

Notice: This is an informal translation of the Insurance Supervision Law as adopted on December 17, 2004. The translation is provided for information purposes only; it is not and may not be construed as an official document.

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Swiss Federal Office of Private Insurance

Federal Law

on the supervision of insurance companies (Insurance Supervision Law, ISL)

dated 17 December 2004

The Federal Assembly of the Swiss Confederation,
pursuant to Articles 82 Paragraph 1, 98 Paragraph 3, 117 Paragraph 1 and 122
Paragraph 1 of the Swiss Federal Constitution¹
and having considered the Communication from the Federal Council dated 9 May
2003²,

hereby resolves:

Section 1: Subject, purpose and scope

Art. 1 Subject and purpose

¹ This Law regulates supervision by the Federation of insurance companies and insurance intermediaries.

² In particular, it is designed to protect the insured from abuses and the insolvency risks to which insurance companies are exposed.

Art. 2 Scope

¹ The following are subject to supervision under the terms of this law:

- a. Swiss insurance companies that operate direct insurance or re-insurance;

¹ SR 101

² BBI 2003 3789

- b. insurance companies with their registered office outside Switzerland, in respect of insurance activities conducted in or from Switzerland and without prejudice to differing provisions in international agreements
- c. insurance intermediaries;
- d. insurance groups and insurance conglomerates.

² The following are exempt from the terms of this law:

- a. insurance companies with their registered office outside Switzerland if they only operate re-insurance in Switzerland;
- b. insurance companies subject to special supervision pursuant to Swiss Federal Law, in respect of activities covered by said special supervision; these include especially those entered in the register of occupational pension plans.
- c. insurance intermediaries standing in a relationship of dependence to an insurance policy-holder, where these pursue exclusively the interests of this insurance policy-holder and the companies he controls.

³ The supervisory authority may, if special circumstances justify, exempt an insurance company whose insurance activities are only of minor commercial importance or cover only a small circle of insured parties.

⁴ The Federal Council shall define what constitutes the exercise of an insurance activity in Switzerland.

Section 2: Commencement of insurance activities

Sub-section 1: Approval

Art. 3 Compulsory approval

¹ An insurance company subject to supervision under Article 2 paragraph 1, sub-paragraphs a. and b. (insurance company) shall obtain approval from the supervisory authority before it commences insurance activities.

² If an insurance company merges, splits or undergoes transformation, this shall also require approval.

Art. 4 Application for approval and business plan

¹ An insurance company as defined in Article 2, paragraph 1, sub-paragraphs a. and b. seeking approval to carry out insurance activities shall submit an application to the supervisory authority together with a business plan.

² The business plan shall contain the following information and documents:

- a. company statutes;
- b. details of its organisational structure and range of activities to be carried out locally by the insurance company, including if appropriate details of the insurance group or insurance conglomerate to which the insurance company belongs;
- c. if insurance activities are to be exercised outside Switzerland: the licence from the competent foreign supervisory authority or an equivalent document;
- d. details of financial resources and reserves;
- e. annual accounts for the last three financial years or the opening balance sheet if a new insurance company;

- f. details of persons who directly or indirectly have at least a 10% equity holding or at least 10% of votes in the insurance company or who may exert a significant influence on its commercial activities;
- g. names of persons entrusted with the direction, supervision, control and management or for foreign insurance companies details of the person(s) holding a general power of attorney;
- h. name of the accountable actuary;
- i. name of the external auditors and the persons with responsibility for this mandate and, if the insurance company is part of an insurance group or insurance conglomerate, details of how the mandate entrusted to the external auditors of the insurance group or insurance conglomerate is organised;
- j. contracts or other agreements, indicating how the principal functions of the insurance company are to be allocated;
- k. the proposed insurance classes and the nature of the risks to be insured;
- l. where applicable, a statement relating to membership of the National Bureau of Insurance or the National Guarantee Fund;
- m. details of resources available to provide assistance services if application includes the insurance class "assistance";
- n. re-insurance plan and retrocession plan if active re-insurance is included in the application;
- o. estimate of costs required to build up the insurance company;
- p. budget showing projected balance sheets and projected statements of income for the first three financial years;
- q. details of risk identification and how risks are to be limited and monitored.
- r. the rates and general insurance conditions to be used in Switzerland for insuring all risks in occupational pension plans and in the supplementary insurance to social health insurance.

³ If an insurance company already holding approval for one insurance class wishes to obtain approval for another insurance class, the information and documents specified in Paragraph 2, sub-paragraphs a–l are required only if they differ from those already approved.

⁴ The supervisory authority may demand additional information and documents if required for the purposes of evaluating the application.

Art. 5 Changes to the business plan

¹ Changes to elements of the business plan specified in Article 4, paragraph 2, sub-paragraphs a, h, i, k and r shall be submitted to the supervisory authority for approval before they are implemented. In addition to changes to the business plan, details of any merger, split or transformation of an insurance company shall also be submitted for approval.

² The supervisory authority shall be notified of changes to elements of the business plan specified in Article 4, paragraph 2, sub-paragraphs b, c, d, f, g, j, l, m, n and q; they shall be deemed approved unless the supervisory authority starts an examination of the changes within four weeks.

Art. 6 Grant of approval

¹ Approval is granted if the legal requirements are met and the interests of the insured are safeguarded.

² If the insurance company is part of an insurance group or an insurance conglomerate, approval may be contingent upon the existence of appropriate consolidated supervision by a supervisory authority with responsibility for financial services.

³ Approval is granted for one or several insurance classes. The approval also covers re-insurance activities in the relevant insurance class. The Federal Council shall define the insurance classes.

⁴ The supervisory authority shall publish details of the approvals it grants.

Sub-section 2: Requirements

Art. 7 Legal form

The legal form of an insurance company shall be a public limited company or a co-operative society.

Art. 8 Minimum capital

¹ An insurance company with its registered office in Switzerland shall have a minimum capital of CHF 3,000,000-20,000,000 depending upon the insurance classes to be operated.

² The Federal Council shall issue rules on the minimum capital for each insurance class.

³ The supervisory authority shall determine the capital required in each case.

Art. 9 Capital resources

¹ The insurance company shall have adequate disposable and unencumbered capital resources to cover its entire activities (solvency margin).

² In calculating the solvency margin, account shall be taken of the risks to which the insurance company is exposed, the insurance classes involved, the extent of the business, the geographic scope and internationally recognised principles.

³ The Federal Council shall issue rules on the capital resource allowable for this purpose. The supervisory authority shall issue rules on the calculation and level of solvency margins.

Art. 10 Organisational fund

¹ In addition to the capital, the insurance company shall also establish an organisational fund that enables it to cover, in particular, set-up and development costs or an extraordinary business expansion. For business set-up purposes, this is normally up to 50% of the minimum capital specified in Article 8.

² The Federal Council shall regulate the amount to be held in the organizational fund as well as its creation, duration of existence and reinstatement.

