Insurance Business or Insurance Intermediation: Which FINMA Requirements Apply?

Licence, registration or insurer responsibility: the basic structure

The Insurance Supervision Act (VAG) covers three groups:

- insurers with a seat in Switzerland;
- foreign insurers, but only for their insurance activity "in der Schweiz oder von der Schweiz aus" (in or from Switzerland), and subject to treaties;
- insurance intermediaries **Art. 2 VAG**

These groups do not face the same entry requirement.

- Insurers need a FINMA licence before they start insurance activity **Art. 3 VAG**
- Untied intermediaries need an entry in the public FINMA register, and they may not act before they are entered **Art. 41 VAG** **Art. 42 VAG**
- Tied intermediaries need neither. Since 1 January 2024 they can in principle no longer be entered in the register. For supervisory purposes they are assigned to the insurer for which they offer or conclude contracts. That insurer must check their reputation and their guarantee that they will comply with the VAG **FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicheru** .

Every new business model should therefore be tested against three questions, in this order:

1. Is the activity insurance at all?
2. If so, does the business itself carry the risk (insurer), or does it distribute contracts of someone else who carries it (intermediary)?
3. If it is an intermediary, is it tied, untied or exempt?

The most serious errors are made at the first two questions. A distributor that in fact carries the risk is carrying on insurance activity without a licence. The consequences of that are discussed in the section on enforcement below.

The current regime rests on two amendments:

- The partial revision of 18 March 2022, in force since 1 January 2024. Among other things, it introduced the ancillary-intermediary exemption, the guarantee-association carve-out and the business-plan declarations for segment-based relief **Art. 2 VAG** **Art. 4 VAG**
- The Federal Act of 16 December 2022 on the regulation of intermediary activity, in force since 1 September 2024. It added a special regime for supplementary health insurance **Art. 31a VAG** **Art. 86 VAG**

The VAG version valid from 1 September 2024 is the current one **VAG (2024-09-01)**.

Step 1: Is the business model insurance?

The five-element test and its substance-over-form approach

Neither the VAG nor the Insurance Supervision Ordinance (AVO) defines insurance. The Federal Supreme Court requires five cumulative elements:

- a risk;
- a premium paid by the insured;
- the insurer's performance;
- the independence of the operation;
- compensation of risks according to statistical laws. The Court equates this element with "der planmässige Geschäftsbetrieb" (planned business operation) **BGE 107 Ib 54**.

The Court confirmed the test in 2011 **2C_410/2010**. The Federal Administrative Court applies it to decide whether a licence under Art. 2 para. 1 lit. a VAG is required **b-2808-2009**. The VAG covers only insurance business, not merely insurance-like transactions. It cannot be applied by analogy **BGE 76 I 362**.

The test looks at economic substance. In B-2808/2009 the Federal Administrative Court made two points:

- An undertaking cannot escape supervision because its contracts lack many typical features of an insurance contract under the Insurance Contract Act (VVG).
- The customer's ability to influence whether the insured event occurs does not negate the risk **b-2808-2009**.

Independence: the decisive element for embedded and bundled cover

Most borderline cases turn on independence. The question is whether the cover is a separate operation, or only an ancillary clause ("Nebenabrede") or modality of another contract.

Cover that lacks independence. In BGE 76 I 362, mortgage banks waived the outstanding annuities if the borrower died, in return for a premium. Risk, premium and planned operation were conceded. The Court nonetheless held that the waiver was "lediglich ein Zusatzvertrag zum Darlehensvertrag" (merely a supplementary agreement to the loan contract) and an integral part of the mortgage business. No licence was required **BGE 76 I 362**.

The decision should be read with care. The banks were already supervised under banking law, and the Court regarded the waiver as inherent in their particular mortgage business **BGE 76 I 362**.

Cover that is independent. The contrasting decisions show how narrow this exception is.

- Used-car guarantee. In BGE 107 Ib 54, a guarantee was sold through partner garages for CHF 140 per car. It covered repairs to the engine, gearbox and differential up to CHF 3,500. The Court held that this was insurance, not a seller's warranty under Art. 197 ff. CO, because it covered third-party cars regardless of any defect in the provider's own products. The Court added that mixed transactions can be insurance where the insurance benefits have "eine gewisse Bedeutung" (a certain importance) **BGE 107 Ib 54**.
- Legal-protection product. In BGE 58 I 256, a product combined advisory services with cover for legal costs. Combining insurance benefits with services of another kind did not remove their autonomy, because the cover was not a mere accessory of the service element **BGE 58 I 256**.

