

Stricter supervision of intermediaries

Areas of action for intermediaries and insurers

The partially revised Insurance Supervision Act will enter into force on 1 January 2024. One of the main aims of the revision is to strengthen consumer protection. To this end, the legislator is introducing extensive licensing and conduct rules for insurance intermediaries (hereinafter “intermediaries”). This significant tightening of supervision is a challenge for the insurance industry. We outline the specific areas of action and provide support.

Immediate measures: check applicability of the law and review FINMA register data

As an immediate measure, intermediaries should first check whether they will be subject to future supervision in future. If they qualify as untied intermediaries, they should also review their entry in the register immediately.

Untied intermediaries will have to submit follow-up documentation on [FINMA's survey and application platform \(EHP\)](#) in the first half of 2024; they must make an individual application for this. Intermediaries who do not apply for follow-up documentation by 30 June 2024 will be deleted from the register on 1 July 2024.

Who is considered an intermediary?

The Insurance Supervision Act defines intermediaries as persons who offer or conclude insurance contracts in the interest of insurance companies or other persons. They also include persons who advise policyholders with a view to concluding an insurance contract, or who propose insurance contracts. According to FINMA practice, an intermediary is anyone who significantly supports and advises policyholders in their decision to conclude a contract. Persons without direct customer responsibility are therefore not considered intermediaries within the meaning of the law; however, comparison platforms (online or via smartphone apps) are.

Media reports, descriptive comparisons or rankings of insurance products do not constitute intermediation if these publications are made without an economic interest (e.g., in consumer magazines).

Untied intermediaries have a fiduciary relationship with policyholders. They must take care of their interests and be free to choose the optimal insurance product. They may therefore not be legally, personally or economically tied to an insurance company. All other intermediaries are considered to be tied.

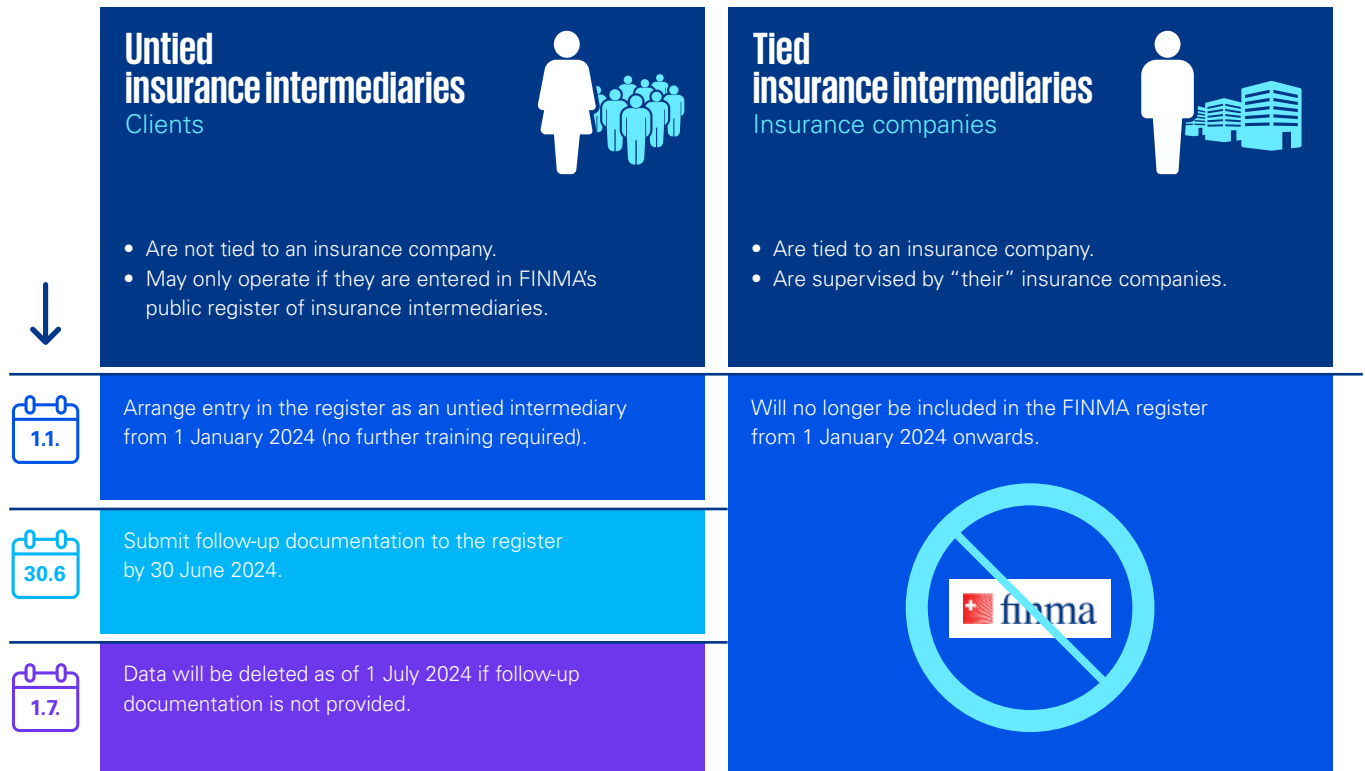
Intermediaries will have to realign their business model

Tied and untied activity at the same time is prohibited (type constraint). Intermediaries must therefore align their business model uniformly and have this reflected in their contracts. If intermediaries use terms such as “independent insurance advice”, they are considered to be untied and are therefore required to register. FINMA will prosecute any violations in this regard.

