

VINGE



Insurance services
in Sweden

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The Association of Foreign Insurance Companies in Sweden is the trade association for foreign insurance companies established in Sweden. The Association promotes the interests of the member companies and their possibilities to operate in Sweden.

The Swedish insurance market used to distinguish itself as a closed market, dominated by a small number of domestic companies. During the past two decades, however, Sweden has gradually opened the insurance market to both domestic and foreign competition. Sweden's accession to the European Union on January 1, 1995, resulted in a liberalisation of the market that was further increased through Sweden's implementation of the EU directives.

Already at the beginning of the new millennium a new structure, housing banking and insurance operations within the same financial group, was adopted by all the leading players in the Swedish financial services industry. Meanwhile, Swedish online self-service via the internet has achieved a leading position in Europe. The Swedish insurance industry now consists of 361 insurance companies, 82 friendly societies and 28 branch offices and 6 agents of non-Swedish companies. This means that there are more insurance companies per inhabitant in Sweden than in any other European country.

The majority of the insurance companies (210) are small, local, non-life insurance companies. The number of non-life captive insurance companies (50) is increasing. The market, however, is clearly concentrated to a few larger companies and company groups. The four largest of the insurance companies or groups (LF-group, If, Trygg-Hansa and

Folksam) have a combined total of about 81 per cent of the market for non-life insurance. In life insurance, the five largest insurance groups (Skandia, SEB, Folksam, AMF and LF) control about 60 per cent of the free, individual life market.

During recent years, foreign insurance companies have acquired important Swedish life and non-life insurance companies and a number of foreign insurance companies have established branch offices and agencies on the Swedish market.

The following is a brief summary of some of the main features of the Swedish regulations affecting foreign insurers with existing or contemplated business activities in Sweden.

The summary is merely a general description of certain major aspects and consequently it does not deal with all aspects that will need to be taken into account when considering insurance business activities in Sweden. Professional advice should be obtained on a case-by-case basis, and the contents of this publication should not be relied on alone.

The summary is presented by Vinge in cooperation with the Association of Foreign Insurance Companies in Sweden.

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1. Provision of Services in Sweden

1.1 Establishing an insurance company

To establish a new Swedish insurance company, the founders must apply for authorisation from the Swedish Financial Supervisory Authority (the SFSA). The application will be evaluated on the merits of the management and the owners controlling 10 per cent or more of the share capital or votes, as well as the nature of the planned business and the amount of share capital.

1.2 Acquiring a Swedish insurance company

Acquisitions, both Swedish and foreign, of qualified holdings in Swedish insurance companies, require a permit from the SFSA. A permit must be obtained when any of the thresholds of 10 per cent, 20 per cent, 30 per cent or 50 per cent of the share capital or the votes are reached.

1.3 Branch offices or general agencies

In accordance with the Foreign Insurance Activities Act, an insurer or reinsurer domiciled within the European Economic Area may establish an agency or branch in Sweden without prior Swedish authorisation. This is subject to certain notification procedures involving the authorities of its home state.

Insurers domiciled outside the EEA are subject to more restrictive regulations. They may practise business in Sweden if they have obtained a licence. Their business may be conducted through an agency or a branch, but only if a major deposit is made with a Swedish bank. Agreements between Switzerland and the European Union enable Swiss non-life insurance undertakings to be authorised to establish either an agency or a branch in Sweden without a deposit.

1.4 Cross-border services

According to the FIAA, insurance companies domiciled within the EEA may directly market insurance in Sweden, subject to authorisation by their home state and notification to the home-state authority. "Passive" provision of insurance services (i.e., the provision of insurance services on the sole

initiative of the client) from the EEA is also regarded as a cross-border activity and is subject to notification. Motor insurance providers are required to appoint a Swedish claims settlement representative entrusted with the necessary powers to settle claims on behalf of the provider. In addition, motor insurance providers must certify that they have joined and participated in financing the Swedish Association of Motor Insurers.

Insurers domiciled outside the EEA may provide cross-border services in Sweden only through intermediation by an insurer licensed in Sweden and subject to a specific permit from the SFSA. Non-EEA insurers (but not EEA-insurers), however, are entitled to provide "passive" insurance services.

