Conditions for Permission to Conduct Business

Reinsurance
Captive reinsurance companies with head office in Switzerland

Status as at: 1st March 2008

1. Background
Insurance companies with their headquarters in Switzerland require a permit from the Federal Office of Private Insurance (FOPI) regardless of whether they conduct insurance business in Switzerland and/or abroad from Switzerland.

The permit will be issued if legal requirements are met and the interests of policy holders are protected (Art. 6 of the Federal Insurance Supervision Law – ISL). Following the granting of a permit, FOPI will exercise ongoing supervision on the entire business activity of the insurance company (Art. 46 ISL).

Through authorisation the insurance companies gain the right to reinsure all insurance categories in life and non-life insurance belonging to their enterprise group in accordance with Appendix 1 of the Insurance Supervision Decree – ISD.

The insurance company must actually commence business operations for reinsurance within six months (Art. 61 ISL).

Without this permit it is prohibited to conduct insurance business within Switzerland or from Switzerland (Art. 87 ISL).

Insurance companies with their headquarters overseas, which only conduct business in reinsurance in Switzerland, are permitted to carry on business without authorisation. They are not subject to insurance supervision in Switzerland (Art. 2, par. 2a, ISL).

2. Procedures for meeting the requirements for a permit
Following its establishment, the insurance company must submit a request to FOPI for a permit to conduct business. A business plan must be attached to this request (Art. 4 ISL). There is also the option of submitting the business plan to FOPI already prior to the formal submission of the request in order that the plan can be revised in mutual collaboration.

a) Business plan
The business plan must contain the following details and documentation (Art. 4 ISL):
- Minutes from the founding meeting of the company certified by a solicitor
  - Form of company: joint stock company or a cooperative (Art. 7 ISL).
  - Name of firm: The Commercial Registry is primarily responsible for this.
- Extract from the Commercial Register.

- The Articles of Association (Statutes). In particular the Statutes must take the following points into account:
  - A precise description of the business domain: The insurance company may carry out other business besides the insurance business basically only where this is directly linked to the insurance business (Art. 11 ISL). Furthermore the insurance company may only reinsure risks belonging to its group.
  - Allocation to the profit reserves required by law (Art. 26 ISL) must amount to at least 20% of net profit, until the profit reserves reach 50% of statutory capital or have again been reached following recourse to draw on funds (Art. 5 Supervision Decree-FOPI, SD – FOPI).
- The organisation and the geographical area of activities of the insurance company, as the case may be the insurance group or of the insurance conglomerate to which the insurance company belongs.
  - The insurance company provides details on the overall organisation of the enterprise and of the management and controlling instruments. The insurance company also reports on its internal controlling system and on its internal auditing.
  - An organigram of the insurance company and the company group must be attached.
- For insurance activities abroad: a permit from the responsible foreign supervisory authorities or a comparable certification is required.
- Details on financial solvency and on provisions. In particular this includes:

  Financial solvency: confirmation of payments made for minimum capital requirements and the organization fund. Details regarding minimum capital requirements can be found in Art. 8 of the ISL, as well as in Art. 6, 9 and 10 of the ISD; and details on the organization fund in Art. 10 of the ISL and Art. 11 of the ISD.

  Captive reinsurers, owning one or several insurance companies or which also reinsure risks, which do not belong to their enterprise group, must put up a minimum capital amount of CHF 5 million (Art.10, ISD).
  - Technical provisions: the conditions for accumulating and depleting technical provisions must be mentioned. The provision methods applied and the figures used in the technical insurance liabilities must be documented (Art. 16 ISL; Art. 54 ISD).
  - Details on proposed investment policy.
- Opening balance.
- Details on persons (name, place of residence and profession in the case of natural persons as well as firms, headquarters and business domain in the case of legal entities) who shall participate directly or indirectly holding at least 10 per cent of capital or of votes in the insurance company and whose business activities in other regards may decisively influence the company. Specifically a register of shareholders containing details on the share of holdings must be submitted.
- Designation of those persons entrusted with direction, supervision, controlling and company management must be provided. A register of the composition of the board and directors by name must also be submitted. In particular the following points must be heeded:
  - Those persons responsible for direction, supervision, controlling and company management must enjoy a good reputation and must provide guarantees as regards impeccable company management (Art. 14 ISL, as well as requirements on guarantees contained in Art. 12 – 14 ISD). A Curriculum Vitae has therefore to be attached for each and every member of the board and of management (Art. 12 and 14 ISD).
- Designation of the responsible actuary.
  - The responsible actuary must enjoy a favourable reputation, be professionally qualified and be in a position to accurately estimate the financial implications of the activities of the insurance company (Art. 23 ISL).
  - He or she must hold the title of "Actuary of the Swiss Association of Actuaries " or a comparable qualification. Upon request the supervisory authorities can also accredit a corresponding specialised qualification linked with at least five years professional experience as an actuary as proof of their professional competence (Art. 99 ISD).

