Insurance Services in Sweden

There are more insurance companies per inhabitant in Sweden than in any other European country. Swedish insurance companies generated premium income of about SEK 325 billion in 2017; in 2017 they employed almost 21,000 people and invested SEK 4,500 billion in the global economy. The Swedish insurance industry consists of about 350 insurance companies. The majority of the insurance companies are small non-life insurance companies. The market is concentrated into a few large groups.

The international presence on the Swedish insurance market has increased in the past ten years. There are approximately 35 foreign insurance companies represented via branches or agencies.

Set forth below 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.

1. FINANCIAL SERVICES AND INVESTMENT RELATIONS

The past 10 years have witnessed a financial services revolution. 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 provide all kinds of financial services within the same Swedish group of financial companies. 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, i.e., the Swedish Financial Supervisory Authority (Sw. *Finansinspektionen*; the **Swedish FSA**).

2. PROVISION OF SERVICES IN SWEDEN

2.1 Supervision and Authorisation

The Swedish FSA, an agency under the Ministry of Finance, is responsible for the supervision, authorisations, sanction assessments, regulations and reporting matters over the insurance industry.

A Swedish company may conduct insurance business in Sweden only after having been duly authorised by the Swedish FSA pursuant to the Swedish Insurance Business Act (**IBA**). Authorisation is only granted to a company limited by shares (Sw. *aktiebolag*), a mutual insurance undertaking (Sw. *ömsesidigt försäkringsbolag*) or an insurance association (Sw. *försäkringsförening*). Authorisation to conduct insurance business in Sweden is granted when the requirements defining insurance business are satisfied. Moreover, in order for an authorisation to be granted, the applicant's articles of association must be compliant with the IBA and other relevant laws and regulations, the proposed business has to be considered to be compliant with the IBA and other relevant laws and regulations regarding the business of the applicant. In addition, the qualifying holder(s) of shares in an insurance undertaking must be judged to be appropriate to exercise a significant influence over the management of the insurance undertaking, which includes considerations governing good standing and capital strength of the qualifying holder(s). Lastly, the persons involved in the management of, or in charge of key functions within, the insurance undertaking must possess the knowledge and experience deemed to be sufficient as well as being considered as fit and proper persons in this respect.

2.2 Establishing an insurance company

Authorisation by the Swedish FSA is required in order for a Swedish company to conduct insurance business in Sweden. An application is granted where the insurance company is deemed to satisfy the requirements governing insurance operations. 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 capital. An authorisation is in general valid indefinitely, but can be withdrawn in case of serious breach of insurance legislation.

2.3 Acquisition of an insurance company

Acquisitions, both Swedish and foreign, of qualified holdings in Swedish insurance companies require approval by the Swedish FSA. Such approval 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. The statutory assessment period is 60 working days calculated from the date when the application was deemed to be complete. The assessment period may be extended up to 30 business days.

The approval by the Swedish FSA is required prior to the acquisition. This applies regardless of whether it is a Swedish or a foreign acquisition and regardless of whether the thresholds reached will be 10, 20, 30 or 50 per cent of the share capital or the votes.

2.4 Business requirements for Swedish insurance companies

Naturally, a Swedish insurance company is required to comply with relevant EU regulations, Swedish law and regulations issued by the SFSA. In addition hereto, the SFSA and the European Insurance and Occupational Pensions Authority (EIOPA) formulate guidelines and recommendations on a "comply or explain" basis, thus enabling insurance and reinsurance undertakings to determine the manner in which the requirements should be satisfied. Further, the Swedish insurance companies' industry organization (Insurance Sweden) issues recommendations to its members.

A Swedish insurance company may not engage in business other than insurance business and activities that are connected with insurance business (such as claims handling, investment management, etc.). However, Swedish life insurance companies are able to combine unit-linked life insurance business with regular life insurance business. Furthermore, both life and non-life insurance companies may provide short-term health and accident insurance.

Insurance companies need to fulfil certain basic requirements, such as satisfactory solvency, liquidity and control over insurance risks, operating risks and investment risks. Furthermore, insurance companies must conduct the business in accordance with Generally Accepted Insurance Practices.

Insurance companies are obliged to provide, on an ongoing basis, information about their financial status, and the Swedish FSA may conduct on-site inspections and review the operations at any time. In case of violations of insurance business rules and regulations, the Swedish FSA may revoke the authorisation or impose fines of up to SEK 50,000,000. However, infringement of money laundering provisions may result in considerably higher penalties, both for the company and its directors.