- Rent-deposit guarantee. In 2C_410/2010, the guarantee was autonomous because it was "pas l'accessoire du contrat de bail" (not accessory to the lease). The provider was not a party to the lease **2C_410/2010**.
- Group captive. In BGE 114 Ib 244, a captive was independent because its contracts were concluded between separate legal entities and were not side agreements to a main transaction **BGE 114 Ib 244**.

For embedded insurance, these decisions point to three indicators. Cover is more likely to be insurance in the supervisory sense where:

- it is priced or charged separately;
- it is provided by someone other than the seller of the main product;
- it extends beyond the seller's own contractual performance, for example beyond the seller's liability for defects in its own goods.

If those indicators are present, the seller must place the risk with a licensed insurer. It may then act at most as an intermediary.

Guarantee and suretyship products

Commercial guarantee products recur in the case law. In 2C_410/2010 the Court rejected the argument that a rent-deposit product was a simple suretyship, for two reasons:

- the landlord could claim against the provider without first pursuing the tenant;
- the provider offered its guarantees "à un nombre indéterminé de personnes, sous la forme de "produits" standardisés et de manière planifiée" (to an indeterminate number of persons, in the form of standardised "products" and in a planned manner) **2C_410/2010**.

The Federal Administrative Court had added that the contracts lacked the subsidiarity required for a suretyship under Art. 492 ff. CO. It also held that they went beyond a cumulative assumption of debt **b-2808-2009**.

Since 2024 the statute contains a narrow carve-out. It covers associations, cooperatives and foundations that conclude guarantee-type contracts, in particular suretyships or guarantees, with their own members. Two conditions apply:

- their territorial activity must be limited to Switzerland; and
- the profit generated must be allocated to the contracting parties **Art. 2 VAG**

A guarantee company selling to the general public does not meet these conditions. For such companies, the rent-guarantee case law remains controlling.

Exemptions require a specific legal basis

The Federal Supreme Court has read exemptions restrictively.

- In BGE 107 Ib 54, the former exemption for undertakings of minor economic significance required, cumulatively, a small circle of insureds and insignificant benefits. Neither condition was met **BGE 107 Ib 54**.
- In BGE 114 Ib 244, the Court held that there is no general clause exempting an insurer merely because the insureds do not need protection **BGE 114 Ib 244**.

Both decisions concern the former Act. The minor-significance exemption survived in the 2004 VAG as a discretionary FINMA exemption until 31 December 2023 **VAG (2023-01-01)**, but it has since been repealed (see the section on foreign insurers below). The decisions are consistent with the current structure, under which exemptions require a specific basis in Art. 2 para. 2 or para. 5 VAG **Art. 2 VAG** These exemptions are discussed below.

Step 2: Who carries the risk? Insurer or intermediary

Under Art. 40 para. 1 VAG, an intermediary is any person who offers or concludes insurance contracts in the interest of insurers or other persons. This applies "unabhängig von ihrer Bezeichnung" (regardless of designation) **Art. 40 VAG** Art. 182a para. 1 AVO adds persons who advise policyholders with a view to concluding a contract, and persons who propose contracts **Art. 182a AVO**.

An intermediary does not carry the insured risk. A business that does carry it is an insurer, whatever it calls itself.

The rent-deposit litigation shows how this line works in practice.

- Before restructuring. The provider guaranteed landlords' claims in its own name. FINMA found that it was carrying on insurance activity without a licence **b-2808-2009**.
- After restructuring. The provider concluded cooperation and collective-insurance contracts with a licensed insurer. From then on, the insurer was the risk carrier. The provider was the policyholder and acted as "intermédiaire d'assurance lié" (tied insurance intermediary) of that insurer **6B_917/2014**.

The same commercial product therefore moved from the licensing regime to the intermediary regime solely because the risk was transferred.

