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Insurance/Reinsurance - Sweden

Overview (March 2006)

Contributed by [Advokatfirman Vinge](#)

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Introduction

The Swedish insurance market used to distinguish itself as a closed market dominated by a small number of domestic companies. However, during the past decade 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 liberalization of the market that was further increased through Sweden's implementation of EU directives.

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.

Provision of Services

Establishing an undertaking

In order to establish a new Swedish insurance company, the founders must apply for authorization from the Swedish Financial Supervisory Authority (SFSA). The application will be evaluated on the merits of the management and the owners controlling 10% or more of the capital or votes, as well as the nature of the planned business and the size of the capital.

Acquiring a Swedish undertaking

Acquisitions, both Swedish and foreign, of qualified holdings in Swedish insurance companies are subject to a permit from the SFSA. A permit must be obtained when any of the thresholds of 10%, 20%, 33% or 50% of the capital or the votes are reached.

Branch offices or general agencies

In accordance with the Foreign Insurance Activities Act, an insurer domiciled within the European Economic Area (EEA) may establish an agency or branch in Sweden without prior Swedish authorization. However, this is subject to certain notification procedures with the authorities of its home state.

Insurers domiciled outside of the EEA are subject to more restrictive regulations. They may

practise business in Sweden only if they have obtained a licence. Their business may be conducted through an agency or branch, but only if a major deposit is made with a Swedish bank. However, agreements between Switzerland and the European Union enable Swiss non-life insurance undertakings to be authorized to establish either an agency or a branch in Sweden without a deposit.

Cross-border services

According to the Foreign Insurance Activities Act, undertakings domiciled within the EEA may directly market insurance in Sweden, subject to authorization by their home state and notification to the home state authority. 'Passive' provision of insurance services (ie, the provision of insurance services on the sole initiative of the client) is regarded as a cross-border activity and is subject to notification.

Motor insurance undertakings are required to appoint a Swedish claims settlement representative entrusted with the necessary powers to settle claims on behalf of the undertaking. In addition, motor insurance undertakings must certify that they have joined and participated in financing the Swedish Motor Insurance Bureau.

Insurers domiciled outside of 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. However, non-EEA insurers are entitled to provide 'passive' insurance services.

Insurance mediation

On July 1 2005 the Insurance Mediation Act entered into force, implementing the EU Insurance Mediation Directive (2002/92/EC). The act establishes a system of professional requirements for SFSA authorization whereby the insurance or reinsurance intermediary:

- must not have been declared bankrupt;
- 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 economic matters;
- must possess the necessary general, commercial and professional knowledge and ability; and
- must possess professional indemnity insurance or any 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. However, subject to certain notification procedures, insurance and reinsurance intermediaries registered in other EEA states may be able to conduct business in Sweden through the principle of freedom to provide services or by establishing a branch. Insurance or reinsurance intermediaries outside of the EEA may provide insurance mediation from a Swedish branch only if they have obtained a licence from the SFSA.

Furthermore, among other things the act stipulates certain information requirements which must be met before entering into an insurance agreement, as well as the obligations for intermediaries: (i) to comply with good commercial standards, and (ii) to warn natural persons against inappropriate deals.

Business requirements for Swedish insurance companies

A Swedish insurance company may not engage in business other than insurance. However, since January 1 2000 Swedish life insurance companies have been 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 with fair settlements. The SFSA is entitled to investigate the business in order to ensure that the company meets these requirements.

Financial Status and Investment Restrictions

Financial status

With regard to non-Swedish insurers domiciled within the EEA, the solvency regulations of the member state in which the undertaking's management head office is located apply to all the undertaking's activities, including those carried out by a Swedish branch or agency.

Swedish insurance undertakings and Swedish agencies of insurance undertakings domiciled outside of 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. The capital base should also be sufficient in relation to other companies in the same insurance group (ie, a group of companies where an insurance company owns 20% or more of another insurance or reinsurance undertaking, or is a subsidiary of an insurance holding company, a foreign reinsurance company, a non-EEA insurance undertaking or a mixed activity insurance holding company). Following application to the SFSA, subordinated loans may be included in the calculation of the capital base.

