

The constitutional mandate of 1874 and the Act of 1885

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The federal state of 1848 left commercial and trade regulation largely to the cantons. Insurance was still a small business in which foreign companies, above all German, French and British life and fire insurers, competed with a handful of Swiss foundations such as the Mobiliar in Bern, founded in 1826, the Rentenanstalt in Zurich, founded in 1857, and the reinsurance company established in Zurich in 1863.¹ Cantonal authorities had neither the expertise nor the territorial reach to examine the solvency of companies that collected premiums across the whole country and invested the proceeds abroad. A policyholder in Zurich who had paid premiums for twenty years to a life office in Gotha or London depended entirely on the good faith and the reserves of an undertaking that no Swiss authority examined.

The total revision of the Federal Constitution of 29 May 1874 changed the allocation of competences. Article 34 paragraph 2 provided that “Der Geschäftsbetrieb von Auswanderungsagenturen und von Privatunternehmungen im Gebiete des Versicherungswesens unterliegt der Aufsicht und Gesetzgebung des Bundes”, which placed the business of emigration agencies and of private insurance undertakings under federal supervision and legislation.² The combination with emigration agencies is revealing. Both trades involved promises made to ordinary people, often of modest means, whose fulfilment lay far in the future or far away, and whose failure could ruin whole families. Both were also dominated by agents who earned commissions on the conclusion of contracts and had little stake in their performance.

The economic section of the National Council’s committee took the view that the general principle of freedom of trade could not be the last word in this field. Only a nationwide authority, it argued, could maintain specialists capable of understanding the complex matter of insurance and of enforcing

effective controls. When the Federal Council later presented its draft statute, it described the aim of the Confederation modestly: the state could not guarantee that insurance would work, but it should at least “das Möglichste thun, um den Bürger vor Schaden zu sichern”.³ The formula captures an attitude that still shapes Swiss supervisory law: public protection of the insured is a duty of care, exercised through expert administration, without a state guarantee.

Eleven years passed between the constitutional mandate and the statute. The federal legislature adopted the Bundesgesetz betreffend Beaufsichtigung von Privatunternehmungen im Gebiete des Versicherungswesens on 25 June 1885. It was a short text of seventeen articles that entered into force on 1 November 1885. Its core consisted of two duties. Every private insurance undertaking that wished to do business in Switzerland needed a licence granted by the Federal Council, and every licensed undertaking had to submit annual reports to the federal authority. The HLS explains the timing by the experience of the preceding years, when bankruptcies and unsuitable personnel had damaged the reputation of the industry.⁴

Contemporaries and later authors stressed that Switzerland was early. A historical account published by Swiss Re describes the federal office created under the Act as the first dedicated insurance supervisor in Europe, ahead of the German imperial supervisory office of 1901 and the French regime of 1905.⁵ Such claims of priority need a caveat, since several German states and some Scandinavian countries had licensing requirements of various kinds before 1885. What distinguished the Swiss solution was the combination of a single federal authority, a comprehensive licensing requirement for domestic and foreign undertakings and a regular reporting duty, all established at a time when most European insurance markets were still supervised locally or not at all.

The effect of the Act on the market was immediate. Around 160 undertakings applied for a licence in 1886, and slightly fewer than half of them obtained one. The few British and American companies that had operated in Switzerland withdrew because they were unwilling to hold the reserves that the Swiss authority required.⁶ The licensing procedure thus worked as a filter from its first year. It reduced the number of market participants, excluded undertakings whose business model depended on keeping reserves at home and gave the surviving companies, many of them Swiss, a seal of approval that they could use in their marketing. This double effect, protection of policyholders and indirect support for a domestic industry, recurs throughout the history of Swiss insurance supervision.

1 Notes

1. Historisches Lexikon der Schweiz (HLS), Martin Körner and Bernard Degen, “Versicherungen”, version of 21 January 2014, <https://hls-dhs-dss.ch/de/articles/014066/>. The article describes the Mobiliar as the first durably successful domestic foundation and dates the main founding wave of Swiss insurers to the 1860s. ↩
2. Britta Delmas, “Déjà-vu: Warum der Rohstoffhandel Aufsicht braucht”, Public Eye, 20 September 2023, <https://www.publiceye.ch/de/standpunkte/deja-vu-warum-der-rohstoffhandel-aufsicht-braucht>. The article quotes the wording of Art. 34 para. 2 of the 1874 Constitution and the justification advanced in the parliamentary committee. ↩
3. Delmas, “Déjà-vu” (cited above), quoting the committee’s reasoning and the Federal Council’s message in BBl 1885, p. 120. ↩
4. Schweizerischer Versicherungsverband (SVV), “Rückblick auf 140 Jahre Versicherungsregulierung”, 20 June 2025, <https://www.svv.ch/de/rueckblick-auf-140-jahre-versicherungsregulierung>. The SVV account states that the Act comprised 17 articles, required insurers to obtain a licence and to submit annual reports, and entered into force on 1 November 1885. HLS, “Versicherungen” (cited above), which states that the Confederation issued the first insurance supervision act in 1885 after crises caused by bankruptcies and unsuitable personnel. ↩
5. Swiss Re, Geschichte der Versicherung in der Schweiz, brochure, https://www.swissre.com/dam/jcr:c24c1c66-3045-47d5-a4ca-4829f67c59dd/Markt_Broschuere_Schweiz_DE_web.pdf, p. 13. The brochure dates the Act to 1886, the year in which the licensing procedure began to operate. ↩
6. Swiss Re, Geschichte der Versicherung in der Schweiz (cited above), p. 13: “1886 bemühten sich rund 160 Unternehmen um eine Zulassung für die Schweiz. Knapp die Hälfte von ihnen wurde zugelassen.” ↩

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