases the court stressed that the person may continue to work

as a tied intermediary without registration and may reapply later
b-274-2025 b-199-2025.

Requirements for tied intermediaries: supervision through the insurer

Tied intermediaries are allocated to their insurer, which checks their good reputation and guarantee of compliance

FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler
FINMA states that the insurer "with whom they have an identifiable fiduciary relationship" must ensure compliance with statutory obligations. This responsibility covers its own salesforce, general agents, and its own electronic distribution channels such as internet platforms

FINMA Guidance 04/2023: Action plan for insurance intermediaries

FINMA Supervisory Notice 05/2024 sets out the controls FINMA expects in its supervisory practice:

- Before cooperation (natural persons): documented information on

FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler

- the private-law basis of the activity;
- a CV and proof of training;
- a check of good reputation based on criminal and debt-enforcement records;
- proof that no FINMA register entry exists;
- adequate financial security.

- Additional checks for entities: qualified holders above 10 per cent, management and its reputation, complaint history, corporate governance, and absence from the register and the FINMA warning list. These checks may be waived for FINMA-supervised institutions

FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler

- On an ongoing basis: current data and a list of tied intermediaries, compliance with information duties (including the insurer's shareholdings in tied intermediaries), conflict-of-interest controls, timely training, absence of any appearance of independence, coverage by internal audit and control functions, and complaint management

FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler

- Value-chain analysis: insurers must carry out a documented analysis of the activities in their value chain to determine who counts as intermediating. Sub-intermediaries working for a tied intermediary are covered by its tie

FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler

Insurers' own conflict-of-interest duties apply alongside. They must take organisational measures to avoid conflicts and disclose residual disadvantages before conclusion of the contract **Art. 14a VAG Art. 14c AVO.**

On the civil side, a Graubünden decision under the pre-2006 version of Art. 34 VVG held that the insurer, not the agent personally, answered for the agent's advice **ZB 2005 55**. The court noted that the amended Art. 34 VVG was not relevant to the case **ZB 2005 55**. The decision therefore illustrates the allocation of responsibility to the insurer, but does not interpret current law.

Duties of insurers towards untied intermediaries

Insurers may not cooperate with intermediaries lacking the required registration **Art. 44 VAG** According to FINMA, the following applies

FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler

- Scope: the check covers the entity and every natural person intermediating for it, whether employed or self-employed.

- Timing: it is required before the relationship starts and regularly during it, at a frequency suited to the business model.
- Chains: it extends to sub-intermediation through a chain of untied intermediaries.
- Abuse: insurers must collect indicators, such as cancellation and complaint patterns, that may reveal systematic mis-selling, and must control the operational risks of the cooperation, including data access.

FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler
words, an unauthorised activity

FINMA Guidance 04/2023: Action plan for insurance intermediaries

It is also an offence under Art. 87 para. 1 lit. b VAG (see below).

Conduct duties at the point of sale

Information duties of all intermediaries

Every intermediary, tied or untied, must inform the policyholder of **Art. 45 VAG**

FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler

- whether it acts as a tied or untied intermediary and, if tied, the insurers for which it acts;
- how to obtain information on its training;
- who is liable for negligence, errors or incorrect information;
- the processing of personal data.

The information must be understandable. It may be provided in standardised form on paper or electronically, and must be available when the policyholder applies for or accepts the contract **Art. 45 VAG**

The Federal Administrative Court links this duty to the tied/untied test. Its purpose is to reveal the intermediary's ties and potential conflicts of interest **b-5886-2023**.

FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler

On the civil side, a Vaudois cantonal decision under the former Art. 45 found no indication that the supervisory duty went further than the mandatory's duty to inform under Art. 398 OR on the disputed points **CACI pt15-035448-301/2018**. The broker had no risk-advice mandate, and the coverage exclusion was clear, so it had no duty to point it out **CACI pt15-035448-301/2018**. This illustrates that breach of the supervisory duty does not automatically enlarge civil liability. It is an isolated cantonal decision, not a general rule.

FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler

Conflicts of interest and remuneration

All intermediaries must take adequate organisational measures to avoid conflicts of interest, or to exclude disadvantages to policyholders. A residual disadvantage that cannot be excluded must

FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler

For untied intermediaries, the following rules apply to remuneration from insurers or third parties (commissions, brokerage, rebates or other benefits) **Art. 45b VAG**

- It may be accepted only after the policyholder has been expressly informed.
- If the policyholder also pays the intermediary, the remuneration may be kept only if the policyholder expressly waives it, or if it is passed on in full.
- The information must state the type and amount before the service or the contract. Where the amount cannot be determined in advance, the calculation parameters and ranges must be given.
- Actual amounts must be disclosed on request.

Document access

Policyholders and insured persons may at any time request a copy of their file and the documents an insurer or intermediary prepared in the business relationship **Art. 80 VAG** The copy must be delivered free of charge within 30 days **Art. 81 VAG**

Enforcement and sanctions

Administrative measures

In the rent-guarantee case, FINMA did the following **2C_410/2010**:

- found the activity unlawful;
- prohibited it and any advertising for it as interim measures;
- appointed investigators;
- ordered the company's dissolution and liquidation.

The Federal Supreme Court dismissed the appeal **2C_410/2010**.

The parallel proceedings show that regularisation remains possible. After the company concluded a compliant contract with a licensed insurer, FINMA withdrew the dissolution and liquidation. Only the finding of past unlawful activity remained, and the court upheld it **b-2808-2009**.

For a platform found to be an untied intermediary, the measure was an order to apply for registration. The court noted that this finding was not a declaratory ruling of a serious violation under Art. 32 FINMAG **b-5886-2023**.

Criminal liability

- Art. 44 FINMAG: intentionally carrying on an activity requiring a licence or registration without it is punishable by up to three years' imprisonment or a monetary penalty. Negligence is punishable by a fine of up to CHF 250,000 **Art. 44 FINMASA**.
- Art. 87 VAG: the same penalties apply to intentionally concluding or intermediating contracts for an unlicensed insurer, and to distributing insurance through an unregistered intermediary **Art. 87 VAG**
- Art. 86 VAG: breaches of the information, conflict-disclosure and remuneration-disclosure duties are punishable by a fine of up to CHF 100,000, or CHF 50,000 if negligent **Art. 86 VAG**

In 6B_917/2014, the manager of the rent-guarantee company was convicted under Art. 44 FINMAG. The Federal Supreme Court rejected the defence of legal error, because the authority had expressly told him that the activity required authorisation and was punishable without it **6B_917/2014**. However, the authority's repeated extensions of time, and its willingness to await regularisation, could in good faith have led him to believe that regularisation might come without criminal consequences. This was relevant to culpability, so the sentence was annulled and remitted **6B_917/2014**. Regulatory tolerance therefore mitigates the penalty but does not exclude liability.

Ombudsman affiliation

The ombudsman affiliation duty in the Financial Services Act **Art. 77 FinSA** does not reach insurers and insurance intermediaries whose activity falls under the VAG, because the Financial Services Act excludes them from its scope **Art. 2 FinSA**. Art. 77 of the Financial Services Act therefore does not govern insurance distribution supervised under the VAG.

Current law and pending reforms

- Adopted, not yet in force: the amendment of 2 October 2026 adds Art. 2 para. 2 lit. g VAG. Intermediaries will be outside supervision insofar as their activity relates to reinsurance **BBI 2026 2724**. The referendum period expires on 21 January 2027, and the Federal Council will set the date of entry into force **BBI 2026 2724**.
- The exemption will cover tied and untied reinsurance intermediaries. Chapter 4 duties, including Arts. 45, 45a and 45b, will no longer apply to them **BBI 2025 3700**.
- Voluntary registration under Art. 42 para. 4 VAG remains possible and brings back supervision and annual reporting **BBI 2025 3700**.
- The Federal Council expressly kept insurers' duty not to

cooperate with unregistered untied intermediaries in direct business, and supervision of retail intermediation is unchanged **BBI 2025 3700**.