³ The supervisory authority shall specify the required amount to be held in the organizational fund in each individual case.

Art. 11 Purpose of company

¹ Apart from insurance activities, an insurance company may only operate business directly associated with those activities.

² The supervisory authority may approve other activities if this does not endanger the interests of the insured.

Art. 12 Simultaneous operation of life insurance and other insurance classes

If an insurance company operates direct life insurance, the only other insurance classes that it may operate are accident and health insurance.

Art. 13 Membership in the Swiss National Bureau of Insurance and the National Guarantee Fund

If an insurance company intends to operate third party motor vehicle insurance, it shall become a member of the Swiss National Bureau of Insurance and the National Guarantee Fund as specified in Articles 74 and 76 of the Road Traffic Law of 19 December 1958³.

³ SR 741.01

Art. 14 Guarantee of sound commercial activities

¹ The following persons shall be of good standing and offer a guarantee that commercial activities are beyond reproach:

- a. persons responsible for direction, supervision, control and management;
- b. for foreign insurance companies the person(s) with a general power of attorney.

² The Federal Council shall determine the required professional qualities of persons specified in Paragraph 1.

³ If important functions within the insurance company are assigned to other persons, Paragraph 1 shall apply analogously.

Sub-section 3: Additional requirements for foreign insurance companies

Art. 15

¹ A foreign insurance company intending to operate an insurance activity in Switzerland shall also meet the following requirements:

- a. have approval to exercise the insurance activity in its country of registration;
- b. establish a subsidiary in Switzerland and appoint as its manager a person with general power of attorney;
- c. in its country of principal registration have a capital equal to that specified in Article 8 and a solvency margin equal to that specified in Article 9, whereby the latter shall also cover the extent of its business in Switzerland;
- d. establish in Switzerland an organisational fund equal to that specified in Article 10 together with corresponding assets;
- e. lodge a surety in Switzerland equal to a specified percentage of the solvency margin accruing to the business in Switzerland. The supervisory authority shall determine this percentage and its method of calculation as well as the place of deposit and the assets allowable for this purpose.

² This is without prejudice to differing provisions in international agreements.

Section 3: Exercise of insurance activity

Sub-section 1: Financial resources

Art. 16 Technical reserves

¹ The insurance company shall establish adequate reserves to cover its entire commercial activities.

² The Federal Council shall determine the principles for calculating the technical reserves. It may leave details as to the nature and volume of the technical reserves to the supervisory authority.

Art. 17 Tied assets

¹ The insurance company shall guarantee claims arising from its insurance contracts by means of tied assets.

² There is no requirement to guarantee its foreign insurance portfolio pursuant to Paragraph 1, if an equivalent security is required for this purpose abroad.

Art. 18 Amount of tied assets required

The amount of tied assets shall be equal to the technical reserves specified in Article 16 plus a reasonable additional amount. The supervisory authority shall determine this additional amount.

Art. 19 Liability in respect of the tied assets

¹ Tied assets established for this purpose may only be used for the claims they are intended to guarantee.

² If an insurance portfolio is transferred to another insurance company, the value of these tied assets or assets of an equivalent value shall be transferred to the insurance company acquiring the insurance portfolio, unless the supervisory authority dictates otherwise.

Art. 20 Rules on tied assets

The Federal Council shall issue rules on the creation and location of tied assets, their coverage and control and changes to them. It may entrust regulation of the technical details to the supervisory authority.

Art. 21 Equity holdings

¹ An insurance company with its registered office in Switzerland intending to acquire an equity holding in another company shall notify the supervisory authority if the holding in the other company equals or exceeds 10, 20, 33 or 50% of the capital or voting rights.

² Whosoever intends to take a direct or indirect equity holding in an insurance company with its registered office in Switzerland shall notify the supervisory authority if the holding in that insurance company equals or exceeds 10, 20, 33 or 50% of the capital or voting rights.

³ Whosoever intends to reduce its equity holding in an insurance company with its registered office in Switzerland to below 10, 20, 33 or 50% of the capital or voting rights or to change its holding such that the insurance company is no longer a subsidiary company, shall notify the supervisory authority to this effect.

⁴ The supervisory authority may prohibit a holding or impose conditions if the nature or extent of the holding might endanger the insurance company or the interests of the insured.

Sub-section 2: Risk management

Art. 22

¹ The insurance company shall be organised so that, in particular, it can identify, limit and monitor all main risks.

² The supervisory authority shall issue rules on the nature of the risks to be identified and their monitoring by the insurance company.

Sub-section 3: Accountable actuary

Art. 23 Appointment and role

¹ The insurance company shall appoint an actuary who can be held accountable and grant him/her access to all commercial documents.

² The accountable actuary shall be of good standing, be professionally qualified and in a position to make an accurate assessment of the financial effects of the activities of the insurance company. The Federal Council shall determine the professional qualifications to be held by the accountable actuary.

³ The insurance company shall notify the supervisory authority without undue delay if the accountable actuary is dismissed or resigns.

Art. 24 Responsibilities

¹ The accountable actuary is responsible for ensuring that:

- a. the solvency margin is calculated correctly and tied assets are in accord with supervisory legislation;
- b. proper accounting principles are used and
- c. adequate technical reserves are established.

² If shortcomings are identified, the actuary shall inform the management of the insurance company without undue delay.

³ In addition, the actuary shall compile regular reports for the management of the insurance company or in the case of foreign insurance companies for the person(s) with general power of attorney. The report shall indicate the measures proposed in respect of the shortcomings identified as well as details of measures actually taken.

⁴ The supervisory authority shall issue detailed rules on the responsibilities of the accountable actuary and the content of the report.

Sub-section 4: Reporting

Art. 25 Management report and supervisory report

¹ Each year, insurance companies shall produce a management report as at 31 December consisting of the annual accounts, annual report and if required by law, the consolidated accounts. If an insurance company is part of an insurance group or an insurance conglomerate, the submission of consolidated accounts is obligatory.

² In addition, insurance companies shall produce an annual supervisory report. The supervisory authority shall specify the requirements for this report and stipulate the information and documents to be included.

³ Insurance companies shall submit the management and supervisory reports for the previous financial year to the supervisory authority by the following 30 April. An insurance company that only operates reinsurance shall submit its reports by 30 June.

⁴ Foreign insurance companies shall submit separate management reports and separate supervisory reports for the previous year for their businesses in Switzerland.

⁵ The annual accounts shall be included in the report published by the supervisory authority (Article 48).

⁶ The supervisory authority may require the submission of reports for periods of less than one year. In addition, it may also impose special conditions in respect of the management report.

Art. 26 Special accounting provisions

¹ Insurance companies shall establish the general reserve specified in Articles 671 and 860 of the Law of Obligations (OR)⁴ in accordance with their business plan. The provisions of the law on public limited companies on the formation and release of undisclosed reserves shall not apply to technical reserves. Transparency and protection of the insured parties shall be guaranteed.

