

# Strengthening the surveillance of intermediaries

## Field of action for banks

The partially revised Insurance Supervision Act (ISA) will come into force on January 1st, 2024. The main objective of this revision is to strengthen client protection. The legislature is introducing expanded admission and conduct rules for insurance intermediaries. These changes also impact banks that offer insurance solutions as part of pension planning and credit coverage (hereafter referred to as “intermediaries”, “intermediary banks”, or “banks”). We outline the specific field of action and offer our support in this regard.

### Immediate action required: verify subjection and FINMA registry data

As an immediate measure, intermediary banks should first verify their subjection to future supervision. If they are classified as unaffiliated intermediaries, they should also immediately check their registration in the registry. During the first half of 2024, unaffiliated intermediaries will be subject to additional documentation on the [FINMA's entry and request platform \(EHP\)](#), for which they will need to file an individual application. Intermediaries failing to submit the required documentation by June 30, 2024, will be removed from the registry effective July 1, 2024.

### Overview of key terms

According to the supervision law, intermediaries encompass individuals or entities involved in offering or concluding insurance contracts in the interest of insurance companies or other individuals. This includes individuals who advise policyholders with the aim of concluding an insurance contract or who offer insurance contracts. According to FINMA's practice, anyone who significantly supports and advises policyholders in their decision to conclude a contract is considered an intermediary. Intermediaries are now categorized as either affiliated or unaffiliated (type obligation).

### Unaffiliated Intermediaries

Unaffiliated intermediaries maintain loyalty relations with policyholders. They are obligated to act in the best interests of the policyholders and be free in the choice of the optimal insurance product. Therefore, they cannot be legally, personally, or economically tied to any insurance company.

### Affiliated Intermediaries

All other insurance intermediaries are deemed to be affiliated accordingly. This applies in particular to cases in which an insurance intermediary acts in the interest of an insurance company.

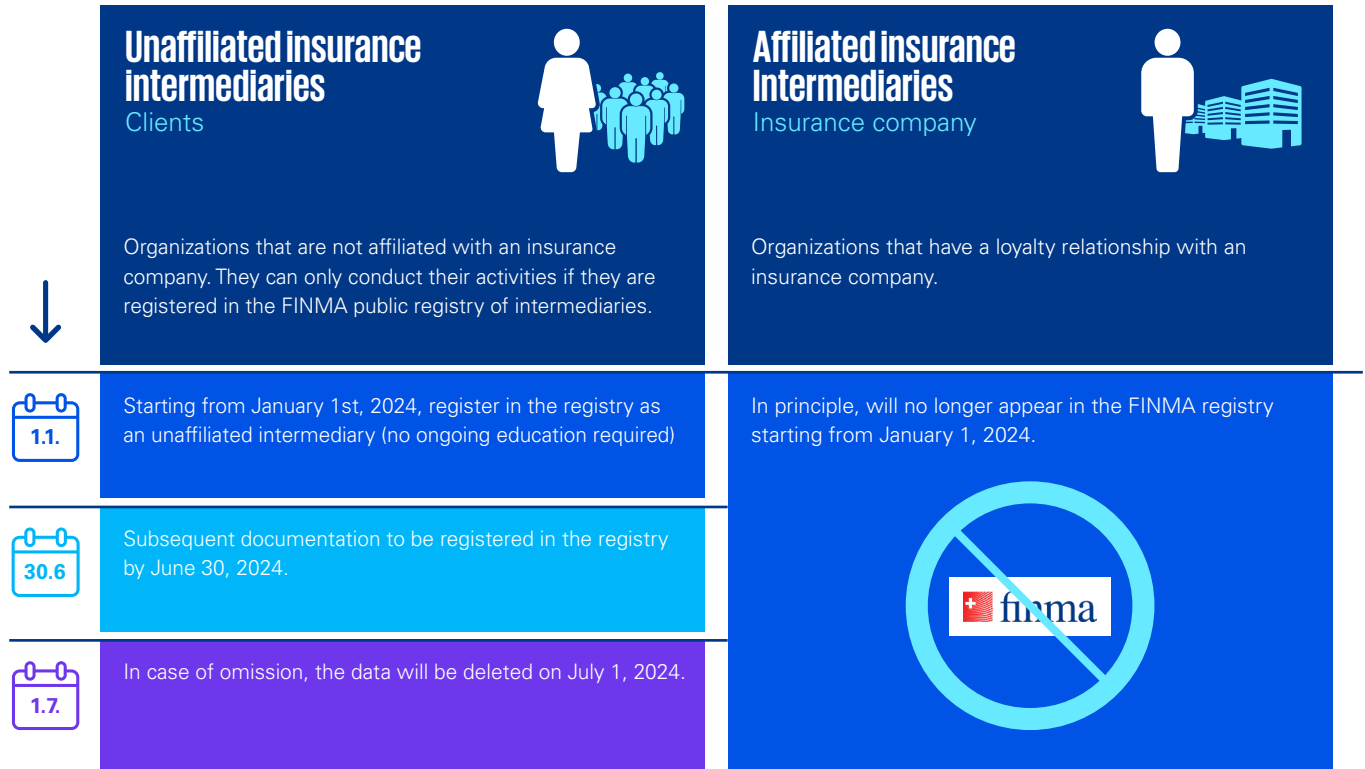
### Banks must realign their business model

It is prohibited to simultaneously engage in affiliated and unaffiliated activities. Hence, intermediary banks must uniformly realign their business model and reflect it in their contracts. If intermediary banks use terms such as “independent insurance advice”, they are considered unaffiliated and are consequently required to register.