> *”In case of violations of insurance business rules and regulations, the Swedish FSA may revoke the authorisation or impose fines of up to SEK 50,000,000.*

2.5 Cross-border services/Branch offices/General agencies

In accordance with the Foreign Insurance Activities Act (**FIAA**), an insurer, reinsurer or institution for occupational retirement provisions domiciled within the European Economic Area (**EEA**), may establish an agency or a branch (secondary establishment) or carry on business on a cross-border basis (freedom of provision of services) in Sweden without prior Swedish authorisation. This is subject to certain notification procedures involving the authorities of the relevant home state.

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

A foreign insurer which intends to carry on motor insurance business in Sweden must certify that it is a member of the Swedish Association of Motor Insurers (Sw. *Trafikförsäkringsföreningen*). A foreign insurer intending to carry on motor insurance business on a cross-border basis must also appoint a representative in Sweden.

2.5.1 Cross-border services provided by companies domiciled outside the EEA

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 Swedish FSA. However, non-EEA insurers are entitled to provide “passive” insurance services (i.e. the provision of insurance services on the sole initiative of the client) without a licence.

2.5.2 Cross-border services provided by companies domiciled within the EEA

A foreign insurer or an institution for occupational retirement established and authorised within the EEA – and which is not a reinsurance undertaking – may carry on business on a cross-border basis in Sweden without applying for an authorisation; however, before doing so the undertaking must notify its home supervisory authority. Passive provision of such services (i.e. the provision of insurance services on the sole initiative of the client) would also require a prior notification.

A foreign insurer authorised and established within the EEA may carry on reinsurance business in Sweden from a branch or general agency or write business on a cross-border basis without applying for an authorisation or notifying its home supervisory authority.

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 the financing of, the Swedish Association of Motor Insurers.

2.6 Insurance Distribution

2.6.1 The Insurance Distribution Directive

The Insurance Mediation Act, based on the former Insurance Mediation Directive, is from 1 October 2018 replaced by a new Insurance Distribution Act (**IDA**) based on the Insurance Distribution Directive (**IDD**).

IDD applies to all distributors of insurance products, even insurance companies, and all distribution channels. IDD aims at enhancing the protection of consumers and retail investors buying insurance products or insurance-based investment products. The ways of achieving those aims through IDD are by ensuring a greater transparency of insurance distributors with regard to the price and costs of their products, better and more comprehensible product information as well as improved conduct of business rules, in particular with regard to giving advice. IDD allows for member states to deviate from certain requirements as regards reinsurance or insurance cover for commercial and industrial risks or when the customer is a professional client.

Some general rules of the IDD include the requirements of identifying the target market and having a product approval process, the information and documentation requirements, the requirements regarding governance and organisation and the requirements concerning remuneration. IDD contains a new general conduct of business principle, which provides that insurance distributors have to act honestly, fairly and professionally in accordance with the best interests of their customers. New information requirements regarding cross-selling and prohibition for tie-contracts are set out in IDD. When distributing property insurance, the customer has to be provided with a product fact sheet (IPID) on paper or another durable medium.

Certain exceptions can be found as regards information requirements when the insurance distributor carries out the insurance distribution in relation to insurance of large risks. Furthermore, the requirements regarding product governance shall not apply to insurance products which consist of the insurance of large risks. Generally, IDD is not applicable in relation to insurance and reinsurance activities pertaining to risks and commitments located outside the European Union or insurance and reinsurance activities carried out in third countries. However, the rules pertaining to the company "as a whole", such as internal guidelines etc., is likely to apply to the whole business including activities carried out in third countries.

2.6.2 Insurance Distribution Act

The general rules for IDD apply to IDA as well. Reinsurance and insurance in relation to the insurance of large risks, in accordance with IDA, generates some exceptions from the requirements stipulated in the IDA. The general conduct of business principle is not mandatory in respect of reinsurance and insurance of large risks. Requirements regarding product approval processes are not applicable to insurance products which consist of the insurance of large risks. Some of the general information requirements are not applicable to insurance of large risks and reinsurance. Furthermore, certain information requirements applicable to distribution of insurance based investment products do not apply when the customer is a professional client.

According to the IDA, a number of conditions for distribution of life insurance products with a savings element will change dramatically as the regulations related to the provision of investment advice will be similar to those set forth in the MiFID II-regulations. Further, the IDA has a strong focus on conflict of interest matters that arise from remuneration received from third parties. For instance, insurance intermediaries which provide advice based on a fair and personal analysis are prohibited from accepting and retaining remuneration from any other person than the customer. Even if advice is not based on a fair and personal analysis, the possibilities to receive commission-based remuneration will be limited.