Digital distribution and comparison platforms

Since 2024, Art. 182a para. 2 AVO also treats as intermediaries persons who have an economic interest in offering or concluding a contract via a website or other electronic medium, if they either:

- provide information on contracts on the basis of individualised criteria; or
- produce a ranking of insurance products, including a price and product comparison.

Persons "welche nur Daten oder Informationen zur Verfügung stellen" (who merely provide data or information) are excluded **Art. 182a AVO**.

FINMA treats the concept as technology-neutral. It covers websites, comparison platforms and apps without any physical presence at the point of sale
FINMA Guidance 04/2023: Action plan for insurance intermediaries
. An insurer is responsible for its own electronic distribution channels
FINMA Guidance 04/2023: Action plan for insurance intermediaries
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The leading decision: Comparis (B-5886/2023). The Federal Administrative Court upheld FINMA's order that a comparison portal apply for registration **b-5886-2023**.

- The test. The decisive criterion is active participation in the process leading to the contract. The court held that a platform is an intermediary where it produces a product comparison from individualised data and gives users links to request offers from the insurers it rates **2024iv-3**.
- No change in the law. In the court's view, Art. 182a AVO merely concretises what Art. 40 para. 1 VAG already meant. The 2024 revision did not change the concept **2024iv-3**.
- Restructuring did not help. The portal later inserted a registered group company into the user journey. This did not alter the qualification, because the offer requests were still made through links on the portal's own website **b-5886-2023**.
- Reliance on an old FINMA email failed. The portal relied on a 2010 email exchange with FINMA. The court held that it could derive nothing from it **b-5886-2023**.

The limit for lead generators. The decision records that "das blosse Weiterleiten der Adressen" (the mere forwarding of addresses) of possibly interested persons is in principle not intermediation **2024iv-3**. This applies only as long as the activity remains strictly limited to forwarding addresses, and advice and all other steps towards conclusion are performed exclusively by the insurer **2024iv-3**. The court presented this as the prevailing understanding, not as a separate holding **2024iv-3**.

A lead generator that adds individualised pre-selection, rankings or an offer-request function therefore crosses the line.

Who must hold the registration. A Ticino court applied the same concept in a public procurement. A municipal broker mandate for managing an insurance portfolio was intermediation. The bidding company itself had to be registered: registration of its sole director was not enough. Its bid was therefore excluded **52.2024.459**.

FINMA likewise treats the following as intermediaries:

- in-house sales staff;
- field and office staff;
- sub-intermediaries without any direct contract with the insurer **FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler**
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Step 3: Tied, untied or exempt?

The loyalty test and the appearance rule

An untied intermediary stands in a relationship of loyalty to policyholders and acts in their interest. All other intermediaries are tied **Art. 40 VAG** The tied category is therefore the residual one.

Two rules qualify this.

- The appearance rule. Anyone who creates the appearance of acting as an untied intermediary must meet the untied requirements, including registration **Art. 182b AVO**.
- The disclosure test. The Federal Administrative Court held that classification does not depend on whether contractual ties to insurers actually exist. It depends above all on whether such ties are openly disclosed and made recognisable to potential policyholders. Anyone who does not disclose ties is treated as untied **b-5886-2023**.

Comparis presented itself as neutral and unbound, so the untied rules applied **b-5886-2023**.

The rules also work in the opposite direction. Some links between an intermediary and an insurer are incompatible "in jedem Fall" (in every case) with untied status under Art. 182c AVO. These include:

- agreements that restrict the intermediary's freedom to work for other insurers;
- cross-shareholdings of more than 10 per cent;
- management functions in the other undertaking, or other influence over it **Art. 182c AVO**.

FINMA concludes that where such a situation exists, the activity is in any event tied **FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehmen hinsichtlich der Versicherungsvermittlerinnen und Versicherungsvermittler**. In addition, nobody may act as a tied and an untied intermediary at the same time **Art. 44 VAG**

The practical choice is binary:

- Untied. The intermediary is registered, independent of insurers and paid transparently.
- Tied. The intermediary is openly attached to named insurers. It is not registered and is overseen by those insurers.

B-274/2025 shows the consequence. After an untied intermediary was struck from the register, the court considered the measure proportionate partly because he could continue to work as a tied intermediary without registration **b-274-2025**.

Exemptions for intermediaries

Three exemptions take intermediation outside supervision altogether.