² Set-up costs, the cost of raising capital and organisational costs shall be charged to the organisational fund in the year in which they are incurred.

³ Provided transparency is maintained, the Federal Council may issue rules for insurance companies that differ from the provisions of the OR on the valuation of assets and liabilities and their classification in the annual accounts.

⁴ SR 220

Sub-section 5: Audit

Art. 27 Internal monitoring of commercial activities

¹ The insurance company shall set up an effective internal audit system covering its entire commercial activities. In addition, it shall establish an internal audit function (Inspectorate) that is independent of management.

² In individual cases, the supervisory authority may, if justified, exempt an insurance company from the requirement to establish an Inspectorate.

³ The Inspectorate shall produce a report on its activities at least once a year and submit it to the external auditors.

Art. 28 External auditors

¹ The insurance company shall instruct external auditors to audit its management.

² The external audit may only be entrusted to auditing firms and auditors that:

- a. can guarantee - both professionally and personally - that their audit will be beyond reproach;
- b. are independent of the insurance company and, if the insurance company belongs to an insurance group or insurance conglomerate, are independent of its companies; and
- c. are approved by the supervisory authority as an auditor of insurance companies.

³ The Federal Council shall determine the criteria for the approval specified in Paragraph 2. It may entrust regulation of the technical details to the supervisory authority.

Art. 29 Remit of external auditors

¹ The external auditors shall examine whether the form and content of the annual accounts comply with statutory provisions, the company statutes and procedures. In addition, it shall examine, in accordance with instructions issued by the supervisory authority, whether the insurance company has complied with this law and its implementing regulations.

² It shall prepare a report of its findings and submit a copy of this report to the supervisory authority.

³ The supervisory authority may issue additional instructions to the auditors and order a special audits, the cost of which is payable by the insurance company.

⁴ The insurance company shall grant the auditors access to its books and accounting records at any time, make available the documents required for the audit and valuation of assets and liabilities and supply the information required by the auditors to discharge their mandate.

Art. 30 Duty of external auditors to provide notification

External auditors shall notify the supervisory authority without undue delay if they identify the following:

- a. criminal offences;
- b. serious irregularities;
- c. breach of good business principles;
- d. circumstances likely to endanger the solvency of the insurance company or the interests of the insured.

Sub-section 6: Special provisions for individual insurance classes

Art. 31 Restrictions

The Federal Council may impose restrictions on various insurance classes in order to protect the insured.

Art. 32 Legal expenses insurance

¹ If an insurance company intends to offer legal expenses insurance concurrently with other insurance classes, it shall

- a. assign the settlement of claims arising from its legal expenses insurance to a legally independent company (claims settlement firm); or
- b. grant the insured the right to transfer the defence of their interests, as soon as they are entitled to demand intervention by the insurance company under the terms of their insurance contract, to an independent lawyer of their choice or, if the relevant procedural provisions allow it, to another person with the skills specified in the aforementioned provisions.

² The Federal Council shall regulate the relationship between the insurance company and the claims settlement firm. In addition, it shall enact rules on the form and content of legal expenses insurance contracts, in particular on the procedure to be followed if the insurance company or claims settlement firm is unable to agree with the insured on the action to be taken to settle the claim.

Art. 33 Insurance against damage from natural hazards

¹ An insurance company may only offer fire cover for risks in Switzerland if the fire insurance includes cover for damage from natural hazards.

² The extent of cover and the premium rates for insurance against damage from natural hazards are uniform and binding on all insurance companies.

³ The supervisory body shall examine the rates and associated calculations submitted by the insurance companies to check that the resultant premiums are fair in terms of risk and costs.

⁴ The Federal Council shall issue detailed rules on:

- a. the basis for calculating premiums;
- b. the extent of cover for damage from natural hazards and limits on liability;
- c. nature and extent of statistics to be compiled by the insurance companies.

⁵ It may:

- a. stipulate the terms and conditions of insurance if necessary;
- b. take whatever action is required to achieve a spread amongst insurance companies of liabilities arising from claims, in particular to require membership of an organisation established under and civil law operated by insurance companies themselves.

Art. 34 Motor vehicle third party liability insurance

Insurance companies providing motor vehicle third party liability insurance shall notify the supervisory authority of the name and address of a claims settlement agent appointed in each of the countries in the European Economic Area in accordance with Article 79b of the Law on road traffic of 19 December 1958⁵.

Art. 35 Reinsurance

¹ Articles 15, 17–20, 32–34, 36, 37, 55–59 and 62 shall not apply to insurance companies only active in reinsurance activities.

² The remaining provisions apply analogously.

⁵ SR 741.01

Art. 36 Life insurance

¹ For insurance companies that provide direct individual or group life insurance and are required to execute life insurance contracts with an interest payment guarantee, the Federal Council shall issue rules for calculating the maximum technical interest rate.

² Insurance companies that provide direct individual or group life insurance and are required to execute life insurance contracts with capital bonuses shall compile an annual statement on capital bonuses that is capable of being understood. In particular, this shall show the basis on which bonuses are calculated and distributed.

³ The Federal Council may issue rules for the insurance companies specified in Paragraph 2 on the following:

- a. the way information to be derived from these statements is to be shown;
- b. the basis on which bonuses are calculated;
- c. the basis and extent of any bonus distribution.

Art. 37 Special rules for occupational pension providers

¹ Insurance companies active in occupational pension provision shall establish separate tied assets for the liabilities arising from their occupational pension activities.

² They shall compile separate annual operating statements for their occupational pension activities showing in particular:

- a. any drawings from reserves for future capital bonuses;
- b. premiums sub-divided into savings, risk and cost premiums;
- c. benefits;
- d. any binding capital bonus allocation distributed to policyholders during the previous year;
- e. investment earnings from funds together with unrealised profits or losses on investments;
- f. income and expenditure from the use of derivative financial instruments;
- g. substantiated acquisition and management costs;
- h. substantiated asset management costs;
- i. premiums and benefits arising from the reinsurance of disability, mortality and other risks;
- j. formation and release of substantiated technical reserves and substantiated specific equalisation funds.

³ The Federal Council shall issue rules on:

- a. the way the information to be derived from the separate operating statements is to be shown;
- b. the basis on which capital bonuses are calculated;
- c. the basis on which the capital bonuses are then distributed.

⁴ The capital bonuses shown shall equal at least 90% of the capital bonuses calculated in accordance with Paragraph 3, sub-paragraph b.

⁵ If the operating statement shows a loss, no capital bonus may be established for the financial year in question. The loss shown shall be carried forward to the subsequent year and then taken into account when the next capital bonus is calculated.

Art. 38 Investigation of rates subject to approval

The supervisory authority, within the scope of the approval process, on the basis of the rate calculations submitted by the insurance company, and without prejudice to Article 33 paragraph 3, will investigate whether the proposed rates are in a range that, first, will ensure the solvency of the individual insurance companies and, second, will protect the insured parties from abuses.

