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Insurance & Reinsurance - Sweden

Overview (July 2007)

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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 leading players in the Swedish financial services industry. Meanwhile, online self-service on the Internet has achieved a leading position in Europe. The Swedish insurance industry now consists of approximately 390 insurance companies, 90 friendly societies and approximately 25 branch offices and agents of non-Swedish companies.

The majority of the insurance companies are small, local, non-life insurance companies. The number of captive insurance companies is increasing. However, the market consists mainly of a few larger companies and company groups.

The five largest insurance companies or groups have a combined total of about 90% of the market for non-life insurance. In life insurance, the five largest insurance groups control about 75% of the market. In recent years important Swedish life and non-life insurance companies have been acquired by foreign insurance companies and a number of foreign insurance companies have established branch offices and agencies in the Swedish market.

This overview summarizes some of the main features of the Swedish regulations affecting foreign insurers with existing or contemplated business activities in Sweden. It is merely a general description and does not deal with all aspects that will need to be taken into account when considering carrying out insurance business activities in Sweden.

Provision of Services

Establishing an insurance company

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 based on:

- the merits of the management and the owners controlling 10% or more of the share capital or votes;
- the nature of the planned business; and
- the amount of share capital.

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%, 20%, 33% or 50% of the share 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 involving the authorities of the home state.

Insurers domiciled outside 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 a 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 act, insurance companies 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 from the EEA (ie, the provision of insurance services on the sole initiative of the client) 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 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 (but not 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 number of professional requirements for SFSA authorization, including that 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 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. However, subject to certain notification procedures, 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 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 prior to entering into an insurance agreement, as well as the obligations for intermediaries to comply with good commercial standards and to warn 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 and 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 head office is located apply to all the undertaking's activities, including those carried out by a Swedish branch or agency.

Swedish insurance companies and Swedish agencies of insurance companies 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. Further, the company must have a sufficient 'buffer' (security margin) in addition to the solvency margin. The government has recently proposed that Sweden prepare for the forthcoming EU Solvency II Regulations. As a consequence, the necessary security margin will, as of January 1 2008, be assessed individually for each company based on the company's financial, insurance and operational risks.

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 company, or 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% 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% 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 equalization reserve is also required. Swedish agencies of insurers domiciled outside of the EEA are liable to maintain their bank deposit.

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 (eg, 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). The SFSA applies a 'traffic-light' stress test to ensure that the solvency will survive a worst-case scenario. As of January 1 2007 the traffic-light test applies to all insurance companies.

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 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.

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 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 life insurance companies licensed before that date 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 as such 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 structure 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 policyholders. The SFSA must also consent to the conversion.

In mid-2006 a government committee suggested that all life insurance companies be required to

convert to either a pure mutual or a dividend-paying structure; several measures to facilitate conversion have been proposed. However, whether and when this proposal will enter into force remains uncertain.

Priority rights

As of January 1 2006 Sweden has implemented the EU Winding-Up of Insurance Undertakings 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

Insurance companies 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 a branch in another EEA member state, the supervision may, after application from the insurer, be entrusted to the competent authority in that state.

Marketing Practices

The Marketing Practices Act

Marketing insurance products in Sweden is 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 requires that marketing comply with good commercial standards and 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. Persons engaged in marketing may not use statements or other descriptions that are or may be misleading.

The Insurance Contract Act

A new Insurance Contract Act entered into force on January 1 2006, despite severe industry criticism. The new act combines the Consumer Insurance Act 1980 and the outdated Insurance Contract Act 1927.

The language of this new, combined act has been modernized; 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, it strengthens the position of consumers in relation to insurers by, for instance:

- imposing extensive information requirements;
- increasing the insurer's obligation to enter into insurance contracts (ie, a contracting obligation); and
- introducing a mandatory right for the policyholder to surrender life insurance policies at any time during the policy period.

The act introduces 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 on the policy. The information must be provided in Swedish. It may also be provided in additional languages if the policyholder so requests. The information must be provided in writing or in any other form that gives the policyholder permanent access to it (eg, on the Internet). Certain information must be given before the insurance agreement is entered into and other information must be provided during the policy period.

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 in writing. In addition, the insurance company must ensure that the consumer is dissuaded from purchasing products that are inadequate or unsuitable with regard to his or her needs, economic circumstances and other relevant circumstances.

The Distance Marketing Act

According to the EU E-commerce Directive (2000/31/EC) adopted in June 2000, it is possible to provide services throughout the European Union under the internal market principles of free movement of services and freedom of establishment 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 maintains 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 requirement covers 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 - that is, a period of 14 days (or 30 days 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 regarding 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.

Taxation

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 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 pension assurance and 27% 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.

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.

Cross-border pension insurance

As of February 2 2007 pension contributions that an employer makes for its employees will be tax deductible if they are paid to an insurer within the EEA. 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.

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 are 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. In 2006 the number of agreements entered into with Swedish banks for the use of banking services via the Internet increased by 12%. In December 2006 approximately 7.2 million Swedish bank customers (80% of the population) had access to deposit accounts and payment services on the Internet. 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 through 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.

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