FINMA registration as a “ticket” for untied intermediaries

Untied intermediaries may only operate if they are entered in the public FINMA register of intermediaries (registration obligation). From 1 January 2024, tied intermediaries will no longer be able to register voluntarily in the FINMA register (unless this is required by the respective country of operation for activities abroad); their entries will be deleted by FINMA on 31 December.

Overview: new regulations governing insurance intermediation



Source: FINMA

Documents for registration and subsequent supervision

The Supervision Ordinance, which has also been revised, governs the documents to be submitted for registration and follow-up documentation. Documentation is extensive and includes excerpts from the commercial register, CVs, excerpts from the criminal and debt enforcement records and corporate governance documents (for companies with more than ten employees).

FINMA also periodically collects supervisory information and key figures from untied intermediaries. For 2024 – the year the new requirements enter into force – FINMA will request the following additional data and information in addition to the follow-up documentation: number of intermediary employees, number of intermediated policies and insurance segments, commission volumes (total, per partner, per intermediary, per segment) and other types of commission (e.g., portfolio commission).

Prerequisite for registration as an untied intermediary

To register as an untied intermediary, applicants must meet the following requirements:

1. Registered office, domicile, or branch in Switzerland: FINMA may approve exceptions (e.g., for pure reinsurance intermediation).
2. Personal requirements and good reputation: untied intermediaries must have capacity to act. Their reputation is determined based on excerpts from the debt enforcement and criminal records.
3. Guarantee that obligations under insurance supervision law will be met: FINMA sets requirements for corporate governance (internal regulations and appropriate business organization). Specifically:
 - Clear assignment and documentation of tasks, powers and reporting lines;
 - Clear segregation of operational control activities;
 - Documentation of key decisions;
 - Documentation of how the duty to provide information is implemented
 - Definition of principles, processes, and structures for compliance with legal, regulatory and internal provisions (compliance system);
 - Definition of principles regarding the conduct expected from employees and the skills and knowledge required for their work;
 - Embedding of suitable control mechanisms.

Untied intermediaries may adapt these corporate governance requirements to their respective intermediation activities in a risk-appropriate manner and in proportion to their size, complexity, and legal form.

4. Professional liability insurance or equivalent financial security: untied intermediaries must take out professional liability insurance for financial losses with an insurance company regulated in accordance with the Insurance Supervision Act (or be included in corresponding cover). The sum insured for all claims per year must be at least CHF 2 million. If an untied intermediary has employees who, in turn, intermediate insurance contracts or if it uses technological means to increase intermediation capacity, the insured amount shall be increased.
5. Skills and knowledge required for intermediation: individuals must now meet industry-specific minimum education and training standards. Employers must ensure that enough employees meet these requirements. The required knowledge must be proven by passing an examination.

Insurance companies supervise “their” tied intermediaries

The requirements for untied intermediaries also apply to tied intermediaries (albeit without the obligation or option to register). However, direct supervision of tied intermediaries is not the responsibility of FINMA but of the insurance companies. For insurance companies, this entails considerable effort that goes far beyond the usual quality assurance processes for “their” intermediaries.



Code of conduct for all intermediaries

All intermediaries are subject to the following duties:

- The existing duty to provide information will be amended so that intermediaries must also provide their status (tied or untied) as well as their training and continuing education certificates. FINMA will intervene if intermediaries breach their duty to provide information to policyholders. Intermediaries must therefore keep their client forms up to date.
- Intermediaries must now also avoid conflicts of interest. If they cannot rule out a disadvantage to policyholders, they must inform policyholders of the conflict of interest before concluding an insurance contract.
- Disclosure of client files: intermediaries must have these “at hand” on data carriers.
- Finally, the intermediation of life insurance policies with an investment character (known as “qualified life insurance policies”) is also governed by new provisions. Intermediaries must supply policyholders with a basic information sheet to be provided by life insurers free of charge before the contract is concluded. In addition, intermediaries must test the product for appropriateness. This means that intermediaries must now clarify whether the life insurance in question is appropriate for the policyholder in view of their knowledge and experience. The Federal Council has also introduced a suitability test in the ordinance: intermediaries must also clarify the policyholder’s investment objectives and financial circumstances and assess whether the qualifying life insurance “suits” the individual’s financial situation and life circumstances based on income and assets as well as current and future financial obligations. Intermediaries must document this and provide policyholders with a copy of this documentation and, upon request of the latter, provide an account of the



valuation, performance and costs of the underlying financial instruments. Intermediaries must store this comprehensive documentation electronically so that they can provide an account to policyholders within ten working days.

As already mentioned, direct supervision of tied intermediaries is the responsibility of the respective insurance companies. They must monitor compliance with the rules of conduct.

Additional rules of conduct for untied intermediaries

The duty to disclose compensation is also new. Untied intermediaries may only accept compensation from insurance companies or other third parties if they have expressly informed policyholders of this. If intermediaries receive remuneration from policyholders, they may only accept compensation from third parties if they pass this on to the policyholders or if the policyholders expressly waive their right to it.

How KPMG supports the insurance industry

Both intermediaries and insurance companies need to make considerable adjustments in response to the new rules on intermediary supervision. We can advise and support you in realizing the new intermediary supervision in a sustainable but pragmatic way.

Our services

- Ad hoc answers to your questions in terms of both understanding and implementation
- Reviews or creation of individual work products (instructions and forms)
- Readiness checks
- Employee and executive training
- Development and implementation of plans and projects
- Support in dealings with FINMA
- Post-implementation assessments

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