Art. 39 Minimum benefits

Insurance companies to which has been transferred the ownership of the assets of the occupational pension plans set up by them and economically or organisationally dependent on them, must pay no less benefits than the obligatory occupational pension plan.

Section 4:
Insurance intermediaries

Art. 40 Definition

Insurance intermediaries are persons who, irrespective of their designation, offer or conclude insurance policies in the interests of an insurance company or other person.

Art. 41 Inadmissible activities

Insurance intermediaries shall not exercise any activity for the benefit of insurance companies who are subject to this law but not authorised to exercise insurance activities.

Art. 42 Register

- ¹ The supervisory authority shall maintain a register of insurance intermediaries (register).
- ² The register is public.
- ³ The Federal Council shall regulate details.

Art. 43 Register entry

- ¹ Registration is compulsory for insurance intermediaries who are not tied to an insurance company, either legally, commercially or in any other way.
- ² Registration is voluntary for the remaining insurance intermediaries.

Art. 44 Requirements for register entry

- ¹ The register is only open to those:
 - a. with adequate professional qualifications or in the case of legal persons if sufficient of their staff have these qualifications; and
 - b. with professional liability insurance or who have provided a financial surety of equivalent value.
- ² The Federal Council shall determine the required qualifications and the minimum level of financial surety. It may entrust regulation of technical detail to the supervisory authority.

Art. 45 Duty to provide information

- ¹ As soon as insurance intermediaries establish contact with an insured, they shall provide him or her with at least the following information:
 - a. their name and address;
 - b. whether the insurance offered in a specific class comes from one or several insurance companies, and the identity of the insurance companies in question;

- c. the nature of their contractual relationship with the insurance company/companies for which they are acting and the identity of the companies in question;
- d. the person with liability for negligence, errors or incorrect information relating to their activities as intermediaries;
- e. the processing of personal data, in particular the purpose, extent and recipients of these data and their retention.

² The information referred to in Paragraph 1 shall be made available on a permanent medium accessible to the insured.

³ The Federal Council shall regulate the details.

Section 5: Supervision

Sub-section 1: General

Art. 46 Remit

¹ The remit of the supervisory authority is as follows:

- a. To monitor compliance with insurance and supervisory legislation.
- b. To check whether commercial activities of insurance companies are sound.
- c. To monitor compliance with the business plan.
- d. To check whether insurance companies are solvent, have established the statutory technical reserves and manage and invest assets properly.
- e. To check whether the claims settlement function is performed properly in accordance with the provisions of the Road Traffic Law of 19 December 1958⁶ on motor vehicle third party liability insurance.
- f. To protect the insured from any abuse by insurance companies or insurance intermediaries.
- g. To intervene in the event of any mismanagement that endangers the interest of the insured.

² The supervisory authority may call upon third parties at any time to check compliance with the law. The insurance company shall carry these costs. Third mandated parties mandated are released, vis-à-vis the supervisory authority, from their duty of confidentiality.

³ The Federal Council shall issue specific rules on individual areas of responsibility.

Art. 47 Investigating powers and duty to provide information

¹ The supervisory authority may perform checks at any time.

² Insurance companies, insurance intermediaries and external auditors shall provide the supervisory authority with the information or documents that the latter requires to carry out its remit. Auditors are released, vis-à-vis the supervisory authority, from their duty of confidentiality.

³ The management of the insurance company shall notify the supervisory authority without undue delay of any circumstances of relevance to the latter's supervisory function.

⁴ If an insurance company assigns important functions to another natural or artificial person, those persons are similarly subject to the duty to provide information.

⁶ SR 741.01

Art. 48 Reporting by the supervisory authority

The supervisory authority shall publish an annual report on its activities and insurance companies subject to its supervision.

Art. 49 Publication of decisions

¹ The supervisory authority shall publish regular information on decisions on insurance law.

² The Swiss courts shall provide the supervisory authority free of charge with a copy of all judgements relating to the law on insurance contracts.

Art. 50 Funding of insurance supervision

¹ The supervisory authority shall charge fees for its official rulings and services. To cover supervisory costs not included in these fees, insurance companies, insurance groups and insurance conglomerates subject to supervision and the insurance intermediaries referred to in Article 43, paragraph 1 shall pay an annual supervisory fee.

² The supervisory fee payable is based on costs during the financial year and the premium income of each individual insurance company as a percentage of the total premium income of all insurance companies or on a time basis.

³ The Federal Council shall regulate the details. In particular it shall specify what supervisory costs are recoverable and determine the relevant premium income and fee rates.

Sub-section 2: Safeguards

Art. 51 Principle

¹ If an insurance company or insurance intermediary fails to comply with the provisions of this law or instructions issued by the supervisory authority or if the interests of the insured appear threatened in some other way, the supervisory authority shall take action as seems appropriate in order to protect the interests of the insured.

² In particular, it may:

- a. block an insurance company's free access to its own assets;
- b. order the deposit of assets or block them;
- c. assign powers entrusted to an executive body of an insurance company to a third party in full or in part;
- d. transfer the insurance portfolio and the associated tied assets to another insurance company subject to the latter's agreement;
- e. order the realisation of tied assets;
- f. demand the dismissal of persons entrusted with direction, supervision, control or management or that of the person(s) with general power of attorney or the accountable actuary and ban them from exercising further insurance activities for a maximum of five years;
- g. remove an insurance intermediary from the Register specified in Article 42.

Art. 52 Liquidation

If an insurance company goes into liquidation, the supervisory authority may appoint the liquidator.

Art. 53 Opening of bankruptcy proceedings

¹ Approval from the supervisory authority shall be required before bankruptcy proceedings are opened in respect of an insurance company. The supervisory authority shall grant approval if it is not possible to restructure the company.

² The supervisory authority is vested with the powers specified in Article 170 of the Federal legislation of 11 April 1889⁷ on debt enforcement and bankruptcy (SchKG).

Art. 54 Execution of bankruptcy proceedings

¹ The supervisory authority may appoint special administrators and assign to them the entire powers of the meeting of creditors; in addition, it may authorise an individual to represent the insurance portfolio in dealings with the administrators.

² It may issue special instructions for the call for creditors that differ from the provisions of the SchKG⁸.

³ Debts of the insured identifiable from the books of the insurance company are deemed to have been lodged.

⁴ First call on the proceeds from the tied assets shall be the claims arising from insurance contracts covered by the sureties pursuant to Article 17. Any residue shall be paid into the assets divisible amongst creditors.

Sub-section 3: Additional safeguards in respect of life insurance

Art. 55 Bankruptcy of insurance companies

¹ Contrary to the provisions of Article 37, paragraph 1 of the Federal law of 2 April 1908⁹ on insurance contracts, life insurance policies secured by the tied assets are not terminated upon the opening of bankruptcy proceedings.

² For the insurance companies pursuant to Paragraph 1 the supervisory authority:

- a. may prohibit surrenders as well as the collateralization, advance disbursement and, in the event of Article 36 of the Federal law of 2 April 1908 on insurance contracts, the disbursement of the mathematical reserve; or
- b. may grant deferment to the insurance company in respect of its obligations and to the insured parties in respect of their premium payments.

