



MARKETING AND DOING FOREIGN LIFE INSURANCE BUSINESS IN AND FROM SWITZERLAND

Dominique R. Lecocq
Lucile Cesareo-Hostettler



1. **OUTLINE**

- Attractiveness of Switzerland
- Doing insurance business in Switzerland – an evolving definition
- Selling foreign wrappers in or from Switzerland
- Targeting Swiss residents – Limits and safe harbours
- Life insurance wrappers – EU definition vs Swiss definition
- Past practices – Current Practice
- The myth of residents under a Swiss tax lump sum regime – is there any loophole?



1. **OUTLINE**

- The case where the “life insured” is in Switzerland?
- The Swiss representative of foreign policy holders
- Revisiting the spectrum of the light license
- Life-insurance product VS financial instrument
- Draft Revised Insurance Supervision Law – What will change?
- Conclusion and Questions



1. Attractiveness of Switzerland

- Switzerland is a meeting point.
- Switzerland is a “distribution” market.
- Tax optimization.
- Estate planning.



2. DOING INSURANCE BUSINESS IN SWITZERLAND – AN EVOLVING DEFINITION

- Are subject to FINMA supervision (and therefore authorization) “[...] insurance with registered office abroad, for their insurance business **in** Switzerland or **from** Switzerland, subject to any contrary provisions of international treaties [...]”¹;

¹ Article 2 (1) (a) to (c) of the Insurance Supervision Act of 14 December 2004 (“**ISA**”).

2. Doing insurance business in Switzerland – **an evolving definition**

- **Life insurance – Insurance business in Switzerland** is defined as²
 - A (=one) natural or legal person domiciled in Switzerland is the policyholder or insured person;
 - Regardless of the manner and place of conclusion of the contract!
 - Regardless of the accounts' location!
- **Direct insurance** – Insurance companies with their registered office abroad but no branch office in Switzerland **are not subject to supervision** if they carry out, **risks located abroad**³.
- **Reinsurance in Switzerland is not subject to authorization in Switzerland**⁴.

² Article 1 (1) and ISO.

³ Article 1 (2) (b) ISO.

⁴ Article 2 (2) (a) ISA.



3. Selling foreign wrappers **in or from Switzerland**

FINMA is a global regulator – we would expect similar rules for similar business. This is not the case.

Safe Harbors for business in Switzerland	Offering of financial instruments (incl. funds units)	Financial Intermediaries	Securities House	Manager of Collective Investment Scheme	Foreign bank marketing in Switzerland (with no office)
Number of Clients/Investors	Limited number (no prospectus if < 500)	20 threshold	20 threshold	20 threshold	n/a
Investors/Clients Profile	Qualified Investors	n/a	Certain investors are out of scope	n/a	n/a
Revenues	n/a	CHF 50k gross revenues	CHF 50k gross revenues	CHF 50k gross revenues	n/a
De Minimis	n/a	CHF 5 mios (assets) CHF 2 mios (transactions)	CHF 5 mios (assets) CHF 2 mios (transactions)	CHF 100 mios	n/a
Consequences	Lighter Regime	Possibly out of scope	Possibly out of scope	Lighter Regime	Possibly out of scope if no permanent establishment in Switzerland



4. Targeting Swiss residents

– Limits and safe harbours

- One Swiss policyholder is enough to trigger licensing requirement – no minimum threshold as exemption.
- No investor profile exemption (as is).
- No insurance business in Switzerland.
- No policyholder or insured person in Switzerland.
- No *de minimis* thresholds as exemption!



5. Life insurance wrappers **EU definition vs Swiss definition**

According to European Law

Directive 2009/138/EC applies to capitalization operations and defines them as operations “*based on an actuarial technique involving, in exchange for single or periodic payments fixed in advance, commitments determined as to their duration and amount*”⁵.

Life insurance class VI.

According to Swiss Law

No definition in the law.

“A capitalization operation is a contract **without any minimum biometric risk** concluded between a life insurer and a policyholder for the acceptance of assets and their management according to a **mathematical procedure**. It **ends on an agreed date or on the death of the insured person**”⁶.

As per FINMA’s practice:

- No biometric risk.
- Management according to a mathematical procedure:
 - single premium or periodic premium of a predefined amount.
 - simple payment or fixed absolute or relative amount of payments during a precise period, according to a mathematical procedure.
- Potential surplus elements (*excédents*) depending on the maturity of the contract and which are not guaranteed.