1. Ancillary intermediation (Art. 2 para. 2 lit. f VAG with Art. 1h AVO). The VAG excludes intermediation of insurance that is of minor importance and complements a product or service **Art. 2 VAG** Art. 1h AVO fixes three cumulative criteria:

- the annual premium does not exceed CHF 600, excluding taxes;
- the insurance is a subordinate element of the supply of a product or service "durch einen beliebigen Anbieter" (by any provider);
- the intermediation is carried on as a secondary activity **Art. 1h AVO**.

Since 1 September 2024 the exemption does not apply to supplementary insurance to social health insurance **Art. 1h AVO**. FINMA confirms that ancillary intermediation falls outside its supervisory remit **FINMA Guidance 04/2023: Action plan for insurance intermediaries**
.

The criteria are typically met by a retailer selling a low-premium device insurance, a travel agency selling travel insurance, or a platform whose core business is insurance distribution, or where the premium exceeds CHF 600. These applications follow from the wording of the three criteria in Art. 1h AVO.

The exemption also concerns only the intermediary. The cover itself must still be written by a licensed or exempt insurer, because insurers may not cooperate with intermediaries lacking a required registration, and intermediaries may not work for unlicensed insurers **Art. 44 VAG**

2. Captive intermediaries of a single policyholder (Art. 2 para. 2 lit. c VAG). This exemption covers intermediaries that are dependent on one policyholder and pursue only the interests of that policyholder and the companies it controls. A typical example is an in-house insurance department of a group **Art. 2 VAG**

3. Outbound activity (Art. 182 AVO). Intermediation carried on abroad by an intermediary with a Swiss seat or domicile is not subject to Swiss supervision **Art. 182 AVO**. Where a foreign state requires a Swiss register entry, FINMA may nevertheless register an intermediary that is otherwise not required to register **Art. 42 VAG**

Exemptions and reliefs for risk carriers

These must be distinguished from the intermediary exemptions. They concern the risk carrier itself.

- Innovation exemption (Art. 1f AVO). Insurers that develop and directly distribute products are exempt from supervision if they meet all of the following conditions:
  - a Swiss seat;
  - the legal form of a company limited by shares or a cooperative;
  - an ordinary audit;
  - products in classes B3-B9 and B14-18;
  - at most 5,000 policies with total premiums of at most CHF 5 million;
  - a commitment to tell policyholders that they are not supervised by FINMA **Art. 1f AVO**.

If a threshold is exceeded, the business may continue for one year at most. A licence application must be filed at least six months before that year ends, and FINMA may extend this by up to three months. FINMA decides within three months of receiving a complete application. If the licence is refused, the contracts must be wound up or transferred to a licensed insurer within six months **Art. 1g AVO**.

- Old cooperatives and guarantee associations (Art. 2 para. 2 lit. d and e VAG). Certain cooperatives existing on 1 January 1993 are exempt under strict cumulative conditions, including gross premiums never above CHF 3 million. The guarantee-association carve-out was discussed above **Art. 2 VAG** Exempt entities under lit. d and para. 5 must inform policyholders of their exemption before the contract is concluded **Art. 2c VAG**
- Reliefs within supervision.
  - An insurer that insures only professional policyholders is released, on application, from certain requirements, including the organisational fund and tied assets. In mixed business, the release covers only the professional business. It never applies where compulsory-insurance claims of non-professionals could arise **Art. 30a VAG**
  - FINMA may grant newly licensed category-5 insurers additional solvency and organisational relief for up to three years **Art. 1e AVO**.

Foreign insurers and foreign intermediaries

What counts as activity in Switzerland. Insurance activity in Switzerland exists "unabhängig von der Art und vom Ort des Vertragsschlusses" (regardless of the type and place of contract conclusion) in either of two cases:

- a person domiciled in Switzerland is among the policyholders or insured persons; or
- property located in Switzerland is insured **Art. 1 AVO**.

An online sale by a foreign insurer to Swiss residents is therefore activity in Switzerland. The ordinance text contains no exception for cross-border correspondence business.

Exceptions. Foreign insurers without a Swiss branch are outside supervision only if they exclusively write one or more of the following:

- marine, aviation and cross-border transport risks;
- risks located abroad;
- war risks **Art. 1 AVO**.

