

Circular 2008/28

Structure — insurance groups

Reporting on the structure of insurance groups and insurance conglomerates

Reference: FINMA Circ. 08/28 "Structure — insurance groups"
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 Concordance: previously FOPI Directive 13.2/2006 "Reporting on the structure" of 21 November 2006
 Legal framework: FINMASA art. 7 sect. 1 lett. b
 ISA art. 68, 76
 ISO art. 192, 204
 CO art. 665a

Addressees																					
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I. Introductory remarks	Margin no.	1–4
II. Purpose	Margin no.	5
III. Scope of application	Margin no.	6
IV. Terminology	Margin no.	7–11
A. Insurance group and insurance conglomerate	Margin no.	7–9
B. Significant holdings	Margin no.	10
C. Group organisational chart	Margin no.	11
V. Principles and thresholds applicable to significant holdings	Margin no.	12–14
VI. Minimum reporting requirements	Margin no.	15–21
A. Group organisational chart	Margin no.	15–19
a) Tabular representation	Margin no.	15
b) Graphical representation	Margin no.	16–19
B. Significant holdings	Margin no.	20–21
VII. Submission deadlines	Margin no.	22–28
A. Initial submission	Margin no.	22–26
a) Group organisational chart	Margin no.	22
b) Significant holdings	Margin no.	23–24
c) Changes to the shareholder base	Margin no.	25–26
B. Periodic notifications	Margin no.	27–28

I. Introductory remarks

This Circular describes the minimum reporting requirements with respect to the structure of insurance groups (groups) and insurance conglomerates (conglomerates) subject to regulatory supervision. 1

This Circular is based on art. 192 and art. 204 of the Insurance Supervisory Ordinance (ISO; SR 961.011). Pursuant to art. 192 sect. 1 and art. 204 ISO, groups/conglomerates must submit a complete group organisational chart to FINMA every year. The organisational chart must be submitted more frequently should FINMA so request. 2

Pursuant to art. 192 sect. 2 and art. 204 ISO, FINMA must be notified of the creation, acquisition or sale (including merger or liquidation) of significant holdings by any of the companies in the group or conglomerate. Notification must be submitted upon finalisation of the contractual agreement at the latest. 3

Art. 192 sect. 3 and art. 204 ISO grant FINMA the possibility to define what a significant holding is. In so doing, it must take due account of the respective size and complexity of the group or conglomerate. 4

II. Purpose

The purpose of this reporting requirement is to provide to FINMA comprehensive and timely information on the structure of the group/conglomerate. In particular, FINMA must be informed of the scope of and changes to the material and geographical areas of activity and the breakdown of holdings within the group/conglomerate. 5

III. Scope of application

This Circular applies to all groups/conglomerates that have been placed under regulatory supervision by means of an order pursuant to the following legal foundations: 6

- insurance groups: pursuant to art. 65 of the Insurance Supervision Act (ISA; SR 961.01);
- insurance conglomerates: pursuant to art. 73 ISA.

IV. Terminology

A. Insurance group and insurance conglomerate

The two terms are specified in detail in art. 64 ISA and art. 72 ISA, respectively. 7

- Two or more undertakings constitute an economic unit or 8
- are otherwise linked to one another through influence or control, and
- at least one of them is an insurance undertaking, and the group/conglomerate as a whole operates primarily in the insurance sector.

Influence or control over an undertaking exists if there is a majority of votes or consolidation under uniform management. "Consolidation under uniform management" includes all holdings that are not held as capital investments. 9

B. Significant holdings

Pursuant to art. 665a sect. 2 of the Code of Obligations (CO; SR 220), holdings are shares in the capital of other enterprises that are held with the intention of a lasting investment and that convey significant influence. The holdings of a company member of a group or conglomerate in another enterprise are deemed significant if they exceed the thresholds established by FINMA (see point V). 10

C. Group organisational chart

A group organisational chart is a table and graphical representation of all the units of a group/conglomerate. The hierarchical and functional structure is to be detailed and visualised in a clear and concise manner. 11

V. Principles and thresholds applicable to significant holdings

FINMA must be notified of the creation, acquisition or sale (including merger or liquidation) of a significant holding by any of the companies of the group/conglomerate. 12

When assessing the significance of a holding for the group/conglomerate, the following principles must be observed: 13

- The value of the acquired/relinquished net assets (NAV) is CHF 100 million or more. Net assets are total assets minus short-term and long-term liabilities and minority-owned stakes.
- The share of the NAV of the holding in the reported equity capital of the group/conglomerate amounts to 1% or more.