Life insurance classe A6: “*Capitalization operations*”⁷:

A6.1 Capitalization transactions linked to fund units.

A6.2 Capitalization transactions linked to internal investment portfolios.

A6.3 Other capitalization transactions.

⁵ Article 2 (3) (b) (ii) of the European Council Directive of 25 November 2009 (“**Directive 2009/138/EC**”).

⁶ FINMA Circular 2016/6 of 3 December 2015 on life insurance, §11.

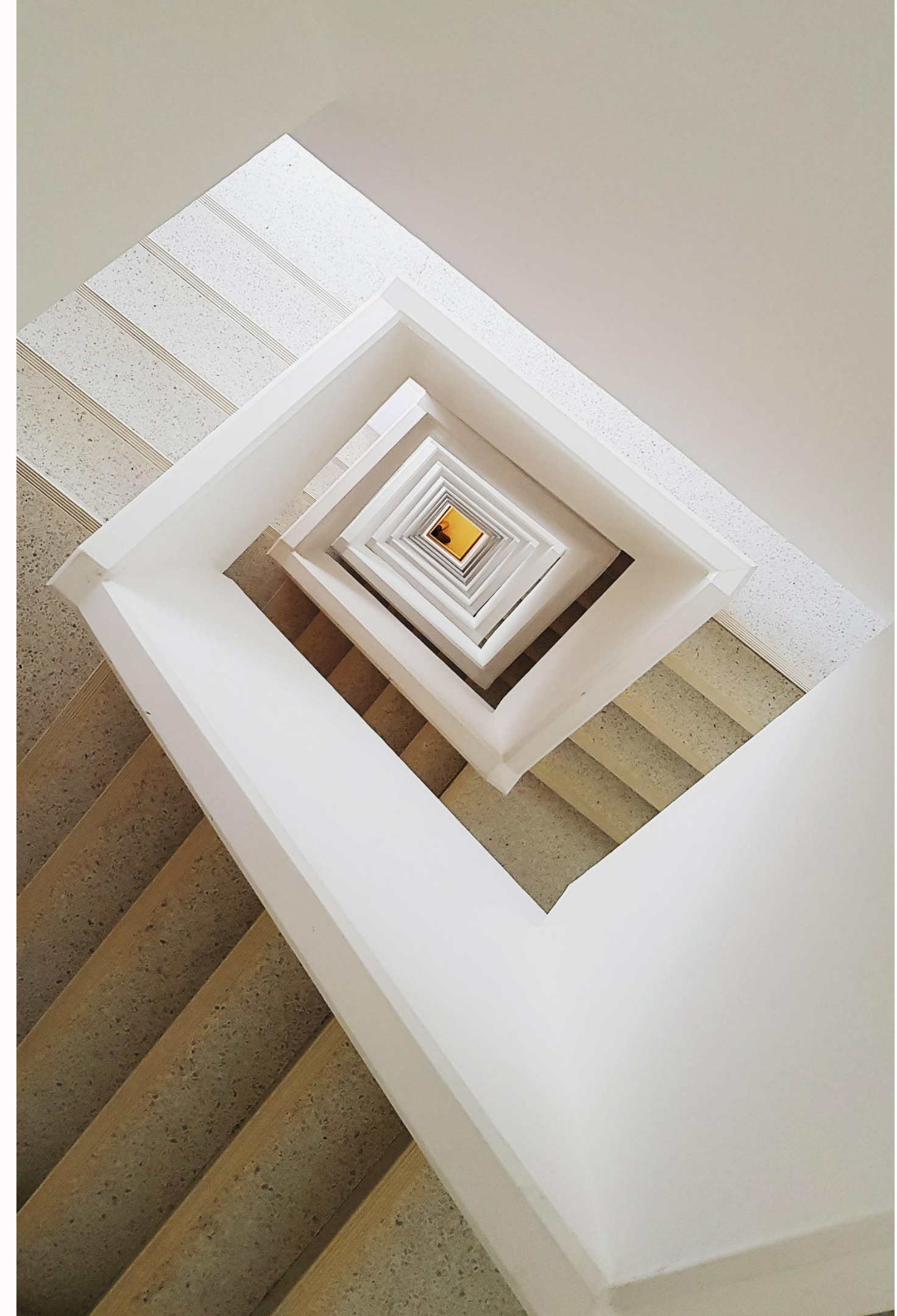
⁷ Annex 1 of the Insurance Supervision Ordinance of 9 November 2005 (“**ISO**”).