3. APPLICABLE LAWS

3.1 Applicable laws in general

The **IBA** and the Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 (**Solvency II Regulation**) constitute the main legal framework applicable to insurance business in Sweden. Supplementary company law for most insurance companies is provided in the Swedish Companies Act. In addition, the Swedish FSA issues regulations and general guidelines that must be observed.

Further, EIOPA prepares guidelines and recommendations, which have the same status as the Swedish FSA's general guidelines. In other words, they must be followed but firms are allowed to determine the manner in which they meet the requirements on a "comply or explain" basis. In addition, Insurance Sweden issues recommendations to its members.

3.2 Regulation regarding the insurance contract

The Swedish Insurance Contracts Act (Sw. *försäkringsavtalslagen;* **ICA)** must be adhered to if the insurance contract is governed by Swedish law. The ICA stipulates various provisions which are mandatory in favour of the policyholder, its assignee, the insured and its beneficiaries. This means that the ICA may restrict the terms of insurance contracts. Furthermore, various mandatory provisions of the ICA and regulations issued by the Swedish FSA specify an obligation for the insurance company to submit pre-contractual or contractual information to the policyholders and the insured. The ICA regulates, inter alia,:

- customer information before the policy is entered into and during the term of the policy;
- the right to obtain insurance coverage;
- when the insured and the insurer may terminate the agreement;
- what limitations the insurer may set up for coverage;
- premium payments;
- settlement;
- the possibilities for the insured to direct the compensation to someone else (beneficiary).

Applicable law on insurance contracts concerning risks situated in Sweden is governed by Regulation (EC) No 593/2008 (**Rome I Regulation**), which restricts the right of the parties to choose the applicable law to the insurance contract. Sweden has not implemented any greater freedom of choice; the Rome I Regulation applies.

The ICA is not applicable to reinsurance contracts. The parties to reinsurance contracts thus have a greater degree of contractual freedom and they are limited mainly by the general restrictions stated in the Swedish Contracts Act (Sw. *avtalslagen;* **CA**) and international law.

An insurance contract governed by Swedish law must comply with the provisions of the Swedish Discrimination Act (Sw. *diskrimineringslagen*), which may prohibit certain discriminatory terms in insurance contracts. Insurance contracts are also subject to the Swedish Distance and Doorstep Sales Act (Sw. *lag om distansavtal och avtal utanför affärslokaler;* **DDSA**), the Consumer Contracts Act (1994:1512) (Sw. *lag om särskilda avtalsvillkor i konsumentförhållanden*), the Contract Terms (Enterprises) Act (Sw. *lag om avtalsvillkor mellan näringsidkare*) and the CA.

Pursuant to the Swedish DDSA, the mandatory provisions of the Swedish ICA and regulations issued by the Swedish FSA apply to situations when there is an obligation to provide pre-contractual or contractual information toward customers and policyholders. Swedish insurance undertakings are under an obligation to provide information which is sufficient to enable a customer to decide whether he or she should enter the insurance contract. The information that should be provided in such cases will include, inter alia, a description of the insurance contract entailing the costs and the scope of the insurance, in particular in relation to exclusion clauses. If the pre-contractual information is not provided when such an obligation exists, e.g. in relation to an exclusion clause, the exclusion clause may be declared void.

3.3 Mandatory insurance

In Sweden, third party motor insurance, which covers the strict tort liability that a motor vehicle owner has for personal injuries to other people and damage to their property, is mandatory pursuant to the Swedish Motor Insurance Act (Sw. *trafikskadelag*).

Furthermore, a number of professionals, such as insurance intermediaries, real estate agents and accountants must likewise maintain professional indemnity insurance. For instance, pursuant to the rules of the Swedish Bar Association, the Association's members must be covered by professional indemnity insurance. It is also mandatory for several business activities to procure and maintain insurance cover, e.g. under the provisions of the Nuclear Plant Liability Act (Sw. *atomansvarighetslag*), Air Traffic Act (Sw. *luftfartslag*), Railway Traffic Act (Sw. *järnvägslag)* and the Sea Traffic Act (Sw. *sjölag*).

Moreover, under Swedish law an employer might be required to provide insurance benefits subject to the provisions of a collective bargaining agreement. This includes, inter alia, occupational old age pension, sick pay pension and occupational injury insurance.

3.4 The marketing of insurance

The marketing of insurance services in Sweden, whether such services are provided by Swedish or non-Swedish insurers, is regulated by the Swedish Marketing Act (Sw.

marknadföringslagen) and regulations and recommendations issued by the Swedish FSA. Further, Swedish insurers must also comply with recommendations issued by Insurance Sweden to its members.