Foreign pure reinsurers are also excluded **Art. 2 VAG**. The same territorial rules apply correspondingly to intermediation **Art. 1 AVO**.

What changed on 1 January 2024. The basic attachment of foreign insurers did not change. Before the 2022 revision took effect, the VAG already subjected foreign-seated insurers to supervision for their activity in or from Switzerland, subject to treaties, and already excluded foreign insurers carrying on only reinsurance in Switzerland **VAG (2023-01-01)**. The original wording reads "Versicherungsunternehmen mit Sitz im Ausland für ihre Versicherungstätig-keit in der Schweiz oder von der Schweiz aus, unter Vorbehalt abweichender staatsvertraglicher Bestimmungen" (insurers with a seat abroad, for their insurance activity in or from Switzerland, subject to deviating treaty provisions) **BBl 2004 7289**. The amending act of 18 March 2022 left these two provisions untouched **BBl 2022 704**.

The revision changed the surrounding framework in three respects:

- The individual FINMA exemption was repealed. The former Art. 2 para. 3 VAG allowed FINMA to exempt an insurer whose activity was of minor economic significance or concerned only a small circle of insureds, where special circumstances justified it **VAG (2023-01-01)**. The 2022 act repealed that paragraph **BBl 2022 704**. The Federal Council's message explains that it could be dropped because of the new powers of the Federal Council under para. 5 **BBl 2020 8967**. Under para. 5 lit. b, the Federal Council may exempt insurers wholly or partly from supervision, in particular to preserve the future viability of the Swiss financial centre, and may attach conditions on seat, securities and information duties **BBl 2022 704**. A provider can therefore no longer rely on a case-by-case FINMA exemption for small business. It must fit an exemption laid down in the statute or ordinance, such as Art. 1f AVO discussed above.
- The delegation to the Federal Council was widened. Formerly the Federal Council only defined what counts as insurance activity in Switzerland **VAG (2023-01-01)**. It now also regulates the scope of supervision over foreign insurers for their activity from Switzerland, and the criteria for the ancillary-intermediation exemption **BBl 2022 704**.
- Reinsurance branches can be brought under supervision. The Federal Council may subject Swiss branches of foreign pure reinsurers to supervision where recognised international standards require it. If the reinsurer is adequately supervised abroad, lighter supervision of the branch applies **BBl 2022 704**.

For contracts and business models assessed for periods before 1 January 2024, the former wording therefore remains relevant, in particular where an exemption granted under the former Art. 2 para. 3 VAG is invoked.

Requirements for a licensed foreign insurer. In addition to the general requirements, a foreign insurer must:

- be authorised in its home state;
- establish a Swiss branch, register it in the commercial register and appoint a general agent to head it;
- hold capital under Art. 8 VAG at its head office;
- show solvency that also covers its Swiss business;
- maintain an organisational fund in Switzerland;
- deposit in Switzerland a security corresponding to a fraction of its Swiss business volume, which FINMA fixes.

Deviating treaty provisions remain reserved **Art. 15 VAG**.

Foreign intermediaries. An untied intermediary must have its seat, domicile or a branch in Switzerland. FINMA may grant exceptions in justified cases **Art. 41 VAG**. The ordinance names three grounds for an exception:

- reciprocity;
- a treaty arrangement;
- the exclusive intermediation of reinsurance **Art. 186 AVO**.

Where a treaty is in prospect, FINMA may grant a time-limited exception **Art. 216c AVO**.

Comparing the principal requirements

Requirement	Insurer	Untied intermediary	Tied intermediary
Market entry	FINMA licence per insurance class, published by FINMA **Art. 3 VAG**.	**Art. 6 VAG**. Entry in the FINMA register **Art. 41 VAG**.	No licence or registration; supervised through the insurer **FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehm**
Application file	Business plan under Art. 4 para. 2 lit. a-r VAG **Art. 4 VAG**.	Information listed in Annex 6 AVO **Art. 184 AVO**.	Insurer documents the checks before cooperation starts **FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehm**
Legal form and capital	Company limited by shares or cooperative; CHF 3-20 million minimum capital **Art. 8 VAG**.	None prescribed.	None prescribed.
Fit and proper	Management, board and general agent; good reputation of qualifying holders **Art. 14 VAG**.	Good reputation and guarantee of compliance; statutory bars **Art. 41 VAG**.	Checked by the insurer **FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehm**
Qualifications	Professional skills of the persons concerned **Art. 14 VAG**.	Training and continuing education **Art. 43 VAG**.	Training and continuing education **Art. 43 VAG**.
Financial guarantee	Solvency and target capital; risk management **Art. 22 VAG**.	Professional liability insurance or equivalent security **Art. 189 AVO**.	Appropriate financial security, verified by the insurer **FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehm**
Remuneration	Not applicable.	Disclosure of third-party compensation and, where applicable, passing it on **Art. 45b VAG**.	Avoidance and disclosure of conflicts of interest **Art. 45a VAG**.