The following criteria additionally apply: 14

- Public interest
A change to a significant holding (purchase, sale, liquidation, merger, etc.) is often published by the group/conglomerate in a press release. Accordingly, the group/conglomerate believes the change to be of public interest, whether at the national or international level. Changes to the structure that the group/conglomerate believes to be of public interest must be communicated to FINMA prior to publication.
- Change in the group's/conglomerate's shareholder base
FINMA is to be notified of a direct or indirect holding by natural or legal persons in the parent undertaking of the group/conglomerate satisfying one of the following criteria:
 - A change results in the thresholds of 5%, 10%, 20%, 33 1/3%, 50% or 66 2/3% of the voting rights of the parent undertaking being attained or crossed in either direction,
 - A contractual agreement exists according to which a natural or legal person obtains or may exert significant influence on the parent undertaking of the group/conglomerate.

VI. Minimum reporting requirements

A. Group organisational chart

a) Tabular representation

The table must contain the following information at minimum: 15

- Name of the unit of the group/conglomerate.
- Address including country.
- Function within the group/conglomerate: life insurance, non-life insurance, reinsurance company; holding company; other (to be specified).
- Responsible supervisory authority (where subject to regulatory supervision).
- Companies that are components of groups but do not belong to the scope of consolidation according to the accounting method used. The reasons for non-consolidation must be indicated.
- Insurance conglomerates must also indicate whether the company operates in the insurance or finance sector in terms of art. 205 ISO.

b) Graphical representation

The graphical representation is to consist of an overview diagram and detailed illustrations of the significant holdings and subgroups. 16

The company that functions as the group's strategic holding company is to be placed at the top of the overview diagram. The significant holdings and subgroups must be represented below, including the size of the holdings as a percentage. 17

The detailed representation is to show the holdings and subgroups by country or region, including the associated legal entities and an indication of the size of the holding as a percentage. 18

The graphical representation and the table must be submitted on paper; submission in electronic form is also possible upon application with FINMA. 19

B. Significant holdings

The creation, acquisition or sale of a significant holding by one of the companies in the group must be reported to FINMA and the following details included: 20

- Name of the unit of the group/conglomerate.
- Address including country.
- Parent undertaking within the group/conglomerate.
- Purpose or function of the company within the group/conglomerate.
- Responsible supervisory authority (where subject to regulatory supervision).
- Holding as a percentage.
- Net asset value (NAV).

This information must always be submitted on paper; additional submission in electronic form is possible upon application with FINMA. FINMA is to be notified in advance by telephone of any changes to a significant holding that might be of public interest, in accordance with the principle above. 21

VII. Submission deadlines

A. Initial notification

a) Group organisational chart

An up-to-date listing of the group/conglomerate structure must be submitted for the first time in accordance with the requirements set out in the order placing the group or conglomerate under regulatory supervision. 22

b) Significant holdings

The reporting requirement enters into force simultaneously upon placement under group or conglomerate supervision. 23

Any changes to a significant holding must be reported upon finalisation of the contractual agreement at the latest. FINMA is to be informed of the change in structure prior to the media and shareholders. 24

c) Changes to the shareholder base

The reporting requirement enters into force simultaneously upon placement under group or conglomerate supervision. 25

FINMA is to be notified immediately of direct or indirect holdings and changes affecting the thresholds set out above. 26

B. Periodic notifications

Groups and conglomerates must submit their up-to-date group organisational chart once a year, within three months of the reporting date of the annual financial statement. 27

The legislator has granted FINMA the option of requesting reporting more frequently than once a year. Reasons for this measure may exist in particular if: 28

- the group/conglomerate is undergoing an accelerated phase of change, so that its structure changes rapidly;
- the creation, acquisition or sale of significant holdings significantly impacts the structure;
- FINMA requires the current status of the structure in order to assess the group's/conglomerate's overall solvency situation at a particular point in time.