3.5 The Solvency II regime

On 1 January 2016, the Solvency II Directive (2009/138/EC) entered into force. Solvency II is a risk-based solvency regime, which aims to deepen the integration of the insurance and reinsurance market, enhance the protection of policyholders and beneficiaries, improve international competitiveness of EU insurers and reinsurers and promote better regulation. The Solvency II Directive is implemented in Sweden primary through the IBA. The "level two" implementation measures set out in the Solvency II regulation entered into force on 1 January 2016 and have direct effect in Sweden. Compared with Solvency I, the regulatory capital requirements under Solvency II more accurately reflect the specific risk profile of each undertaking.

3.5.1 System of governance

The Solvency II regime requires that all the insurance and reinsurance undertakings have in place a risk management system and an internal control system. According to the IBA, implementing Articles 44, 46, 47 and 48 of the Solvency II Directive, an insurance undertaking must have the following key functions: risk management function, compliance function, internal audit function and actuarial function. Insurance undertakings are further required to have a responsible person for each function who must be approved by the Swedish FSA. EIOPA has also issued guidelines pertaining to insurance undertakings' system of governance (EIOPA BoS 14/253).

An insurance undertaking is required to have a number of polices in place as part of the system of governance. The undertaking should align all policies with each other and with its business strategy. Each policy should clearly set out at least:
a) the goals pursued by the policy;
b) the tasks to be performed and the person or role responsible for them;
c) the processes and reporting procedures to be applied;
d) the obligation of the relevant organisational units to inform the risk management, internal audit, compliance and actuarial functions of any facts relevant for the performance of their duties.

> *"There is no single risk management system that is appropriate to all undertakings; the system must be tailored to the individual undertaking.*

In the policies that cover the key functions, the undertaking should also address the position of these functions within the undertaking, as well their rights and powers.

Under the relevant rules, insurance undertakings shall have an effective risk management system in place. The risk management guidelines take as a starting point that an adequate risk management system requires an effective and efficient set of integrated measures which must fit into the organisational and operational activity of the undertaking. There is no single risk management system that is appropriate to all undertakings; the system must be tailored to the individual undertaking.

The compliance function shall include advising the administrative, management or supervisory body on compliance with laws, regulations and administrative provisions. The internal audit function shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance.

In addition to the Solvency II requirement for insurance companies to have an actuarial function, 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 certain standards imposed by the Swedish FSA. For instance, an actuary must have "sufficient knowledge" of the Swedish language and at least three years of professional experience.

3.5.2 Consumer complaints

An insurance undertaking is required to ensure that its customers and any other persons affected by the insurance service can lodge a complaint against the insurance undertaking. Further, the complaints procedure must be governed by a guideline and a policy. The complaints process must be documented and properly archived. Consumer complaints are regulated in the IBA and by regulations issued by the Swedish FSA.

3.5.3 Conflicts of interest

According to the provisions of the IBA, an insurance undertaking which conducts direct insurance business has to adopt and comply with guidelines concerning management of conflict of interests. The internal guidelines shall cover conflict of interests between shareholders, partners and policyholders and other beneficiaries as well as the employees of the insurance undertaking. The board of directors is responsible for adopting the internal guidelines.

3.5.4 Outsourcing

The IBA stipulates that insurance undertakings are required to have written instructions in relation to outsourcing. Under the rules, if an insurance undertaking shall outsource "critical or important functions or activities" of its business, the company must register the outsourcing with the Swedish FSA. Article 274 of the Solvency II Regulation contains detailed restrictions regarding, inter alia, the terms and conditions of the outsourcing contract. Further issues relating to outsourcing are addressed in the EIOPA guidelines on system of governance.

3.6 Removed group exemption

Commission Regulation (EU) No 26/2010 of 24 March 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of agreements, decisions and concerted practices in the insurance sector ceased to be applicable on 31 March 2017. The regulation earlier granted an exemption to certain collaborations between insurance and reinsurance companies which usually gives rise to a restriction of competition, and was therefore not prohibited. The Swedish legislation was amended on 1 August 2017 to comply with this.

4. FINANCIAL STATUS

4.1 Valuation of assets and liabilities

The implementation of the Solvency II Directive has changed the regulations regarding the financial status for insurance companies in Sweden. Assets have to be valued to the amount for which they would be valued in a transaction between professional and from each other independent entities with a real interest to complete the transaction. The same valuation principle applies to liabilities. The value of assets and liabilities may not be adjusted with consideration to the insurance or reinsurance undertaking's own credit rating.