³ During the deferment of premium payments, an insurance contract may be terminated or converted into paid-up insurance only upon the written request of the insured.

Art. 56 Realisation of tied assets following bankruptcy

Unless the supervisory authority issues special instructions, it shall order the administrators to realise the tied assets. Insurance contracts are terminated as soon as this order is issued. Thereafter, the insured and those with valid claims may lodge claims arising from Article 36, paragraph 3 of the Federal law of 2 April 1908¹⁰ on insurance contracts, claims for matured policies and claims for credited capital bonuses.

⁷ SR 281.1

⁸ SR 281.1

⁹ SR 221.229.1

¹⁰ SR 221.229.1

Sub-section 4: Additional safeguards in respect of foreign insurance companies

Art. 57 Exclusion of third-party claims

For foreign insurance companies, the tied assets and statutory deposit act as security for claims from insurance contracts in the insurance portfolio to be guaranteed under the provisions of this law. These sums may only be used to discharge the claims of third parties if claims by the insured parties have been discharged in full.

Art. 58 Place of enforcement and compulsory realisation

¹ For foreign insurance companies, the venue for proceedings to realise the security for claims from insurance contracts in the insurance portfolio to be guaranteed under the provisions of this law shall be that where the Swiss subsidiary is located (Art. 151 ff. SchKG¹¹). If the supervisory authority releases real property for sale, the proceedings are conducted where the property is located.

² If an application for an enforced sale is made, the enforcement office shall advise the supervisory authority within 3 days.

³ If the insurance company fails to provide evidence within 14 days of receiving the application for the enforced sale, that it has satisfied its creditors in full, the supervisory authority shall advise the enforcement office - after consulting the insurance company - which of the tied assets and any deposit are to be released for sale.

Art. 59 Restrictions on disposal

If the supervisory body in the country of registration of an insurance company has restricted or prohibited the insurance company's right to dispose freely of its assets, the Swiss supervisory authority may - at the request of the former supervisory body - make a similar order against the insurance company in respect of its entire Swiss business.

Sub-section 5: Termination of insurance activity

Art. 60

¹ If an insurance company waives its approval, it shall submit a winding-up plan to the supervisory authority

² This plan shall contain the following information:

- a. procedure for winding up its financial obligations from its insurance contracts;
- b. resources allocated for this purpose; and
- c. person responsible for this task.

³ If the insurance company fails to abide by the approved winding-up plan, Article 59, paragraph 2 shall apply analogously.

⁴ The insurance company that waives its approval may not conclude further insurance contracts in the insurance classes in question; existing insurance contracts may not be renewed and the extent of cover may not be extended.

⁵ If the insurance company complies with its obligations under supervisory law, it is released from supervision and its deposit is returned.

Art. 61 Withdrawal of approval

¹ The supervisory authority may withdraw approval to operate insurance for one or all insurance classes if the insurance company:

¹¹ SR 281.1

- a. no longer satisfies the requirements for approval; or
- b. suspends commercial activity for more than six months.

² The supervisory authority shall take whatever action is required, in particular those specified in Article 51, in order to protect the interests of the insured.

³ If approval is withdrawn from an insurance company, it may not conclude further insurance contracts; existing insurance contracts may not be renewed and the extent of cover may not be extended.

Art. 62 Transfer of insurance portfolio

¹ If an insurance company transfers its Swiss insurance portfolio in full or in part to another insurance company under the terms of a contract, this shall require the approval of the supervisory authority. The supervisory authority shall only approve the transfer if the overall interests of the insured are protected.

² If the supervisory authority orders a portfolio to be transferred, it shall specify the conditions.

³ The company acquiring the portfolio shall inform each of the insured parties in question individually within 30 days of the approval that the portfolio has been transferred and that they have a right to terminate the contract. An insured may terminate his/her insurance contract within three months of this individual notification.

⁴ The supervisory authority may exclude the right to terminate the policy, if the transfer of the portfolio does not change, in commercial terms, the party with whom the insured has his or her contract.

Art. 63 Public announcements

¹ The supervisory authority shall make public - at the expense of the insurance company - the fact that the company has waived its operating approval or that approval has been withdrawn.

² It shall make public - at the expense of the acquiring insurance company - the fact that approval to transfer the portfolio has been granted.

Section 6:

Special provisions relating to the supervision of insurance groups and insurance conglomerates

Sub-section 1: Insurance groups

Art. 64 Insurance group

Two or more companies form an insurance group, if:

- a. at least one is an insurance undertaking;
- b. as a whole, they operate primarily in the insurance sector; and
- c. they are an economic unit or are linked in some other way by influence or control.

Art. 65 Groups subject to group supervision

¹ The supervisory authority may subject to group supervision an insurance group belonging to a company in Switzerland, if the insurance group:

- a. is actually managed from Switzerland
- b. is actually managed from abroad, but no equivalent supervision is exercised there.

² If a foreign body claims concurrent supervision of the insurance group either in full or in part, the supervisory authority shall, whilst reserving its authority and with due regard to any possible conglomerate supervision, come to an agreement with the former on jurisdiction, procedures and

scope of supervision. Prior to its decision, it shall consult those companies in the insurance group with a registered office in Switzerland.

Art. 66 Relationship to individual supervision

The group supervision pursuant to this Section shall be in addition to the individual supervision of an insurance company.

Art. 67 Guarantee of sound commercial activities

For persons responsible for the direction, supervision, control and management of the insurance group as well as its risk management, Articles 14 and 22 shall apply analogously.

Art. 68 Monitoring of risks

The supervisory authority may issue rules on the monitoring of internal group procedures and group-wide risk concentration.

Art. 69 Capital resources

¹ The Federal Council shall determine the group-wide capital resources allowable for this purpose.

² The supervisory authority shall specify the required capital resources. They are based on existing principles recognised internationally in the insurance sector and reflect the importance of the remaining business sectors and the associated risks.

Art. 70 External audit

Insurance groups shall have an external auditor. Articles 28 and 29 apply analogously.

Art. 71 Duty to provide information

If insurance companies belong to an insurance group, the duty to provide information specified in Article 47 shall apply to all companies in the group.

Sub-section 2: Insurance conglomerates

Art. 72 Insurance conglomerate

Two or more companies form an insurance conglomerate if:

- a. at least one company is an insurance company;
- b. at least one is a bank or securities dealer of considerable economic importance;
- c. as a whole they operate primarily in the insurance sector; and
- d. they form an economic unit or are linked in some other way by influence or control.

Art. 73 Conglomerates subject to conglomerate supervision

¹ The supervisory authority may make an insurance conglomerate belonging to a company in Switzerland subject to conglomerate supervision if it:

- a. is actually managed from Switzerland; and
- b. is actually managed from abroad, but no equivalent supervision is exercised there.