1.5 Insurance mediation

On July 1, 2005, the Swedish Insurance Mediation Act took effect, implementing the EU Directive on Insurance Mediation (2002/92/EC). The Act establishes a number of professional requirements for SFSA authorisation, including that the insurance or reinsurance intermediary:

1. Must not have been declared bankrupt.
2. Must have a clean police record in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities, and must act conscientiously in economical matters.
3. Must possess the necessary general, commercial and professional knowledge and ability.
4. Must be covered by a professional indemnity insurance or some other comparable guarantee against liability arising out of professional negligence.

Under the Act, only individuals of Swedish nationality or legal entities incorporated in Sweden may register as intermediaries. Subject to certain notification procedures, however, insurance and reinsurance intermediaries registered in other EEA states may be able to conduct business in Sweden cross-border or by establishing a branch.

Insurance or reinsurance intermediaries outside the EEA may only provide insurance mediation from a Swedish

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branch if they have obtained a licence from the SFSA. Among other things, the Act stipulates certain information requirements, which must be met prior to signing an insurance agreement, as well as the obligations for intermediaries to comply with good commercial standards and to warn against inappropriate deals.

1.6 Business requirements for Swedish insurance companies

A Swedish insurance company may not engage in business other than insurance. However, Swedish life insurance companies are able to combine unit-linked life insurance business with regular life insurance business. Further, both life and non-life insurance companies may provide short-term health and accident insurance.

Swedish insurance companies must meet specific requirements of stability and liquidity, and have control over insurance, investment and business risks. The business shall also be conducted to a specified professional level and claims shall be handled in good order and with fair settlements. The SFSA is entitled to investigate the business to ensure that the company meets these requirements.

2. Financial status and investment restrictions

2.1 Financial status

Swedish insurance companies and Swedish agencies of insurance companies domiciled outside the EEA are liable to maintain sufficient basic funds (capital base). These must reach a certain solvency margin in proportion to the extent of the business. Further, the company must have a sufficient "buffer" (security margin) in addition to the solvency margin.

The capital base should also be sufficient in relation to other companies in the same "insurance group" (i.e., a group of companies where an insurance company 1) owns 20 per cent or more of another insurance or reinsurance company;

or 2) is a subsidiary of an insurance holding company, a non-Swedish reinsurance company or a non-EEA insurance company).

Following application to the SFSA, subordinated loans may be included in the calculation of 50 per cent of the capital base. As of March 1, 2007, however, the possibility to include subordinated loans in the capital base has been limited to 50 per cent of the solvency margin.

With regard to non-life insurance companies and life insurance companies that can pay dividends to their shareholders, a specific guarantee fund is required. Life insurance companies that are not dividend-paying companies shall have a specific consolidation fund. With regard to insurance companies involved in credit risk insurance, an equalisation reserve is also required. Swedish agencies of insurers domiciled outside the EEA are liable to maintain their bank deposit.

The SFSA applies a "traffic-light" stress-test to ensure that the solvency will survive a "worst-case" scenario. The traffic lights tests are applied to all insurance companies and include both financial and insurance risks.

Naturally, most regulations related to solvency issues will be substantially changed when Sweden implements the EU Solvency II directive. The implementation is expected to occur in 2012.

2.2 Investment restrictions

Under Swedish law an insurance company shall, with regard to investments meeting the technical provisions, consider the nature of its liabilities and diversify its investments as appropriate with the aim of limiting risks, such as currency risks. In addition, there are a number of specific restrictions with regard to the investment of funds meeting the technical provisions. However, life insurance companies that qualify as Institutions for Occupational Retirement Provisions (IORP) shall instead adhere to the "prudent person rule" implemented pursuant to the EU Pension Funds (IORP) Directive (2003/41/EC).

Assets meeting the technical provisions shall be located within the EEA if the risks are located (non-life insurance)

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or if the activities are conducted (life insurance) within the EEA. In other cases they shall be located in Sweden.

Notwithstanding these restrictions, insurance companies are allowed to invest in assets located outside the EEA as long as the investment is safe and does not undermine Swedish priority rules (i.e., rules which aim to secure the policyholders' rights to the assets in case of insolvency). Swedish agencies of non-EEA insurers shall hold their assets meeting the technical provisions, in Sweden.