Insurer licence

The licence is granted where the legal requirements are met and the interests of insureds are safeguarded. It is granted per insurance class and includes reinsurance in that class **Art. 6 VAG**.

The business plan must include, among other things:

- the articles of association and the organisation;
- the financial resources;
- qualifying holders of 10 per cent or more;
- the responsible actuary;
- outsourcing agreements;
- the reinsurance plan;

- projected balance sheets and income statements for three years;
- risk management;
- for occupational pensions and supplementary health insurance, the tariffs and general conditions **Art. 4 VAG**

An insurer seeking segment-based relief must state, for each class, whether it writes business with professional policyholders, intragroup business or retail business **Art. 4 VAG** FINMA may request further information **Art. 4 VAG**

Minimum capital ranges from CHF 3 to 20 million depending on the classes written. FINMA sets the amount required in each case **Art. 8 VAG** The insurer must be organised to capture, limit and monitor all material risks **Art. 22 VAG**

Registration of untied intermediaries

Conditions. The applicant must prove all four of the following:

- a Swiss seat, domicile or branch;
- a good reputation and a guarantee that it will comply with the VAG;
- the qualifications required under Art. 43 VAG, or, for employers, enough qualified employees;
- professional liability insurance or an equivalent financial security **Art. 41 VAG**

Absolute bars. Registration is refused in two cases:

- an intentional conviction under Art. 86 or 87 VAG, or a criminal-record entry for a property offence under Art. 137-172ter StGB;
- an activity ban or professional ban under FINMASA **Art. 41 VAG**

Case law on the bars. In B-199/2025, the Federal Administrative Court upheld a deletion from the register based on property-offence entries. The intermediary had also failed to report the convictions to FINMA. The court held that milder measures, such as a warning or registration on probation, were "a priori nicht zielführend" (a priori unsuitable) because of the transparency function of the public register **b-199-2025**.

B-618/2024 sets the contrasting limit, under the former rule. Only convictions for acts incompatible with intermediation justified refusal. Drug-law convictions did not qualify, and FINMA was ordered to register the applicant **b-618-2024**. The court also held that applications pending on 1 January 2024 are judged under the law in force when FINMA's decision was issued **b-618-2024**.

The current Art. 41 para. 3 VAG replaces the old open criterion with a list of specific offences **Art. 41 VAG**

Professional liability insurance. The required annual aggregate cover depends on the number of employees:

Employees	Minimum cover
Fewer than two	CHF 2 million
Two to four	CHF 3 million
Five to eight	CHF 4 million
More than eight	CHF 5 million

Further conditions apply **Art. 189 AVO**:

- cover must be increased where IT systems generate a comparable volume;
- the policy must be with a VAG-supervised insurer, with a notice period of at least three months;
- claims must remain covered for five years after the policy expires;
- inclusion in a third party's policy suffices;
- FINMA decides on equivalent securities case by case.

Ongoing duties.

- Every change to the facts underlying registration must be reported to FINMA. Material changes require FINMA's prior approval **Art. 185 AVO**.
- The liability insurer or guarantor must notify FINMA if cover is suspended, ends or falls below the minimum **Art. 185 AVO**.
- Concealing convictions in the post-revision re-documentation justified deletion in B-274/2025. The court treated deletion as materially equivalent to withdrawal of the registration **b-274-2025**.

Insurers' responsibility for tied intermediaries

FINMA expects insurers to collect and assess documented information on each tied intermediary before cooperation begins. This includes:

- a CV and evidence of training;
- a reputation check against criminal and debt-enforcement records;
- proof of appropriate financial security **FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunterr** .

