

Retrocessions and conflicts of interest

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A question that has shaped the relationship between asset managers, banks and clients in Switzerland is that of retrocessions: payments that banks and product providers make to asset managers for the placement of client assets or the distribution of products. In 2006, the Federal Supreme Court held that retrocessions received by an asset manager in connection with the management of a client's assets belong to the client and must be handed over, unless the client has validly waived them after being fully informed. In 2012 it extended this principle to distribution fees paid by product providers to banks.¹ The Financial Services Act codified the principle. A financial service provider may accept compensation from third parties only if it has expressly informed the client in advance and the client has waived it, or if it passes the compensation on to the client in full.²

The rules on retrocessions have transformed the business model of many independent asset managers, who had relied on retrocessions from banks as a significant source of income. They now charge their clients transparent fees and manage the conflicts of interest that retrocessions created through disclosure and waiver. For the practitioner, claims for the restitution of retrocessions remain a frequent subject of disputes between clients and their former asset managers or banks. In these disputes, the limitation periods and the validity of waivers are the central questions.

1 Notes

1. BGE 132 III 460 of 22 March 2006 and BGE 138 III 755 of 30 October 2012 (servat.unibe.ch/dfr): retrocessions and finder's fees received by an asset manager, and distribution fees paid by product providers (including group companies) to a bank managing client assets, fall under the duty to hand over in Art. 400 para. 1 OR. A waiver requires an agreement showing the will of the fully informed client. Art. 400 para. 1 OR, text via swissrights.ch. ↩

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2. Art. 26 FinSA (FIDLEG), text via [swissrights.ch](https://www.swissrights.ch): financial service providers may accept compensation from third parties only if they have expressly informed the clients in advance and the clients have waived it, or if they pass it on to the clients in full. The information must cover the type and scope of the compensation. ↩

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