2.3 Loans and distributions

Until January 1, 2000, Swedish life insurance companies were not allowed to distribute their profits to their shareholders or guarantors, or issue profit-related debt instruments. In addition, no insurance company, whether life or non-life, was allowed to issue convertible bonds.

Today both non-life insurance companies and dividend-paying life insurance companies are allowed to issue convertible bonds and debt instruments with detachable warrants. Since January 1, 2000, life insurance companies limited by shares have been entitled, subject to certain conditions, to distribute dividends to their shareholders. This rule, however, applies only to life insurance companies licensed after December 31, 1999, and life insurance companies licensed prior to that date that have converted their businesses to dividend-paying businesses (demutualisation). Life insurance companies limited by shares that have not been demutualised, are generally referred to as "hybrid companies".

Irrespective of the choice of debt instrument, fundraising through loans is allowed only if the funds are needed for the insurance activity as such or to render the fund management more effective. Substantial loans for the financing of capital investments are generally not allowed.

A hybrid life insurance company that decides to convert to a dividend-paying structure (demutualisation) must change its articles of association, which requires the approval of a certain percentage of the policyholders. In addition, the company must distribute, or at least allocate, its bonus funds (i.e., earnings from earlier financial years, and other policyholder surplus within the company) to the policyholders. The SFSA must also consent to the conversion. The demutualisations of three life insurance companies have been granted (Handelsbanken Life in 2001, and SPP Life and

Nordea Life in 2005). In 2009, however, an application for demutualisation of LF Life was denied.

In mid 2006, a Swedish government committee suggested that all hybrid life insurance companies be required to convert either to a pure mutual (remutualised) or a dividend-paying (demutualised) structure and several measures that will facilitate such conversions were proposed. In April 2010, a new committee was appointed by the government.

The new committee shall consider whether it is possible to avoid the disadvantages connected to hybrid companies (mainly due to the confusion between risk capital and policyholder capital) without forcing hybrid companies to either remutualise or demutualise.

2.4 Priority rights

As of January 1, 2006, Sweden has implemented the EU Directive on the Reorganisation and Winding Up of Insurance Undertakings (2001/17/EC). According to the Swedish priority regulations, all policyholders (including ceding insurance companies in relation to reinsurance providers) will have priority rights to the assets that meet the technical provisions.

2.5 Actuaries

All insurance technical calculations in Swedish insurance companies (both life and non-life) shall be made under the supervision of an actuary. A non-Swedish actuary is able to serve as an actuary in a Swedish insurance company if he or she meets the standards that the International Association of Actuaries imposes. The actuary must have "sufficient knowledge" of the Swedish language and at least three years of professional experience.

3. Supervision

3.1 EEA insurers

Insurance companies domiciled within the EEA with branches or general agencies in Sweden, or providing cross-border services in Sweden, are subject to supervision from their home state but are still liable to provide the SFSA with certain information, although not on a continuous basis.

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3.2 Non-EEA insurers

The main rule regarding Swedish agencies and branches of undertakings domiciled outside the EEA is that the entire activity in Sweden is to be supervised by the SFSA. If the insurer has established an agency or a branch in another EEA member state the supervision may, after application from the insurer, be entrusted to the competent authority in that other state.

4. Marketing Practices

It should be noted that Swedish marketing practices shall be complied with by all insurers marketing insurance products in Sweden, whether from within or outside the EEA. Thus, Swedish marketing restrictions and information requirements apply to both Swedish insurance companies and Swedish branches of foreign insurance companies as well as to cross-border marketing of insurance, even if such cross-border insurance services are provided under the EU principles of Freedom of Services.

4.1 The Marketing Practices Act

Marketing insurance products in Sweden is subject to the provisions of the 2008 Marketing Practices Act. The act applies to activities aimed at boosting the sale of any product or service in Sweden, including insurance products. The Act also applies to the distribution of brochures and other marketing materials.

The Act's main provision provides that marketing shall comply with good commercial standards, and shall be fair and reasonable towards the persons at whom it is directed. All marketing shall be designed and presented so that it is apparent that it is marketing and who is responsible for it. The person engaged in marketing may not use statements or other descriptions that are or may be misleading.