With regard to non-life insurance undertakings and life insurance undertakings 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 undertakings involved in credit risk insurance, an equalization reserve is also required. Swedish agencies of insurers domiciled outside of the EEA are also liable to maintain their bank deposit.

Investment restrictions

Under Swedish law an insurance undertaking 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 currency risks. In addition, there are a number of specific restrictions with regard to the investment of funds meeting the technical provisions. From January 1 2006 life insurance companies that qualify as pension institutions shall instead adhere to the prudent person rule, implemented pursuant to the EU Pension Funds Directive (2003/41/EC).

Assets meeting the technical provisions shall be located within the EEA if the risks are located (non-life insurance) 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 of the EEA as long as the investment is safe and does not undermine Swedish priority rules (ie, rules which aim to secure 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.

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, debt instruments with detachable warrants and participating debentures. Since January 1 2000 life insurance companies have been entitled, subject to certain conditions, to distribute dividends to their shareholders. However, this rule applies only to life insurance companies licensed after December 31 1999 and existing life insurance companies that have converted their businesses to dividend-paying businesses. Fundraising through loans continues to be allowed only if the funds are needed for the insurance activity or to render the fund management more effective. Loans for the financing of capital investments are generally not allowed.

An existing life insurance company that decides to convert to a dividend-paying company 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 (ie, earnings from earlier financial years and other policyholder surplus within the company) to the policyholders. The SFSA must also consent to the conversion.

As of January 1 2006 Sweden has implemented the EU Winding-Up of Insurance Companies Directive (2001/17/EC). According to the new Swedish regulations, all policyholders (including

ceding insurance companies in relation to reinsurance providers) will have priority rights to the assets that meet the technical provisions.

Supervision

EEA insurers

Undertakings domiciled within the EEA with branches or general agencies in Sweden, or which provide 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.

Non-EEA insurers

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

Marketing Practices

Marketing Practices Act

Marketing insurance products in Sweden are subject to the provisions of the Marketing Practices Act 1995. 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.

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. However, it may be provided in additional languages if the policyholder so desires. The information must be provided in writing or any other form that gives the policyholder permanent access to it (eg, via the Internet). Certain information must be given before the insurance agreement is entered into, while other information must be provided during the policy period.

Financial Advice Act

Marketing life insurance products to consumers is subject to specific regulations under the Financial Advice Act 2004 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 in writing. In addition, the insurance company must ensure that consumers are dissuaded from products that are not adequate or suitable with regards to their needs, economic circumstances and other relevant circumstances.

Distance Marketing of Consumer Financial Services

According to the EU E-commerce Directive (2000/31/EC), 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 authorization from their home state and subject to notification of the home state authority, directly market insurance services in Sweden. However, 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 has only a website 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 entered into force, implementing the EU Directive on Distance Marketing of Consumer Financial Services (2002/65/EC). The act applies to distance agreements (ie, agreements entered into within a system for entering into agreements at a

distance, provided that the communication takes place solely at a distance) entered into between a business entity and a consumer. According to the act, certain information must be provided by business entities when offering services over, for instance, the Internet. Among other things, the information requirements cover the following:

- name and address of the business;
- main features of the financial service provided;
- price;
- cooling-off period;
- language; and
- how complaints in relation to the agreement will be handled.

Further, the act provides for a 'cooling-off' period (ie, a period of 14 days - 30 in the case of life insurance - from the date on which the consumer entered into the agreement during which he or she may rescind it). In this case, all monetary amounts must be returned by the business entity.

Applicable Legislation

The Swedish conflict-of-laws principles on insurance contracts are not highly developed. However, in Swedish judicial literature 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 of the state where the permanent establishment through which the insurer has entered into the insurance contract is located.

The only codified law on conflict of laws for insurance contracts is provided by the EEA Agreement 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. However, 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 the policyholder's residence or establishment is located within the EEA.