After that, insurers must monitor compliance on an ongoing basis. This covers information duties, conflicts of interest and training deadlines **FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehr** . The guidance is non-binding administrative interpretation, but it states FINMA's supervisory expectations under the insurer's risk-management duty **FINMA-Aufsichtsmitteilung 05/2024: Pflichten der Versicherungsunternehr** .

Training

All intermediaries, tied and untied, must have the necessary skills and knowledge. The industry sets minimum standards for training and continuing education. The Federal Council steps in only where no adequate standards exist **Art. 43 VAG**

Proof is given by examination or an equivalent certificate. Continuing education may be shown by documented learning activities **Art. 190 AVO**. Industry organisations with FINMA-recognised standards must check compliance and report lapses to FINMA **Art. 190a AVO**.

Information and conduct duties at the point of sale

What must be disclosed. Every intermediary must inform the policyholder of:

- its name and address;
- whether it acts tied or untied and, if tied, for which insurers;
- how to find out about its training;
- who is liable for negligence or errors;
- how personal data are processed **Art. 45 VAG**

Form and timing. The information must be understandable. It may be provided in standardised form, on paper or electronically. It must be given so that the policyholder can know it when applying for or accepting the contract **Art. 45 VAG** For digital journeys, this means the information must appear before the binding click.

Conflicts of interest. Intermediaries must take organisational measures against conflicts of interest. Any disadvantage to the policyholder that cannot be excluded must be disclosed before the contract is concluded **Art. 45a VAG**

Compensation of untied intermediaries. An untied intermediary may accept compensation from insurers only after expressly informing the client about it. If the client also pays a fee, the intermediary may keep the third-party compensation only if the client expressly waives it; otherwise it must be passed on in full. The information must cover the nature and amount of the compensation, or the calculation parameters and ranges, and must be given before the service is provided **Art. 45b VAG**

Access to documents. Policyholders may request a copy of their file from insurers and intermediaries. It must be delivered free of charge within 30 days **Art. 80 VAGArt. 81 VAG**

Civil-law effect. The supervisory duties have limited civil-law effect. The Vaud Court of Appeal saw no broader duty of information under Art. 45 VAG (in its former wording) than under the mandate rules of Art. 398 CO. A broker with a pure portfolio-management mandate did not have to point out a clear, highlighted coverage limitation **CACI pt15-035448-301/2018**.

For tied agents, a Graubünden decision under the former Art. 34 VVG held that the insurer answers for its agent's advice. A claim against the agent personally failed **ZB 2005 55**. Both decisions are cantonal and concern earlier wording, so they illustrate rather than settle the civil consequences under current law.

Supplementary health insurance: a special regime since 1 September 2024

Insurers may conclude an industry agreement on:

- telephone marketing and call centres;
- a ban on cold calling;
- intermediary training;
- limits on intermediary compensation;
- advice records.

On application by insurers representing at least 66 per cent of premiums, the Federal Council may declare the points on cold calling, training, compensation and advice records generally binding by ordinance. Compensation must be set according to business-management principles **Art. 31a VAG**.

Sanctions apply in two ways:

- intentional breaches of the binding rules are punishable by a fine of up to CHF 100,000 **Art. 86 VAG**;
- where an insurer disregards them, FINMA may refuse or adjust tariffs and take protective measures **Art. 31a VAG**.

The ancillary exemption is excluded in this field **Art. 1h AVO**. This is enacted current law, not a pending proposal.

Enforcement and criminal liability

Unlicensed insurance activity

FINMA can intervene directly. In B-2808/2009 it found unlawful insurance activity and ordered dissolution and liquidation. As immediately enforceable provisional measures, it also:

- prohibited the activity and related advertising;
- appointed investigating agents to replace the company's organs;
- blocked the company's accounts **b-2808-2009**.

FINMA annulled the dissolution and liquidation once the company concluded a compliant contract with a licensed insurer. The finding of unlawful activity was upheld on appeal **b-2808-2009**.

Regularisation by transferring the risk to a licensed carrier is therefore the realistic exit route.

Criminal provisions

Art. 44 FINMASA. Intentionally carrying on an activity that requires a licence or registration without having one is punishable by up to three years' custodial sentence or a monetary penalty. Negligence is punishable by a fine of up to CHF 250,000 **Art. 44 FINMASA**.

