

Insurance intermediaries

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The VAG distinguishes between tied and untied insurance intermediaries. An untied intermediary, typically a broker, is in a relationship of trust with the policyholder and acts in the policyholder's interest, while a tied intermediary is economically or contractually linked to one or more insurers and acts on their behalf.¹ Before 2024, untied intermediaries had to register with FINMA, while tied intermediaries could register voluntarily. Since the revision, registration is mandatory for untied intermediaries and for tied intermediaries who distribute qualified life insurance or work for insurers exempted from supervision, while other tied intermediaries are no longer registered. Instead, the insurers are responsible for ensuring that their tied intermediaries meet the requirements of training and conduct.²

All intermediaries must now meet requirements of training and continuing education, for which the industry has developed a common standard. Untied intermediaries must also have professional liability insurance or equivalent financial security and be affiliated with an ombudsman office.³ They must inform the client about their identity, their relationship with the insurer, the remuneration they receive and the potential conflicts of interest. These rules respond to long-standing criticism of the commissions paid in the distribution of life insurance, particularly in the telephone and door-to-door distribution of health and life insurance, which had led to an industry agreement and later to a federal act restricting cold calling by health insurance brokers.

The question of remuneration has a specific Swiss background. In a judgment of 2006 concerning asset managers, the Federal Supreme Court held that retrocessions received by an agent belong in principle to the principal, a reasoning that was later applied by courts and commentators to brokers.⁴ The revised VAG leaves the civil law question open and concentrates on transparency. Brokers who advise corporate clients in

Basel, including the large industrial groups and the pension funds, therefore typically agree on their remuneration with the client and disclose any commissions they receive from insurers.

1 Notes

1. Art. 40 VAG (definition of insurance intermediaries, tied and untied); revised Arts. 40–45 VAG and Arts. 182 ff. AVO (as revised). To be verified. ↩
2. On the changes to the register of insurance intermediaries under the revised VAG (mandatory registration of untied intermediaries; removal of tied intermediaries from the register, subject to exceptions), see FINMA, information on the intermediaries register, and Art. 41 VAG (as revised). Details to be verified. ↩
3. Revised Arts. 41–45 VAG and AVO provisions on training (Aus- und Weiterbildung), professional liability insurance, ombudsman affiliation and information duties of intermediaries; the industry standard of the Cicero association and the Swiss Insurance Association. To be verified. ↩
4. Federal Supreme Court, BGE 132 III 460 (retrocessions in asset management, 2006); BGE 137 III 393 (2011); on the application of these principles to insurance brokers' courtage, see the literature on Art. 400 CO. To be verified. ↩

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