4.2 The Insurance Contract Act

A new Insurance Contract Act took effect on January 1, 2006, despite severe industry criticism. The new Act combi-

nes the 1980 Consumer Insurance Act and the outdated 1927 Insurance Contract Act. The language of this new, combined Insurance Contract Act is modernised and a new structure — where general rules of insurance are repeated for each branch of insurance — has made the law more user-friendly for the industry. It has strengthened the position of consumers in comparison to insurers by, for instance, imposing extensive information requirements, increasing the insurer's obligation to sign insurance contracts (i.e., a contracting obligation) and introducing a mandatory right for the policyholder to surrender life insurance policies at any time during the policy period..

In April 2010, the Ministry of Finance appointed a committee that was charged with the task to find a way to introduce full freedom of transfer of all life insurance policies currently in force. Today, unless otherwise agreed between the policyholder and the insurance company, a policyholder is only entitled to request transfer of a life insurance policy to another insurance company if the policy has been entered into after 2007.

The Insurance Contract Act adds a number of important requirements for marketing insurance services. A life insurance company and a non-life insurance company issuing consumer insurance policies must provide the policyholder with extensive information about the policy.

The information must be provided in Swedish. It may be provided in additional languages, however, if the policyholder so desires. The information must be provided in writing or in any other form that gives the policyholder permanent access to it (e.g., via the internet). Certain information must be given before the insurance agreement is agreed, while other information must be provided during the policy period.

4.3 The Financial Advice Act

Marketing life insurance products to consumers is subject to specific regulations under the 2004 Financial Advice Act if the products have any savings elements in addition to pure death benefits. The person who sells the policy must have sufficient competence and all advice and other statements made must be documented and provided to the consumer

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in writing. In addition, the insurance company must ensure that the consumer is dissuaded from products that are not adequate or suitable for him or with regard to his or her needs, economic circumstances and other relevant circumstances.

4.4 Distance Marketing of Consumer Financial Services

According to the EU E-commerce Directive adopted in June 2000, it is possible to provide services, under the internal market principles of free movement of services and freedom of establishment, throughout the European Union if the service provider complies with the law in its home state. Foreign insurance companies domiciled within the EEA may, with authorisation from their home state and subject to notification of the home state authority, directly market insurance services in Sweden. According to the SFSA's interpretation of the "general good" principle, the company's marketing must be in compliance with the Marketing Practices Act, even if the foreign insurance company only maintains a web site where a policyholder in Sweden can take out an insurance policy without further contact with the foreign insurance company.

On April 1, 2005, the Distance Marketing Act took effect implementing the EU Directive on Distance Marketing of Consumer Financial Services (2002/65/EC). The Act applies to distance agreements (i.e., agreements signed within a system for reaching agreements at a distance provided that the communication takes place solely at a distance) reached between a business entity and a consumer. According to the Act, certain information must be provided by a business entity when offering services over, for instance, the internet. Among other things, the information requirement covers the following:

1. Name and address of the business.
2. Main features of the financial service provided.
3. Price.
4. Cooling off period.
5. Language.
6. How complaints in relation to the agreement will be handled.

The Act provides for a "cooling-off period", i.e., a period of

14 days (or 30 days in the case of life insurance) from the date on which the consumer signed the agreement in which he or she may rescind it. In this case, all monetary amounts must be returned by the business entity.

4.5 Applicable Legislation

The Swedish conflicts-of-laws principles regarding insurance contracts are not highly developed. In Swedish judicial literature, however, it is generally agreed that the parties are free to choose the law applicable to an insurance contract and that, in the absence of such agreement, the choice shall be made in accordance with an individual method.

In case of doubt, preference shall be given to the law in the state where the permanent establishment through which the insurer has entered the insurance contract is located.

The only codified law on conflict of laws for insurance contracts follows from the implementation of the EU insurance directives and applies only to policies with a connection to more than one EEA member state. With regard to non-life insurance, the parties to "large risk" policies have complete freedom of choice of contract law. There is no such freedom as regards "mass risk" policies — the applicable law is generally that of the EEA state where the risk is located. With regard to life insurance contracts, the applicable law is usually determined on the basis of where within the EEA the policyholder's residence or establishment is located.