6. Past Practice – Current Practice

The good old rulings:

- Former Federal Office of Private Insurance vs Federal Banking Commission vs Tax ruling.
- Lighter regime – doing insurance business “from” Switzerland.
- The Swiss branch of a foreign life insurance undertaking limited to marketing.
- FINMA wants to align its practice to the EU.
- Can FINMA creates / grants safe harbours?
- No self-waiver.
- The end of the smart loopholes – no playing around – “either – or”.
- Is an old ruling issued by FINMA still valid?
- Consequences of a regulatory breach?



7. THE MYTH OF THE RESIDENTS UNDER A SWISS TAX LUMP SUM REGIME – IS THERE ANY LOOPHOLE?

- Recent tax decision reconsiders the residency in Switzerland of lump sum tax payers.
- FINMA does not recognize any special residential regime for lump sum tax payer.
- Validity of life insurance contract already signed? No cancellation of the contract but regulatory consequences.
- **SO WHAT CAN BE DONE?**



8. The case where the “life insured” is in **Switzerland**?

- Life insured person in Switzerland – risk could be considered as located abroad under certain circumstances.



9. The Swiss representative of foreign policy holders

- Where no risk is borne by an ultimate Swiss person.



10. Marketing of life-insurance **in** **Switzerland**

- The life-Insurance contract can be signed in Switzerland.



11. Bank in Switzerland

- The assets can be deposited in a bank in Switzerland.



12. Revising the spectrum of **the light license**

- In order to match FINMA's willingness to comply with the law – avoid loopholes, maybe a lighter regime should be negotiable.



13. Life-insurance product vs **financial instrument**

- FINMA does not accept any loophole regarding the insurance supervision in Switzerland.
- Application of the Federal Act on Financial Services of 16 June 2018 ("**FINSA**") and its specific code of conduct (categorization, information and disclosure, appropriateness and suitability, etc.)?



14. Draft Revised Insurance Supervision Law – **What will change?**

- Specific obligations for “qualified life insurance”, i.e. when the policyholder bears a risk of loss in the savings process, as well as in capitalization and tontine operations¹¹.
- Exemption by FINMA from a number of obligations (but no exemption) for professional policyholders (obligation to hold an organisation fund, tied assets requirements, affiliation with an ombudsman, etc)¹⁰.
- Insurance intermediaries who offer insurance of a minor importance and complements a product or services will be exempted⁸.
- The Federal Council may exempt small size insurance companies from FINMA supervision, in particular to guarantee the sustainability of the Swiss financial centre⁹.

⁸ Article 2 (2) (f) D-ISA.

⁹ Article 2 (5) (b) D-ISA.

¹⁰ Article 30a D-ISA.

¹¹ Article 39a D-ISA.



14. Draft Revised Insurance Supervision Law – **What will change?**

- More precise definition of “insurance business in Switzerland” as per ISO¹².
- The project was accepted by the National Council on 3 May 2021 and will be submitted to the Council of States on December 2021. The entry into force is expected for 2023.
- Specific modalities to be detailed in the ISO by the Federal Council as a second step.

¹² Article 2 (4) (a) D-ISA.



Conclusion & Questions

Thank you!

GENEVA

BANKING & CORPORATE
FINANCE LAW FIRM

28, Avenue de la Gare des
Eaux-Vives
1208 Geneva, Switzerland

DUBAI

STRUCTURING
ADVISORY FIRM

Central Park Offices
Office 15-32
Dubai International
Financial Centre
Dubai, UAE

MALTA

REGULATORY
ADVISORY FIRM

Swiss Urban Factory
The Regulatory Suite
5, Saint Frederick Street
Valletta, VLT 1470, Malta

ABU DHABI

LEGAL CONSULTANCY

Al Sila Tower
Office 2435
Al Maryah Island,
Abu Dhabi Global Market
Square
Abu Dhabi, UAE

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For any queries, please email Dominique Lecocq at drl@lecocqassociate.com
Or Lucile Cesareo-Hostettler at lho@lecocqassociate.com

