

The Insurance Supervision Act of 2004

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The Insurance Supervision Act of 17 December 2004 entered into force on 1 January 2006 and replaced the act of 1978 together with several older statutes.¹ Its stated purpose, set out in Article 1, is the protection of insured persons against the risks of insolvency of insurance companies and against abuse. The phrasing is significant, because it makes policyholder protection the primary objective of insurance supervision, ahead of the stability of the financial system or the competitiveness of the industry. The FINMASA later added the protection of the functioning of the financial markets as a general objective of FINMA, so that the two aims now stand side by side.²

The act applies to insurance companies with their seat in Switzerland that carry on direct insurance or reinsurance business, to the Swiss branches of foreign insurers, to insurance intermediaries and to insurance groups and conglomerates. Every insurer needs a licence from FINMA for each line of business it wishes to operate. To obtain it, the company must submit a business plan that describes its organisation, its geographical and material scope of activity, its reinsurance arrangements, its capital resources and its risk management.³ The business plan is a living document. Any change to its essential elements requires FINMA's approval or notification, depending on the element concerned, so that the supervisor remains informed about the actual business of the company throughout its existence.

Several principles of the act reflect specific Swiss traditions. The principle of separation of lines (*Spartentrennung*) prohibits a life insurer from also writing non-life business, with limited exceptions for accident and health insurance as supplements to life policies. Its purpose is to prevent the long-term savings of life policyholders from being exposed to the volatility of non-life claims.⁴ This explains the group structures of the Swiss insurers, which typically hold a life company and a non-life company side by side under a common holding company. Baloise, for example, long operated the

The Insurance Supervision Act of 2004

Basler Leben AG and the Basler Versicherung AG as separate legal entities within the same group, a structure that the merged group has inherited. Insurance companies must take the form of a company limited by shares or a cooperative, which reflects the importance of the mutual tradition in Swiss insurance.⁵

The VAG of 2004 marked the transition from a supervision of products to a supervision of solvency and governance. The prior approval of tariffs and general conditions was largely abolished, except for occupational pension business and supplementary health insurance. In their place, the act introduced the requirement of an adequate risk management, an internal control system, an appointed actuary and an external audit firm. Insurers were also obliged to maintain sufficient capital measured by the risks they carry.⁶ The appointed actuary, who must ensure that the technical reserves are adequate and that the solvency is calculated correctly, became a central figure in this system, standing between the insurer's management and the supervisor in a way that resembles the role of the external auditor.

The act also gave the supervisor a broad catalogue of protective measures. When an insurer no longer meets its obligations, or when the interests of policyholders appear to be endangered, FINMA can intervene with measures ranging from restrictions on the free disposal of assets to the appointment of an investigating agent and the transfer of the insurance portfolio to another company.⁷ Until 2024 the law contained no specific restructuring regime comparable to that available for banks, so that the ultimate consequence of an insurer's failure was bankruptcy. The revision that entered into force in 2024 closed this gap and is discussed later in this chapter.

1 Notes

1. Federal Act of 17 December 2004 on the Supervision of Insurance Companies (VAG, SR 961.01), in force since 1 January 2006; it replaced the Federal Act of 23 June 1978 on the Supervision of Private Insurance Institutions. To be verified. ↩
2. Art. 1 VAG (purpose: protection of insured persons against insolvency risks and abuse); Art. 5 FINMASA (objectives of financial market supervision: protection of creditors, investors and insured persons and the functioning of the financial markets). To be verified. ↩
3. Arts. 3–4 VAG (licence requirement and business plan); Annex 1 AVO (classification of lines of business). To be verified. ↩

4. Art. 12 VAG (prohibition of combining life insurance with other lines, subject to exceptions); see also the corresponding rules in EU law (Art. 73 Solvency II Directive). To be verified. ↩
5. Art. 7 VAG (legal form: Aktiengesellschaft or Genossenschaft); on the group structures of Swiss insurers, see the annual reports of Baloise, Helvetia, Swiss Life and Zurich. To be verified. ↩
6. Arts. 22–24 VAG (risk management, appointed actuary verantwortlicher Aktuar); Art. 9 VAG (solvency); Arts. 28 ff. VAG (audit); on the retention of preventive product control for occupational pensions and supplementary health insurance, see Art. 4 para. 2 let. r VAG and Art. 38 VAG. To be verified. ↩
7. Art. 51 VAG (protective measures, sichernde Massnahmen); Art. 52 VAG (withdrawal of licence); Arts. 53–54 VAG (bankruptcy). To be verified. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/basel-the-insurance-supervision-act-of-2004