- Until entry into force, the current exception for intermediaries placing exclusively reinsurance is the FINMA dispensation from the seat requirement **Art. 186 AVO**. Registration itself is not dispensed with.
- Planned FINMA circular: FINMA plans a circular on its practice regarding insurance intermediaries. It is expected to address the tied/untied distinction, reporting duties and disclosure of remuneration, with consultation and entry-into-force dates still open

FINMA: Financial Market Regulation: Pending projects (Status and out

Business examples

Business model	Classification	Main consequence

| Retailer sells a third-party insurer's phone-breakage cover at checkout (premium below CHF 600 a year, cover subordinate to the sale, selling insurance is a side activity) | Exempt ancillary intermediation | No registration. The insurer carrying the risk needs a licence **Art. 1h AVO** |

| Retailer itself promises to pay for damage not caused by a defect in its goods, priced across customers | Insurance business | Licence required or restructuring through a licensed insurer **BGE 107 Ib 54 b-2808-2009** |

| Comparison website ranks products, links to quote requests and earns commission (directly or via a group company) without disclosing ties | Untied intermediary | Registration duty **b-5886-2023** |

| Website publishing general, non-individualised information on insurance | Not an intermediary | No intermediary duties **Art. 182a AVO** |

| Insurer's own app or exclusive agent network | Tied intermediation | Insurer responsible, no registration

FINMA Guidance 04/2023: Action plan for insurance intermediaries |

| Exclusive agent who presents itself as an independent broker | Treated as untied | Registration duty **Art. 182b AVO** |

| Broker holding more than 10 per cent of an insurer | Cannot be untied | Tied regime **Art. 182c AVO** |

| Insurtech carrying a small non-life risk, at most 5,000 policies and CHF 5 million premiums, Swiss company limited by shares, informing clients | Exempt insurer | No supervision if all conditions are met

Art. 1f AVO |

| Rent-guarantee product replacing a blocked deposit | Insurance business | Licence required **2C_410/2010** |

| Foreign insurer covering only marine risks (including crew sickness and accident cover) | Outside supervision, provided it has no Swiss branch | The no-branch condition must be established separately **b-255-2011** |

Application checklist

1. Risk test. Map who bears the risk. Apply the five elements, with particular attention to autonomy from the main contract **BGE 107 Ib 54 BGE 76 I 362**.
2. Exemption for the risk carrier. Check the statutory exclusions and Art. 1f AVO, then document each cumulative condition **Art. 2 VAG Art. 1f AVO**.
3. Territorial test. Check for Swiss-domiciled policyholders or insured persons, or Swiss-located property. If there are any, establish whether a branch, general representative and security deposit are needed, or whether a treaty regime applies **Art. 1 AVO Art. 15 VAG**.
4. Distribution test. Classify each customer touchpoint: advice, proposal, individualised selection or ranking with an economic interest, or mere information **Art. 182a AVO**.

5. Embedded sales. Test the CHF 600 premium cap, the subordinate character of the cover, the secondary nature of the activity, and the exclusion of supplementary health insurance
Art. 1h AVO.
6. Tied or untied. Review how the distributor presents itself and whether it discloses its ties. Screen for prohibited links, including holdings above 10 per cent **b-5886-2023 Art. 182c AVO.**
7. Untied intermediaries. Before starting, secure a Swiss presence, a criminal-record and debt-enforcement check of managers and holders above 10 per cent, sufficient liability cover for the headcount and digital volume, and training evidence. Report every change **Art. 41 VAG Art. 189 AVO Art. 185 AVO.**
8. Insurers. Keep a documented value-chain analysis, onboarding files for tied intermediaries, and registration checks for every person in untied chains, before and during cooperation
FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherer
.
9. Point of sale. Give the Art. 45 information before application, disclose residual conflicts, and, for untied intermediaries, disclose remuneration expressly **Art. 45 VAG Art. 45a VAG Art. 45b VAG**
10. Reforms. Monitor the entry into force of the reinsurance-intermediation exemption and the planned FINMA circular **BBI 2026 2724**
FINMA: Financial Market Regulation: Pending projects (Status and outlook)
.