² If a foreign body claims concurrent supervision of the insurance conglomerate, either in full or in part, the supervisory authority shall, whilst preserving its authority and with due regard to any possible group supervision, come to an agreement with the former on jurisdiction, procedures and content of supervision. Prior to its decision, it shall consult those companies in the insurance conglomerate with a registered office in Switzerland.

Art. 74 Relationship to individual and group supervision

The conglomerate supervision pursuant to this Section shall be in addition to individual supervision and supervision of an insurance or financial group by the relevant competent supervisory bodies.

Art. 75 Guarantee of sound commercial activities

For persons responsible for the direction, supervision, control and management of the insurance conglomerate as well as its risk management, Articles 14 and 22 shall apply analogously.

Art. 76 Monitoring of risks

The supervisory authority may issue rules on the monitoring of the conglomerate's internal procedures and conglomerate-wide risk concentration.

Art. 77 Capital resources

¹ The Federal Council shall determine the conglomerate-wide capital resources allowable for this purpose.

² The supervisory authority shall specify the required capital resources. They are based on existing principles recognised internationally in the insurance and financial sectors and reflect the importance of these business sectors and the associated risks.

Art. 78 External audit

Insurance conglomerates shall have an external auditor. Articles 28 and 29 shall apply analogously

Art. 79 Duty to provide information

If insurance companies belong to an insurance conglomerate, the duty to provide information specified in Article 47 shall apply to all companies in the conglomerate.

**Section 7:
Cooperation and procedures**

Art. 80 National exchange of information

The supervisory authority may disclose information and documents not in the public domain to other supervisory bodies of financial services in Switzerland and the Swiss National Bank, if they are required for the discharge of their remits.

Art. 81 Cooperation with foreign supervisory bodies

¹ The supervisory authority may ask foreign supervisory bodies responsible for financial services for information and documents, if the supervisory authority requires them for the purposes of implementing this law.

² They may only disclose information and documents not in the public domain to foreign supervisory bodies responsible for financial services, if these bodies are subject to professional or official confidentiality and the information provided:

- a. is used solely for direct supervisory activities within their area of competence; and
- b. is only passed on with the prior approval of the Swiss supervisory authority or pursuant to a general authority arising from an international agreement, to competent authorities and bodies entrusted with a supervisory remit in the public interest.

³ The supervisory authority shall not give this approval if the information is to be passed on to prosecuting authorities and mutual assistance has been excluded in criminal cases. The supervisory authority shall make its decision in consultation with the Swiss body responsible for mutual assistance

⁴ If the information to be provided by the supervisory authority relates to individual insured parties, the Federal Law of 20 December 1968¹² on administrative procedures shall apply.

⁵ The Federal Council may conclude international agreements as referred to in Paragraph 2 in order to regulate cooperation with the foreign supervisory bodies responsible for financial services.

Art. 82 Cross-border investigations

¹ For the purposes of enforcing this law, the supervisory authority may directly investigate foreign subsidiaries of insurance companies, if it is responsible for their consolidated supervision as part of the supervision of insurance groups or insurance conglomerates as defined by this law. The investigation may be conducted by the supervisory authority itself or entrusted to auditors.

² It may give permission to foreign supervisory bodies responsible for insurance or financial services to directly investigate Swiss subsidiaries of foreign insurance companies, if these bodies are responsible for the consolidated supervision of the insurance companies in question as part of the supervision of groups or conglomerates, provided that these bodies are bound by professional or official confidentiality and the information obtained:

- a. is used solely for the consolidated supervision of insurance companies and other financial intermediaries subject to compulsory licensing; and
- b. is only passed on with the prior approval of the Swiss supervisory authority or pursuant to a general authority arising from an international agreement, to competent authorities and bodies entrusted with a supervisory remit in the public interest.

³ The supervisory authority shall refuse permission if the information is to be passed on to prosecuting authorities and mutual assistance has been excluded in criminal cases. The supervisory authority shall make its decision in consultation with the Swiss body responsible for mutual assistance.

⁴ In the event of direct cross-border investigations, the only information that may be thus obtained is that required for the consolidated supervision of insurance companies or financial intermediaries. In particular, this includes information on whether, group-wide, the insurance company or financial intermediary:

- a. is suitably organised;
- b. appropriately identifies, limits and monitors the risks inherent in its commercial activities;
- c. is managed by persons who can guarantee sound commercial activities;
- d. complies on a consolidated basis with provisions on capital resources and risk distribution; and
- e. complies fully with its duty to report to the supervisory bodies.

⁵ The supervisory authority may accompany foreign supervisory bodies responsible for insurance and financial services during their investigations in Switzerland or it may arrange for auditors to attend. The insurance company involved may demand attendance.

⁶ A subsidiary of an insurance company for the purposes of this Article is defined as follows:

- a. subsidiary companies, branch offices and representatives of insurance companies;
- b. other companies, if their activities are included in consolidated supervision by a supervisory body responsible for insurance or financial services.

⁷ Subsidiaries established under Swiss law shall provide foreign supervisory bodies responsible for insurance companies or financial intermediaries and the supervisory authority with the information required for direct investigations or mutual assistance by the supervisory authority and grant access to their books.

¹² SR 172.021

⁸ The Federal Council may conclude international agreements in order to regulate cooperation with foreign supervisory bodies responsible for financial services.

Art. 83 Appeals Commission

¹ Objections to orders issued by the supervisory authority pursuant to this law and other ordinances on insurance supervision shall be heard in the first instance by the Appeals Commission for the supervision of private insurers.

² Rulings by the Appeals Commission are subject to administrative court appeals to the Federal Court.

Art. 84 Procedures

¹ Rating rulings that affect current insurance contracts shall be announced in the gazette of the Federal Government (*Bundesblatt, Feuille fédérale, Foglio federale*). The announcement shall summarise the ruling's subject and content, and the date of its publication shall be deemed the date of its entry into effect for insured parties pursuant to Article 36 of the Federal law of 20 December 1968¹³ on administrative procedures.

² Any objections must be submitted within 30 days of the announcement.

³ Objections against rating rulings do not delay their entry into effect.

Art. 85 Courts

¹ The courts shall rule on disputes under civil law between insurance companies or between an insurance company and an insured.

² For disputes arising from supplementary insurance relating to social health insurance pursuant to the Federal law of 18 March 1994¹⁴ on health insurance, the Cantons provide a simple and fast procedure in which the court establishes the circumstances ex officio and has absolute discretion to assess the evidence.

³ In the event of disputes pursuant to Paragraph 2, the cost of proceedings may not be charged to the parties; however, in the event of malicious litigation, the court may impose costs on the guilty party in full or in part.