### FINMA registration as a “ticket” for unaffiliated intermediaries

Unaffiliated intermediaries are only permitted to carry out their activities if they are registered in the FINMA public registry of intermediaries (registration requirement). Starting January 1, 2024, affiliated intermediaries will no longer have the option to voluntarily register in the FINMA registry (unless the country of activity requires it for activity abroad). Any existing registrations for affiliated intermediaries will be revoked by FINMA on December 31.

## Overview: New regulation of insurance intermediation



Source: New regulation of insurance intermediation starting from January 1, 2024 | FINMA

### Documents for registration and subsequent supervision

The revised Insurance Supervision Ordinance outlines the documents necessary for registration and subsequent documentation. The documentation is extensive and includes excerpts from the commercial register, resumes, criminal record extracts, debt enforcement register extracts, and documents related to corporate governance (applicable to companies with more than ten employees).

Additionally, FINMA periodically gathers relevant information and key metrics from unaffiliated intermediaries for supervisory purposes. For the start-up year 2024, in addition to subsequent documentation, FINMA will request supplementary data and information, such as the number of employees acting as intermediaries, the quantity of policies and insurance lines negotiated, commission volumes (total, per partner, per intermediary, per branch), and other types of commissions (such as portfolio commissions).

### Registration requirements for unaffiliated intermediaries

To qualify for registration, unaffiliated intermediaries must meet the following criteria:

1. Headquarters, domicile, or branch in Switzerland
2. Personal conditions and good reputation:
 

Unaffiliated intermediaries must have the capacity to exercise civil rights. Their reputation is determined by the criminal record and debt enforcement registry extracts.
3. Guarantee of fulfilling legal obligations regarding insurance supervision: FINMA sets requirements concerning corporate governance (internal rules and adequate company organization). Specifically:
  - Clear assignment and documentation of tasks, competencies, and reporting channels;
  - Clear separation between operational activities and control activities;
  - Documentation of key decisions;
  - Documentation of the implementation of the duty to inform;
  - Definition of principles, processes, and structures for complying with legal, regulatory, and internal requirements (compliance system);
  - Definition of principles related to the expected behavior of employees and the skills and knowledge necessary for their activity;
  - Establishment of appropriate control mechanisms.

Unaffiliated intermediaries are allowed to adapt these corporate governance requirements according to the risks, their respective brokerage activities, and in a manner proportional to their size, complexity, and legal form.

4. Professional liability insurance or equivalent financial guarantee: Unaffiliated intermediaries must take out professional liability insurance for pecuniary damages with an insurance company regulated by the ISA (or be included in corresponding coverage). The coverage amount for all claims in one year must be at least CHF 2 million. If an unaffiliated intermediary employs staff who directly negotiate insurance contracts or utilizes technological tools to increase negotiation capacities, the amount of coverage is increased.
5. Necessary skills and knowledge for brokerage: Individuals are now required to meet minimum initial and continuing education standards specific to the sector. Employers are responsible for ensuring that enough employees meet these requirements. The necessary knowledge must be certified by passing an exam.

#### **Insurance companies monitor “their” affiliated intermediaries**

The conditions for the activity of unaffiliated insurance intermediation also apply to affiliated intermediaries, albeit without the requirement or option for registration. However, the direct supervision of affiliated intermediaries is not the responsibility of FINMA; instead, it falls to the respective insurance companies.



#### **Code of conduct for all intermediary banks**

Intermediary banks are subject to the following obligations:

- The existing obligation to inform is adapted insofar as intermediary banks must also indicate their status (affiliated or unaffiliated) as well as their certificates of initial and continuing training. FINMA intervenes when intermediary banks do not fulfill their information obligations towards policyholders. Therefore, intermediary banks must ensure that their client forms are kept up to date.
- Intermediary banks must now avoid conflicts of interest. If they cannot exclude a disadvantage for policyholders, they must inform the policyholders of the conflict of interest before concluding the insurance contract.
- Handover of client files: intermediary banks must have them readily available in electronic format.
- Finally, the intermediation of investment-linked life insurance (referred to as qualified life insurance) is now regulated in line with FIDLEG. Intermediary banks must provide policyholders with the basic information sheet provided by life insurers free of charge before concluding the contract. In addition, intermediary banks must conduct an appropriateness assessment. This means that intermediary banks must now determine whether the concerned life insurance is suitable for the policyholders considering their knowledge and experience. Moreover, the Federal Council has introduced a suitability assessment by ordinance: intermediary banks must also clarify the investment objectives and financial situation of the policyholders and evaluate, based on the situation, income, assets, and both current and future financial obligations, whether the qualified life insurance "suits" the individual financial and life situation.



Intermediary banks are required to document this assessment and provide a copy to policyholders upon request. Additionally, upon request, they must disclose information regarding the evaluation, performance, and cost of the underlying financial instruments. Intermediary banks must maintain this complete documentation in electronic form to facilitate reporting to policyholders within ten working days.

### **Additional conduct rules for unaffiliated intermediaries**

A new obligation introduced the requirement to disclose compensations: unaffiliated intermediaries are permitted to accept compensation from insurance companies or other third parties only if they have explicitly informed the policyholders about it. If intermediary banks receive compensation from policyholders, they are only allowed to accept third-party compensations if they pass them on to the policyholders or if the policyholders expressly waive them.

## **How does KPMG support intermediary banks**

The new supervision of intermediaries necessitates a thorough review and adaptation process for intermediary banks. We offer guidance and support the concerned institutions to ensure a sustainable yet pragmatic implementation of the new intermediary supervision measures:

### **Our offer**

- Simple answers to questions of understanding and implementation
- Revisions or development of individual work products (such as policies, forms, documentation)
- Readiness checks
- Training for employees and management bodies
- Development of Q&As
- Development and implementation of plans and implementation projects
- Support in relations with FINMA
- Post-implementation evaluations

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