- Designation of the external auditor and the names of the persons responsible for the mandate, and where the insurance company is part of an insurance group or an insurance conglomerate, the organisational details of the mandate of the external auditor of the insurance group or conglomerate.
  - The Auditor must fulfil various requirements with respect to specialist, personal and financial details and must be independent from the insurance companies, as the case may be from the companies of a group or of a conglomerate (Art. 28 ISL; Art. 112 – 116 ISD).
  - The Auditor must be accredited by FOPI for the audit of the insurance company and must fulfil the relevant accreditation prerequisites (Art. 28 ISL; Art. 112 – 116 ISD).
- Contracts or other agreements specifying which essential functions of the insurance company are to be excluded.
  - Essential functions of an insurance company are those activities which must imperatively belong to an insurance company. These include production (distribution, marketing), inventory administration (policy administration), claims settlement, accounting, asset investment and management as well as information technology / electronic data management. The majority of the essential functions must remain with the insurance company. After a reasoned request, exceptions may be authorised.
  - Areas which may not be excluded are: direction, supervision and controlling by the board as well as the key management tasks.

  FOPI would be pleased to provide advice on request regarding additional prerequisites and aspects of outsourcing.
- The proposed insurance category and the type of risks to be insured as well as details on the proposed corporate policy.
- The retrocession plan. The insurance company must prove that the reinsurer is prepared to take on the risks. Retention on its total business should amount to no less than 20%. The supervisory authority may allow justified exceptions.
- Envisaged costs for building up the insurance company.
- Budgeted balance sheet and planned income statement for the first three years of business.
- Details on the estimation, limitation and supervision of risks. The insurance company must possess adequate risk management appropriate to its corporate size (Art. 22 ISL; Art. 96 – 98 ISD).
- Further details and documentation: in individual cases FOPI can request further details and documentation to the extent that these are considered necessary for assessing the application (Art. 4 par. 4 ISL).

3. A few comments on the supervisory requirements following the granting of a permit (for ongoing business)

Swiss supervision law subjects insurance companies to perpetual supervision. This implies that the insurance company must not only take care to fulfil the requirements mentioned under Art. 2 for receiving a permit. Beyond this point they have a number of additional supervisory legal obligations to fulfil.

Some of the most important of these obligations are presented in the list below, although this list is not conclusive. This list presents some general information but cannot replace reading and acknowledgement of the legal provisions of the appropriate act and ordinances. FOPI would be pleased to provide applicants with further information regarding understanding or interpretation of specific provisions of the supervision law.

a) Alterations to the business plan
According to Art. 5, par. 1 of the ISL, alterations to the business plan are to be submitted to FOPI prior to their implementation.

According to Art. 5, par. 2 of the ISL, alterations to the business plan must be reported to FOPI within 14 days from the entry into force of the actual situation which is required to be reported on (Art. 5 ISD). These alterations are considered approved, as long as the supervisory authorities do not open an examination within four weeks.

b) Participation in and by insurance companies
If an insurance company wants to take a share in another company, it is obliged to inform FOPI of its intentions, providing the threshold value (according to Art. 21 ISL) will be reached or exceeded.

Whosoever wishes to take a share in an insurance company, is obliged to inform FOPI of his or her intentions, providing the threshold value (according to Art. 21 ISL) will be reached or exceeded. The same reporting obligations apply for reducing share participation below the specified threshold value.

c) *Internal monitoring of business activities*
The insurance company must set up an effective internal controlling system which covers all of its business activities. In addition, it is to nominate an internal inspectorate independent of management.

In certain justifiable individual cases FOPI can dispense the insurance company from the obligation of nominating an internal inspectorate (Art. 27 ISL). An insurance company which wishes to make use of this provision under exceptional circumstances is to submit an application with appropriate justification.

d) Covering solvency margin requirements and in the target capital
The insurance company must have adequate and unencumbered capital of its own at its disposal for all of its activities (solvency margin requirements, Art. 9 ISL). Calculations on the required own capital takes place according to the volume of business (Solvency I). Details governing calculations and coverage of solvency margin requirements are set down in Art. 33 – 40 of the ISD.

Captive reinsurers, owning one or several insurance companies or which also reinsure risks, which do not belong to their enterprise group, must in addition calculate the required own capital after taking the risks into account to which they are exposed (Swiss solvency test). Details on the calculation and coverage of target capital are governed by Art. 41 – 50 of the ISD.

In the case of complex risk structures or considerable financial risks, the supervisory authority may in individual cases also request the Swiss solvency test relating to captive reinsurers, which own one or several trading, industrial or finance companies and reinsure risks of these companies exclusively.

The responsible internal audit authority nominated by the insurance company is to prepare a report at the end of the financial year on solvency margins available (Art. 40 ISD).
The insurance company is to prepare annually a report on the calculation of target capital and on risk bearing capital (Art. 53 ISD).

e) Financial derivatives
The insurance company provides the supervisory authorities with an annual report on its business in financial derivatives. The deployment of instruments of financial derivatives is governed by Art. 100ff ISD.

f) Reporting obligations
The insurance companies are to prepare annually a corporate report and a report on supervision. The report on supervision is to be submitted to FOPI by 30 June on the electronic form provided together with the annual report (Art. 25 ISL).

g) Groups and conglomerates
For insurance companies which come under group supervision there are additional requirements according to Art. 64 – 71 of the ISL and Art. 191 – 203 of the ISD. For companies which come under conglomerate supervision there are additional requirements according to Art. 72 – 79 ISL and Art. 204 – 206 ISD.

h) Fees and supervisory levies
The cost of insurance supervision is covered by fees as well as from an annual supervision levy. The supervision levy amounts to a minimum of CHF 3,000 (Art. 50 ISL; Art. 209ff ISD). Specific information on fees can be found in the fact sheet "Decrees attracting Fees in Insurance Supervision".