6B_917/2014. The Federal Supreme Court held this norm sufficiently precise. It held that an authority's warning that a licence was required excluded any excusable mistake of law **6B_917/2014**. However, extended deadlines and acceptance of a security during regularisation could in good faith be understood as signalling tolerance. The sentence was therefore annulled and remitted, while the conviction stood **6B_917/2014**.

Art. 87 VAG. The same penalty applies to two further acts:

- concluding or intermediating contracts for an unlicensed insurer;
- distributing contracts through an intermediary that lacks a required registration **Art. 87 VAG**.

This reinforces the insurer's prohibition on cooperating with unregistered intermediaries **Art. 44 VAG**. FINMA states that unregistered untied intermediaries act without authorisation **FINMA Guidance 04/2023: Action plan for insurance intermediaries**.

Art. 86 VAG. Breaches of the information duties under Art. 45, 45a para. 2 and 45b VAG, and of the exemption disclosures under Art. 2c VAG, are contraventions. They are punishable by fines of up to CHF 100,000 if intentional, or CHF 50,000 if negligent **Art. 86 VAG**.

Transitional rules

The transitional periods of the 2022 revision ran from its entry into force on 1 January 2024.

Statutory periods. Art. 90a VAG set:

- six months for insurers' declarations of segment business;
- one year for the qualified-life-insurance duties;
- two years for the training requirements under Art. 43 VAG **Art. 90a VAG**.

Re-documentation of registered intermediaries. Untied intermediaries already registered had to file the full registration documents within six months **Art. 216c AVO**. FINMA stated this deadline as 30 June 2024 and said it could not in principle be extended **FINMA Guidance 04/2023: Action plan for insurance intermediaries**. FINMA set the same date for foreign intermediaries **FINMA Guidance 04/2023: Action plan for insurance intermediaries**. The Federal Administrative Court held that the six-month registration duty of Art. 90 para. 3 VAG continues to apply under the revised regime **b-274-2025**.

Continuing education. Intermediaries already registered must meet the continuing-education requirements within two years of the ordinance amendment of 2 June 2023, but at the latest two years after FINMA recognises the minimum standard **Art. 216c AVO**. FINMA's guidance refers to a two-year period ending on 1 January 2026 **FINMA Guidance 04/2023: Action plan for insurance intermediaries**. Where the minimum standard was recognised later, the ordinance's alternative deadline controls.

Application checklist

1. Risk. Does the product promise a benefit on an uncertain event, against payment, priced across a pool? If so, apply the five-element test **BGE 107 Ib 54**.
2. Independence. Is the cover separately priced, provided for third-party goods or obligations, or offered as a standardised product to an indeterminate public? If so, it is not a mere ancillary term **2C_410/2010**.
3. Risk carrier. If you carry the risk, you need a licence or a specific exemption under Art. 1f AVO or Art. 2 para. 2 VAG **Art. 1f AVO**. Otherwise, place the risk with a licensed insurer and proceed as an intermediary.
4. Intermediation. Do you advise, propose, rank or compare individually, or enable offer requests? If you only forward leads, keep strictly to address forwarding **2024iv-3**.
5. Ancillary exemption. Check all three Art. 1h AVO criteria (premium of CHF 600 or less, subordinate cover, secondary activity) and confirm that no supplementary health insurance is involved **Art. 1h AVO**.
6. Status. Choose tied or untied. Avoid any appearance of neutrality if you are tied, and avoid Art. 182c AVO links if you are untied **Art. 182b AVO Art. 182c AVO**.
7. Registration. If untied, register the legal entity itself before acting. Secure professional liability insurance at the required level and keep FINMA informed of changes **Art. 41 VAG Art. 185 AVO**.

8. Insurer due diligence. If tied, expect the insurer's pre-onboarding checks and ongoing monitoring
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.
9. Point of sale. Build the Art. 45 VAG information, and for untied intermediaries the compensation disclosure, into the customer journey before conclusion **Art. 45 VAG** **Art. 45b VAG**
10. Cross-border. If any policyholder, insured person or insured property is in Switzerland, Swiss supervision applies regardless of where the contract is concluded **Art. 1 AVO**.