

The Insurance Supervision Ordinance and FINMA's circulars

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The VAG is a framework act. Its operational detail is set out in the Insurance Supervision Ordinance of the Federal Council (AVO) of 9 November 2005 and in the FINMA Insurance Supervision Ordinance (AVO-FINMA), together with a series of FINMA circulars.¹ The AVO contains the rules on the organisation of insurers, the technical reserves, the tied assets, the calculation of solvency under the SST and the special rules for occupational pension business. The AVO-FINMA specifies technical questions, for example the details of the solvency calculation and the methods admitted for the valuation of liabilities.

FINMA's circulars set out how the authority applies the law in practice. Although they lack the force of law, supervised institutions follow them because FINMA uses them as the basis for its supervisory decisions. Among the circulars relevant to insurers are those on the SST, on the technical reserves in non-life and life insurance, on tied assets, on the own risk and solvency assessment (ORSA), on corporate governance, on public disclosure, on the outsourcing of functions, on operational risks and resilience, and on the management of nature-related financial risks.² In the course of the revision of the VAG, FINMA reviewed its body of insurance circulars, transferred some of their content into the revised ordinances and revised or repealed others. Practitioners should therefore always verify which version of a circular applies to a given reporting year.

The interaction between ordinance and circular is particularly important for the SST, since many of its technical parameters, such as the risk-free interest rate curves, the standard models and the scenarios, are published by FINMA and updated regularly. This flexibility enables the supervisor to adapt the regime to new risks without legislative procedure. Critics have argued that it also gives FINMA a degree of discretion over the capital requirements of the industry that would, in other jurisdictions, be

exercised by the legislator.³ The revision of 2024 responded in part to this criticism by moving essential elements of the SST into the AVO, which is adopted by the Federal Council.

1 Notes

1. Ordinance of 9 November 2005 on the Supervision of Private Insurance Companies (AVO, SR 961.011); FINMA Ordinance of 9 November 2005 on the Supervision of Private Insurance Companies (AVO-FINMA, SR 961.011.1); both revised with effect from 1 January 2024. To be verified. ↩
2. See FINMA, list of circulars currently in force (e.g. Circular 2016/2 "Disclosure – insurers", Circular 2016/3 "ORSA", Circular 2017/2 "Corporate governance – insurers", the circular on tied assets, Circular 2018/3 "Outsourcing", Circular 2023/1 "Operational risks and resilience – banks", Circular 2025/3 on nature-related financial risks); numbering and current versions to be verified, since several circulars were revised or merged in connection with the 2024 revision. ↩
3. On the delegation of technical solvency parameters to FINMA and the debate on the democratic legitimacy of FINMA's rule-making, see the reports of the Federal Council on FINMA's regulatory activity and Art. 7 FINMASA (principles of regulation). To be verified. ↩

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