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### New Rules on Insurance Company Ownership and Management Assessment

Contributed by [Advokatfirman Vinge](#)

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As a result of the EU Directive on Acquisitions in the Financial Sector (2007/44/EC) the government has amended its legislation on ownership and management assessment of financial companies, including insurers. The new regulations are proposed to enter into force on July 1 2009. This update outlines the major changes.

#### Qualifying Holding

A stakeholder is said to have a 'qualifying holding' in a financial company if it has either a direct or indirect stake of 10% or more of the share capital or votes in the company or a holding which otherwise renders it possible to exercise a significant influence over the management of the company.

The new rules stipulate that the regulations on declaration of shareholdings contained in Chapter 4 of the Swedish Financial Instruments Trading Act(1) will be used to assess what constitutes a qualifying holding in insurance companies and other regulated entities. This means that the following will be included in the assessment of whether a holding is to be considered a 'qualifying holding':

- shares held by someone other than the acquirer but which grant the acquirer a voting right;
- deposit certificates; and
- shares on which the acquirer may vote by proxy.

The following will not be included in the assessment:

- shares acquired for the purposes of clearing and liquidating transactions;
- shares held by deposit holders or market guarantors; and
- shares included in the trading stock of investment firms or credit institutions.

#### Confirmation of Receipt

The new rules state that the ownership and management application must be made to the Financial Supervisory Authority (FSA) in writing. The FSA will be required to confirm receipt of the application within two days. The FSA will perform an overall review of the application to ensure that all the requisite documents have been submitted and thus ensure that the application can be deemed complete. The applicant's option to file supplementary information remains.

#### Implied Consent

According to existing legislation, the FSA must render its decision within 90 calendar days of receiving a complete application. The new rules change this timeframe to 60 working days. In practice, this will not be a significant change since the FSA already has a service commitment to an assessment period of 60 calendar days. However, the new rules contain a major difference – should the FSA not deliver its decision within the specified timeframe, the application will be deemed to have been approved. This rule is not intended to apply to applications regarding acquisitions of qualifying holdings in Swedish operators of regulated markets or clearing organizations.

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Authors

[Dan Hanqvist](#)**Johan Ragnar**

## Threshold Value

Under existing rules, a stakeholder wishing to increase its holding in an insurance company or other regulated entity to 20%, 33% or 50% must seek the approval of the FSA. The new threshold values will be 20%, 30% and 50%. However, if permission to acquire a 33% holding has been obtained before the new rules enter into force, that permission will remain valid.

## Assessment Criteria

The directive entails a higher degree of harmonization between the national supervisory authorities than existed previously due to the assessment criteria being in the public domain. Once the new legislation enters into force, the FSA will take several criteria into consideration when performing its ownership and leadership assessment in connection with an acquisition leading to a qualifying holding (or an increase in a qualifying holding) in a regulated entity:

- Permission will be granted only if the acquirer is deemed to be suitable to have a significant influence over the relevant company and the acquisition is deemed to be economically sound.
- The acquirer's reputation and capital strength (ie, its ability to finance the proposed acquisition and maintain a financially sound structure in the relevant entity) will be considered. Any doubts about the acquirer's integrity and competence, experience, general judgement and compliance with the law will be investigated.
- If the acquirer plans to replace management personnel of the target company upon completion of the proposed transaction, the new staff members will be subject to management assessment in connection with the ownership assessment. Consequently, information relating to new personnel must be submitted to the FSA.
- The FSA must consider whether the proposed transaction involves any risk relating to money-laundering activities. The rule aims to ensure that (i) the money used to purchase shares is not derived from criminal activities and (ii) money-laundering activities will not be carried out within the target company after the transaction is completed.
- The size of the acquirer's holding and the acquirer's impact on the target company after completion of the transaction must also be considered.

## Transitional Provisions

The transitional provisions state that the existing rules on ownership and management assessment will apply to applications filed with the FSA before the new rules enter into force.

*For further information on this topic please contact [Dan Hanqvist](#) or [Johan Ragnar](#) at Advokatfirman Vinge by telephone (+46 8 614 3000) or by fax (+46 8 614 3190) or by email ([dan.hanqvist@vinge.se](mailto:dan.hanqvist@vinge.se) or [johan.ragnar@vinge.se](mailto:johan.ragnar@vinge.se)).*

## Endnotes

(1) *Sw lag 1991/930 om handel med finansiella instrument.*

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