5. Taxation

5.1 General

A permanent Swedish establishment of a foreign company will generally be taxed according to the same principles as domestic companies. Swedish tax treaties with other states normally contain a definition of "permanent establishment" that is similar to that provided by the model tax treaty of the Organisation for Economic Cooperation and Development.

The ordinary corporation tax rate of 26.3 per cent also applies to financial institutions. The following additional tax regulations apply to insurance companies, however.

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5.2 Swedish insurance companies

A Swedish non-life insurance company is taxed on its net profits. Funds allocated to technical reserves are usually fully deductible in the computation of the company's net income. The company is also entitled to allocate part of its profits to a specific untaxed reserve, the "safety reserve", in accordance with SFSA guidelines.

Swedish life insurance companies are primarily subject to a specific yield tax determined by applying a yield tax rate of 15 per cent on pension assurance and 27 per cent on other life assurance on a notional yield corresponding to a sum equal to a government loan interest rate on the difference between the company's assets and liabilities at the beginning of the financial year.

5.3 Foreign insurance companies

A foreign non-life insurance company conducting business in Sweden through a permanent establishment (i.e., a branch or agency) will also be taxed at the ordinary corporation tax rate of 26.3 per cent. The taxable income is assessed in the same way as for Swedish non-life insurance companies.

Foreign life insurance companies conducting business in Sweden are subject to yield tax in accordance with the same principles as Swedish life insurance companies. Only assets and liabilities attributable to the Swedish business, however, shall be included in the computation.

5.4 Cross-border pension insurance

As of February 2, 2007, pension contributions that an employer makes for his employees are tax deductible if they are paid to an insurer within the EEA-area. However, all insurance contracts must include an undertaking from the insurer to inform the Swedish tax authorities, on a regular basis, of premiums paid and payments made.

6. Financial Services and Investment Relations

The past 10 years have witnessed a financial services revolution, which is growing more complex. New investment products and services have been developed, and a new playing field for the provision of financial services has evolved as banks, insurance companies and securities brokers offer a wider variety of products and services than ever before — products and services that are similar and often identical to one another.

It is possible to conduct all kinds of financial services within the same Swedish financial group. All major Swedish bank groups and several Swedish insurance groups carry on banking, securities brokerage and insurance business.

Swedish financial groups also often include mutual fund companies (i.e., companies that have been granted a licence to manage mutual funds).

The different financial groups are trying to become distributors of all financial products. Banking, securities brokerage and insurance are governed by different regulations but supervised by the same authority, the SFSA. The establishment and acquisition of a financial institution is subject to a permit from the SFSA.

7. The Internet

Use of the Internet is growing in the Swedish financial sector, in which companies are in a phase of active product development. Self-service via the Internet has become a key area. In 2008, almost 85% of the population had Internet access in their homes. Further approximately 7 million Swedish bank customers (80% of the population) had access to deposit accounts and payment services via the Internet. More than 63% of the Swedes pay their invoices via Internet payment services. In addition, self service functions involving the trading of shares and other securities by private customers are expanding.

Swedish insurance companies are also active in marketing on the Internet, many of them via the systems of an affiliated bank. They are marketing their own brands and a number of insurance products, and it is now possible to take out both life and non-life insurance policies online.

8. Future regulatory changes

A new Swedish Insurance Business Act is in the making. On November 19, 2009, the Ministry of Finance presented a draft new Insurance Business Act. The Ministry has declared that the New Act will enter into force in 2011.

Notwithstanding some critical remarks made by the industry and the SFSA, the proposed New Act is in all a major step towards a modernization of Swedish insurance business regulations. However, even if the New Act does enter into force as planned, many amendments will soon become necessary. For instance, already in 2012, major amendments may prove necessary in order to implement the EU Solvency II project.

Further, in April 2010, a committee has been charged with the task to find a way to introduce full freedom of transfer of all life insurance policies (see above under The Insurance Contract Act). The committee shall also propose ways to reduce the current disadvantages connected to hybrid life insurance companies (see above under Loans and distributions).

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