

Restructuring and resolution of insurers

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The most significant innovation of the revision was the introduction of a restructuring regime. Before 2024, FINMA could take protective measures and transfer an insurance portfolio to another insurer, but if an insurer was over-indebted, the only formal procedure available was bankruptcy. Bankruptcy is a crude instrument for an insurance company, because it terminates the contracts, crystallises the claims and may deprive policyholders of cover at a moment when they cannot easily obtain it elsewhere.¹ The revised act now enables FINMA to open restructuring proceedings when there is a justified concern that an insurer is over-indebted or has serious liquidity problems and when restructuring appears more favourable for the policyholders than bankruptcy.

The restructuring plan may provide for the transfer of all or part of the insurance portfolio, the conversion of debt into equity, the reduction of claims and, as a last resort, the adjustment of insurance contracts, including a reduction of benefits, provided that the policyholders are not placed in a worse position than they would be in bankruptcy.² The design borrows from the bank resolution regime, which the Credit Suisse crisis of 2023 tested and whose reform is discussed in Part F. It also reflects the IAIS Insurance Core Principle on resolution and the Key Attributes of the FSB. For the Swiss market, where no major insurer has failed in recent decades, the regime is intended to be a preventive instrument that gives credibility to the threat that shareholders and creditors, and in extreme cases policyholders, will bear losses.

The revision also facilitated the transfer of insurance portfolios in run-off. In several European jurisdictions, specialised run-off insurers acquire closed books of business from insurers wishing to release capital and reduce complexity. Under the revised Swiss law, portfolio transfers continue to require FINMA's approval, which examines whether the interests of the policyholders are protected. FINMA has signalled that it will look closely

at the capitalisation and the investment strategy of the acquirer.³ The question has a cross-border dimension, because transfers of Swiss portfolios to foreign run-off vehicles raise issues of supervisory equivalence. A Swiss group may also wish to transfer the portfolio of a foreign subsidiary under the procedures of the relevant host country, for example under Part VII of the United Kingdom's Financial Services and Markets Act 2000.

1 Notes

1. On the shortcomings of bankruptcy as a resolution tool for insurers and the absence of a restructuring procedure in the VAG before 2024, see the Federal Council dispatch of 21 October 2020 on the amendment of the VAG. To be verified. ↩
2. Revised Arts. 51a–52l VAG on the restructuring of insurers (Sanierung), including conversion of debt, reduction of claims and modification of insurance contracts, subject to the "no creditor worse off" principle; FINMA Insurance Restructuring Ordinance. Article numbers and the ordinance's title to be verified. ↩
3. On the transfer of insurance portfolios under Art. 62 VAG (as revised) and FINMA practice on run-off transactions, see FINMA communications and the literature. Status to be verified. ↩

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