

FINMA Guidance 06/2023

Implementation of the 'prudent person' principle and relief for business with professional policyholders

31 October 2023

1 A new regulatory framework

The revised Insurance Supervision Act (ISA; SR 961.01) and the revised Insurance Supervision Ordinance (ISO; SR 961.011) are due to enter into force on 1 January 2024. In this regard, there will be extensive adjustments to the requirements, including in the area of tied assets (introduction of the 'prudent person' principle). Insurance companies will be granted significantly higher levels of individual responsibility and the regulations will be essentially more 'principles-based'.

The provisions in the partially revised ISA are also more strongly aligned with the need of protecting the respective customers. For example, insurance companies providing insurance to professional policyholders defined under Article 98a para. 2 lets. b–g of the Insurance Contract Act (ICA; SR 221.229.1), will be able to apply to FINMA for an exemption from the requirement to hold an organisation fund and to provide tied assets for that business.

In this guidance, FINMA addresses the issues arising from the above-mentioned adjustments that it regards as fundamental, thus providing transparency for insurance companies. The references in the guidance already refer to the revised versions of the ISA and the ISO that will come into force on 1 January 2024.

2 'Prudent person' principle – implementation

The requirements governing the investment activities of insurance companies are intended to ensure that those investment activities are conducted in a manner consistent with the risk capacity, solvency and business activity of the particular insurance companies. The requirements are laid down in the ISO and are based on the 'prudent person' principle. For example, it must be ensured that insurance companies invest solely in assets and instruments for which they are able to adequately assess, evaluate, monitor and manage the associated risks, and include those risks in their reporting (Art. 69a para. 1 let. a ISO). In doing so, the security, quality, liquidity and profitability of the portfolio as a whole must be ensured. Furthermore, assets that are retained to cover technical provisions must, among other requirements, be invested in a manner that is appropriate for the type and term of the company's insurance liabilities (Art. 69a para. 1 let. c ISO).

In addition, the ISO also includes specific requirements for the investment of tied assets as well as their establishment and custody. The security, liquidity and availability of the assets play an important role when it comes to

safeguarding claims that may arise from insurance policies. Allocating assets specified in Article 79 para. 2 ISO to the tied assets does not require FINMA's approval. However, investing portions of the tied assets in values other than those specified in Article 79 para. 2 ISO is subject to prior approval from FINMA (approval of its own lists according to Art. 79 para. 1 ISO).

FINMA generally monitors compliance with the investment requirements, in particular with regard to tied assets, on an annual basis or in the event of specific incidents. For this purpose, it collects the necessary information. Additionally, it may also use the results of checks carried out by commissioned third parties (Art. 85 ISO).

FINMA will also conduct in-depth reviews to enable better monitoring of compliance with the regulations.

The current investment rules¹ shall continue to apply unchanged until entry into force of the revised ISA and the revised ISO on 1 January 2024. To enable supervised institutions to prepare for the new situation, FINMA has already provided information on its website regarding the modalities that will apply as of 1 January.²

3 Relief for business with professional policyholders – implementation (Art. 30a ISA)

The possible forms of relief for business with professional policyholders are intended to help ensure that the level of regulatory and supervisory intensity is consistent with the need to provide protection to customers. In the case of professional policyholders it is to be assumed, for example, that they are able to assess the solvency and counterparty risk associated with the insurance companies for themselves and that they do not require any legally prescribed protection by means of tied assets. The possible forms of relief that insurance companies are eligible to apply for are laid down in the revised ISA and relate, inter alia, to organisation funds, recovery plans and tied assets (Art. 30a ISA).

The possible forms of relief are, however, subject to various obligations. For example, insurance companies claiming the forms of relief provided for under Article 30a et seqq. ISA are required to clarify and document the status as a professional policyholder prior to entering into a contract (clarification and documentation obligation under Art. 30b ISA). Furthermore,

¹ www.finma.ch > Supervision > Insurers > Cross-sectoral tools > Tied assets and investment guidelines

² www.finma.ch > Supervision > Insurers > Cross-sectoral tools > Tied assets and investment guidelines > Investment activities from 1 January 2024 onwards

insurance companies providing insurance to professional policyholders will be required to inform them that they are regarded as professional policyholders, as well as of the legal consequences associated with that status, which is that their claims are not covered by tied assets (information obligation under Art. 30c para. 1 ISA), if applicable.

Upon entry into force of the revised ISA and the revised ISO on 1 January 2024, insurance companies will not automatically benefit from possible relaxations provided for under the ISA for business with professional policyholders. Insurance companies wishing to claim the available forms of relief must meet the regulatory requirements and submit an application to FINMA (Art. 30a para. 1 ISA). If FINMA approves their applications, insurance companies can be exempted from the requirement to comply with Article 10, 17–20, 52e paras. 2 and 54^{abis} ISA. To enable supervised institutions to prepare for the new situation, FINMA has already provided information on its website regarding the modalities that will apply as of 1 January 2024.³

FINMA recommends registering on MyFINMA⁴ to subscribe for information on investment activities and tied assets as well as on professional policyholders (keywords: 'supervision' and 'insurance companies').

³ www.finma.ch > Supervision > Insurers > Professional policyholders

⁴ www.finma.ch > MyFINMA