Section 8: Sanctions

Art. 86 Infringements

¹ A maximum administrative fine of CHF 100,000 may³ be imposed on anyone who:

- a. breaches an obligation pursuant to Article 13;
- b. breaches the duty to notify pursuant to Article 21;
- c. fails to submit within the statutory period the management and supervisory reports pursuant to Article 25;
- d. fails to establish the technical reserves required under supervisory legislation or approved in an individual case;
- e. breaches the duty to provide information pursuant to Article 45;

¹³ SR 172.021

¹⁴ SR 832.10

- f. fails to settle properly claims arising from motor vehicle third party insurance pursuant to Article 79c, paragraph 1 of the Road Traffic Law of 19 December 1958¹⁵;
- g. breaches implementing provisions, where the Federal Council has declared infringement to be a punishable act or
- h. breaches an order in which reference is made to the threat of sanctions pursuant to this Article.

² If the action is the result of carelessness, the maximum fine is CHF 50,000.

³ The supervisory authority shall pursue and rule on these infringements in accordance with the provisions of the Federal law of 22 March 1974¹⁶ on administrative criminal law.

Art. 87 Offences

¹ A prison sentence or a fine not exceeding CHF 1,000,000 may be imposed on anyone who:

- a. operates an insurance activity without the required approval;
- b. concludes or negotiates insurance contracts for an insurance company not approved for insurance activities in Switzerland;
- c. is not entered in the register of insurance intermediaries although subject to compulsory registration, or acts as an insurance intermediary after deletion from the register;
- d. misrepresents or conceals from the supervisory authority the business relationships of insurance companies, insurance intermediaries or persons to whom important functions have been assigned;
- e. provides incorrect or incomplete information in the business plan or any report required under the provisions of this law;
- f. fails to submit changes to the business plan pursuant to Article 5, paragraph 1 for approval or fails to notify the supervisory authority of changes to the business plan pursuant to Article 5, paragraph 2;
- g. fails to maintain the minimum capital resources required under supervisory legislation or specified in an individual case;
- h. removes or encumbers tied assets so that the specified sum is no longer secured;
- i. misrepresents material facts relating to tied assets or provides false information in some other way to the supervisory authority on the tied assets or the employment of funds;
- j. acts in a way that reduces the security of the tied assets
- k. fails as accountable actuary to comply with the statutory obligations specified in Articles 23 and 24;
- l. fails as an auditor with an auditing firm to comply with the statutory obligations specified in Articles 29 and 30.

² If the action is the result of carelessness, the maximum fine is CHF 100,000.

³ The court may ban a person sentenced to a prison term from any activity in a senior position with an insurance company subject to this law for a period of up to five years. In calculating the ban, the period prior to execution of the prison sentence or other form of detention is not included. Moreover, Article 54 of the Criminal Code¹⁷ shall apply.

¹⁵ SR 741.01

¹⁶ SR 313.0

¹⁷ SR 311.0

⁴ Offences arising from business activities are subject to Articles 6 and 7 of the Federal Law of 22 March 1974¹⁸ on administrative criminal law.

⁵ The Cantons are responsible for investigating and judging the circumstances of an offence.

Section 9: Concluding provisions

Art. 88 Execution

¹ The Federal Council is charged with the execution of this law. It shall appoint the supervisory authority.

² The Federal Council shall consult interested organisations before issuing regulations.

³ Cantons shall retain the right to issue police regulations on fire insurance. They may enjoin fire insurers to charge moderate premiums for fire protection and damage from natural hazards in respect of their Swiss insurance portfolio and for this purpose they may collect data from them on fire insurance totals in their respective Canton.

Art. 89 Repeal and amendment of existing law

The repeal and amendments to existing law are regulated in the Annex.

Art. 90 Transitional provisions

¹ Insurance companies granted approval under an earlier law to operate insurance classes in addition to other classes, may operate them separately from the effective date of this law and within its limits.

² The deadlines for submission of reports pursuant to Article 25 shall not apply until the financial year following the effective date of this law.

³ The insurance intermediaries specified in Article 43, paragraph 1 shall apply to the supervisory authority for entry in the register within six months of the effective date of this law.

⁴ The Federal Council may grant a transitional period for persons subject to Articles 23, 28 and 44 to acquire the required professional qualifications.

⁵ Insurance companies with a capital under that specified in Article 8 shall increase their capital within two years of the effective date of this law.

⁶ Anyone actually managing an insurance group or insurance conglomerate from Switzerland, without carrying out insurance activities in Switzerland, shall contact the supervisory authority within three months of the effective date of this law.

⁷ Existing insurance groups or insurance conglomerates shall have a period of two years from the effective date of this law in which to comply with the new provisions.

⁸ The supervisory authority may extend the deadlines specified in Paragraphs 5, 6 and 7 on receipt of a justified application.

Art. 91 Referendum and effective date

¹ This law is subject to an optional referendum.

² The Federal Council shall determine the date on which it takes effect.

¹⁸ SR 313.0

Council of States, 17 December 2004

National Council, 17 December 2004

The President: Bruno Frick
The Secretary: Christoph Lanz

The President: Jean-Philippe Maitre
The Secretary: Christophe Thomann

Expiry of the referendum period and enactment

¹ The referendum period for this law has been left unused and expired 7 April 2005¹⁹

² The law, with exception of Article 2, paragraph 2, sub-paragraph c of the amendment of the law on combating money laundering (section II, paragraph 8 of the annex), takes effect 1st January 2006.

³ Article 2, paragraph 2, sub-paragraph c of the amendment of the law on combating money laundering shall be put into effect at a later stage.

9 November 2005

On behalf of the Swiss Federal Council:

The Federal President: Samuel Schmid
The Federal Chancellor: Annemarie Huber-Hotz

¹⁹ BBI 2004 7289

Repeal and amendment of existing legislation

I

The following Federal laws are repealed:

1. Federal law of 4 February 1919²⁰ on sureties from foreign insurance companies;
2. Federal law of 25 June 1930²¹ on the protection of claims from life insurance;
3. Federal law of 23 June 1978²² on the supervision of private insurance companies;
4. Federal law of 20 March 1992²³ on direct insurance excluding life insurance;
5. Federal law of 18 June 1993²⁴ on direct life insurance.

II

The following legislation is amended as follows:

1. Law of Obligations²⁵

*Art. 671 Paragraph 6 and Art. 860 Paragraph 4
repealed*

2. Federal law of 25 June 1976²⁶ on a contribution towards the prevention of road traffic accidents

Art. 10 Monitoring and sanctions

¹ The Federal Office of Private Insurance shall monitor the collection and transfer of the accident insurance contribution pursuant to legislation on insurance supervision.

² Article 86 of the Insurance Supervision Law of 17 December 2004²⁷ shall apply.

³ In the event of a serious contravention and in order to ensure that obligations are met, the Federal Office of Private Insurance may threaten to withdraw approval. If the threat has no effect within the specified period, the supervisory authority shall withdraw approval to operate motor vehicle third party insurance.