New Insurance Contract Act

A new Insurance Contract Act entered into force on January 1 2006, despite industry criticism. The new act combines the Consumer Insurance Act 1980 and the outdated Insurance Contract Act 1927. The language of the new combined Insurance Contract Act has been modernized and a new structure - whereby general rules of insurance are repeated for each branch of insurance - will make the law more user friendly for the industry. Furthermore, the new act strengthens the position of consumers with regards to insurers by, among other things:

- imposing extensive information requirements;
- increasing insurers' obligation to enter into insurance contracts (ie, contracting liability); and
- introducing a mandatory right for policyholders to transfer the insurance to another insurer.

Taxation

A Swedish permanent 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' which is similar to that provided by the Organization for Economic Cooperation and Development Model Tax Treaty.

The ordinary corporation tax rate of 28% also applies to financial institutions. However, the

following additional tax regulations apply to insurance companies.

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% on a notional yield corresponding to the government loan interest rate on the difference between the company's assets and liabilities at the beginning of the financial year. Certain discriminatory effects resulting from the yield tax system and the rights of policyholders to deduct particular pension insurance premiums have been deemed incompatible with the EC Treaty (Article 49 on the freedom to provide services). Therefore, the government is considering a new tax regime for life insurance where the liability to pay the yield tax may be transferred to the policyholder.

Foreign insurance companies

A foreign non-life insurance company conducting business in Sweden through a permanent establishment (ie, a branch or agency) will also be taxed at the ordinary corporation tax rate of 28%. 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. However, only assets and liabilities attributable to the Swedish business shall be included in the computation.

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 (ie, 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.

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. Approximately 77% of the population use the Internet, a proportion unchanged since 2003. In December 2004 just under 5.3 million Swedish bank customers (59% of the population) had access to deposit accounts and payment services via the Internet. In addition, self-service functions involving the trading of shares and other securities by private customers are expanding. In 2003 the number of individuals who made use of the possibility to buy and sell shares and other securities via the Internet increased from 14% to 23% of the Swedish shareholders in registered companies, and the figure continues to rise.

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

The Future

Investment regulations

The government has expressed doubts as to whether the existing detailed investment rules help insurance companies to secure policyholder liabilities. If not, the rules may serve only to reduce policyholder returns. The government has recognized that this wider problem has its foundation in asset-liability matching rather than just asset allocation. Therefore, the government is considering introducing the method of asset-liability management for Swedish insurance companies. In 2003 a government-appointed committee reviewed some of the rules regarding insurance companies' technical provisions and investments covering the technical provisions. The review also encompassed provisions on the capital base and risks in relation to loans, guarantees and similar commitments, as well as those relating to reinsurance. The committee suggested a completely new method for asset-liability matching. It is probable that Sweden will not wait for the European Union to conclude its ongoing modernization of EU solvency regulations (the Solvency II Project). However, the new Swedish regulations are not expected to enter into force before 2007.

Insurance Business Act





In 2003 the Swedish government appointed a committee to review the entire legal regime for insurance companies. The government believes that the Insurance Business Act is out of date and has not kept pace with the development of general company law. In addition, the problems of conflicts of interest between life insurance policyholders and shareholders, which is an issue of intensive debate in Sweden, will be reviewed. The committee is likely to recommend that non-profit distributing life insurance companies limited by shares (eg, Skandia Life) convert either to an entirely mutual structure or to a profit-distributing structure. A proposal for a new Insurance Business Act is expected in mid-2006.

Insurance Contract Act

The new Insurance Contract Act 2006 will be amended (probably as soon as 2007) by the introduction of a mandatory right for life insurance policyholders to transfer their policies from one insurance company to another. However, it is unclear whether this right will be extended to existing policies or limited to new policies entered into after the introduction of the new legislation.

For further information on this topic please contact [Per Johan Eckerberg](mailto:per.johan.eckerberg@vinge.se) at Advokatfirman Vinge by telephone (+46 8 614 30 00) or by fax (+46 8 614 31 90) or by email (perjohan.eckerberg@vinge.se).

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