²⁰ BS 10 296, AS 1978 1836, 1992 2363, 1993 3209, 1995 1227

²¹ BS 10 303, AS 1978 1836, 1992 288 2363, 1993 3211, 1995 1227

²² AS 1978 1836, 1988 414, 1992 288 733 2363, 1993 3204, 1995 1328 3517 5679,
2000 2355, 2003 232, 2004 1677 2617

²³ AS 1992 2363, 1993 3247

²⁴ AS 1993 3221, 2004 1677

²⁵ SR 220

²⁶ SR 741.81

²⁷ SR 961.01; AS 2005 5269

3. Federal law of 25 June 1982²⁸ on occupational pension plans for old age, survivors and invalidity

Art. 68 Paragraph 2

² *Repealed*

4. Federal law of 18 March 1994²⁹ on health insurance

Art. 11 Sub-paragraph b

Compulsory insurance for medical care is operated by:

- b. private insurers subject to the Insurance Supervision Law of 17 December 2004³⁰ (ISL), who offer health insurance and have approval pursuant to Article 13.

5. Federal law of 20 March 1981³¹ on accident insurance

Art. 68 Paragraph 1 Sub-paragraph a

¹ Persons for whose insurance the Swiss public institution for accident insurance is not responsible are insured against accidents under this law by:

- a. private insurance companies subject to the Insurance Supervision Law of 17 December 2004³² (ISL);

6. Federal law of 8 November 1934³³ on banks and savings institutions

Art. 3b

If a bank is part of a financial group or financial conglomerate, the Banking Commission may make its approval dependent upon the existence of appropriate consolidated supervision by a supervisory body responsible for financial services.

Art. 3c

¹ A financial group is two or more companies, where:

- a. at least one is active as a bank or securities dealer;
- b. they are primarily active in the financial sector; and
- c. they form an economic unit or by virtue of other circumstances it may be assumed that one or several of the companies subject to individual supervision are de jure or de facto obliged to support other group companies.

² A financial conglomerate in which banking or securities dealing dominate is defined as a financial group in accordance with Paragraph 1 whose main activities are banking or securities dealing and to which at least one insurance company of significant economic importance belongs.

²⁸ SR 831.40

²⁹ SR 832.10

³⁰ SR 961.01; AS 2005 5269

³¹ SR 832.20

³² SR 961.01; AS 2005 5269

³³ SR 952.0

Art. 3d

¹ The Banking Commission may make a financial group or financial conglomerate in which banking or securities dealing dominate subject to group or conglomerate supervision if it:

- a. is acting in Switzerland as a bank or securities dealer established under Swiss law; or
- b. is actually managed from Switzerland.

² If other domestic or foreign bodies demand concurrent supervision of the financial group or financial conglomerate in full or in part, the Banking Commission shall, whilst preserving its authority, come to an agreement with the former on jurisdiction, procedures and content of the group or conglomerate supervision. Prior to making its decision, it shall consult companies in the insurance group or conglomerate that are incorporated in Switzerland.

Art. 3e

¹ Group supervision by the Banking Commission shall be in addition to single-institution supervision of a bank.

² Conglomerate supervision by the Banking Commission shall be in addition to single-institution supervision of a bank or insurance company and to supervision of a financial or insurance group by the relevant competent supervisory authority.

Art. 3f

¹ Persons entrusted with the management of the financial group or financial conglomerate and with its direction, supervision and control shall be of good standing and provide a guarantee of sound commercial activities.

² The financial group or financial conglomerate shall be organised so that, in particular, it can identify, limit and monitor the main risks.

Art. 3g

¹ For financial groups, the Banking Commission may issue rules on capital resources, liquidity, risk distribution, intra-group risk categories and accounting.

² For financial conglomerates in which banking or securities dealing is dominant, the Banking Commission may issue rules on capital resources, liquidity, risk distribution, intra-group risk categories and accounting or specify rules in individual cases. As regards the required capital resources, it shall take account of existing rules in the financial and insurance sectors, the relative importance of each sector in the financial conglomerate and the associated risks.

Art. 3h

¹ Financial groups and financial conglomerates shall appoint external auditors that are approved, independent and competent. The Banking Commission shall determine the special requirements for auditors and the content of the audit report.

² The Banking Commission may instruct the external auditors or competent third parties to perform special audits. The cost of these audits shall be borne by companies of the financial group or financial conglomerate incorporated in Switzerland.

³ Companies in the financial group or financial conglomerate and their executive bodies shall provide the Banking Commission with the necessary information and disclose all documents that the latter requires to discharge its remit.

Art. 3^{bis} Paragraph 1^{bis}

^{1bis} If a bank is part of a financial group or financial conglomerate, the Banking Commission may make approval dependent upon the agreement of the relevant foreign supervisory bodies.

Transitional provisions for the amendment dated 17 December 2004

¹ Anyone actually managing a financial group or financial conglomerate from Switzerland without operating a bank in Switzerland shall contact the Banking Commission within three months of the date on which this amendment takes effect.

² Existing financial groups or financial conglomerate shall comply with the new provisions within two years of the date on which this amendment takes effect.

³ The Banking Commission may extend these deadlines on receipt of a prompt justified application

7. Federal law of 24 March 1995³⁴ on stock markets and securities dealing

Art. 10 Paragraph 5

⁵ If a securities dealer is part of a financial group or financial conglomerate, the approval criteria specified in the Banking law of 8 November 1934³⁵ on financial groups and financial conglomerates shall apply analogously;

Art. 14 Consolidation

The provisions of the Banking law of 8 November 1934³⁶ on financial groups and financial conglomerates shall apply analogously.

8. Federal law of 10 October 1997³⁷ on combating money laundering in the financial sector

Art. 2 Paragraphs 2 Sub-paragraph c and 3 Sub-paragraph d

² Financial intermediaries are:

- c. insurance establishments as defined in the Insurance Supervision Law of 17 December 2004 (ISL)³⁸ which operate direct life insurance or offer or market shares in an investment fund and insurance intermediaries as defined in Article 43, paragraph 1 of the Insurance Supervision Law.

³ Financial intermediaries are also persons who professionally take on, keep or help to invest or transfer third-party assets; in particular, persons who:

- d. repealed

Art. 13 Paragraph 2

² Supervision may be performed by a special statutory supervisory authority if:

- a. the financial intermediary is part of a group subject to special statutory supervision under Article 12, which includes supervision on compliance with the obligations of this law;
- b. the financial intermediaries meet the requirements of Article 14, paragraph 2 of this law;
- c. the financial intermediary shall make available to the special statutory supervisory authority the information and documents that the latter requires to discharge its remit and
- d. the group guarantees to monitor and enforce the financial intermediary's compliance with the obligations of this law.

³⁴ SR 954.1

³⁵ SR 952.0

³⁶ SR 952.0

³⁷ SR 955.0

³⁸ SR ...; AS ... (BBl 2004 7289)

Art. 14 Paragraph 1

¹ Financial intermediaries as defined in Article 2, paragraph 3, that do not belong to a recognised self-regulating organisation and are not subject to a special statutory supervision pursuant to Article 13, paragraph 2 shall obtain permission to exercise their activities from the supervisory office.