4.1.1 Solvency balance sheet

Insurance and reinsurance undertakings have to prepare a specific solvency balance sheet for regulatory purposes. It includes the entire balance sheet, assets as well as lia-

bilities, and technical provisions. However, the solvency balance sheet is independent from the ordinary financial statements. For instance, the company's assets and liabilities have to be reported at their fair values. The solvency balance sheet constitutes the basis for the calculation of the capital base and the capital requirements.

4.1.2 The technical provisions

Insurance and reinsurance undertakings have to establish technical provisions. The technical provisions must correspond to the amount that the insurance or reinsurance undertaking would value them if they were to be transferred to another insurance or reinsurance undertaking. The calculation shall be conducted in a prudent, reliable and objective manner. There are a number of other factors that have to be considered when calculating the technical provisions. Some of them are:

- inflation, including expenses and claims inflation;
- expenses that will be incurred in handling insurance and reinsurance obligations;
- payments to policyholders and beneficiaries;
- market consistency; and
- risk margin

4.2 Capital base

Insurance and reinsurance undertakings must have a capital base that, at a minimum, meets the Solvency Capital Requirement (**SCR**, see section 4.3 below), or any additional requirement that the Swedish FSA has decided. However, the capital base may never be less than a certain minimum capital requirement (**MCR**).

The capital base consists of: (i) the eligible basic own funds; and (ii) ancillary own funds that are approved by the Swedish FSA. The eligible basic own funds are equal to the positive difference between, on the one hand, the assets and subordinated liabilities that meets certain specific requirements and, on the other, all other liabilities. Ancillary own funds are funds that are not eligible basic own funds, but are still available for absorbing losses, e.g. unpaid share capital. The inclusion of ancillary own funds in the capital base is, however, subject to approval by the Swedish FSA.

4.2.1 Classification of the own funds items in the capital base

The own funds items are classified in three different tiers. The classification shows the quality of the items in the capital base. The classification depends on whether an item is part of the own eligible funds or the ancillary own funds. Furthermore, the classification is based upon the availability of the item for loss absorbing purposes and a number of other requirements

These features will mostly be applicable when assessing if debenture loans and different types of capital contributions should be included in the capital base or not.

Eligible basic own funds that can substantially cover losses and are subordinated other liabilities are classified as Tier 1. Items in the eligible basic own funds that cannot substantially cover losses, but in all are substantially subordinated other liabilities, are classified as Tier 2. Items in ancillary own funds that substantially cover losses and

are subordinated shall also be classified as Tier 2. An item in the eligible basic own funds or ancillary own funds that has not been classified as either Tier 1 or 2 shall be classified as Tier 3.

4.3 Capital Requirements

As mentioned above, insurance and reinsurance undertakings must have a capital base that covers the SCR and the MCR.

The SCR is a formula-based figure calibrated to ensure that all quantifiable risks are taken into account. This includes such risks as risks related to non-life underwriting, life underwriting, health underwriting, market, credit, operational and counterparty risks. The purpose of the SCR is to ensure that both insurers and reinsurers will be able to fulfil their obligations towards policyholders and beneficiaries during the forthcoming 12 months with a 99.5 % probability. The purpose of the MCR has been to establish a bottom line that no insurer or reinsurer may go below.

The SCR may be calculated with the application of a standard formula or an internal model approved by the Swedish FSA. The frequency of the calculation is at least once per year. The results must be reported to the Swedish FSA.

4.4 Investment restrictions

Under Swedish law, an insurance company shall, with regard to investments matching 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 that match the technical provisions. Previously only life insurance companies that qualified as Institutions for Occupational Retirement Provisions (**IORP**) had to adhere to a "prudent person rule" (Sw. *aktsamhetsprincipen*) when conducting investments. Now, all insurance and reinsurance undertakings have to adhere to a prudent person principle, although elaborated further by the Solvency II Directive. Basically, this means that investments should only be made in assets and instruments whose risks the undertaking can properly identify, measure, monitor, manage, control and report and appropriately take into account in the assessment of its overall solvency needs. The assets that cover the MCR and the SCR shall be invested in a way that ensures the security, quality, liquidity and profitability of the portfolio as a whole. The use of derivative instruments is permitted insofar as they contribute to a reduction of risks or facilitate an efficient portfolio management.

In the event a conflict of interests arises, the investments shall be made in the best interests of the insured and their beneficiaries.

4.5 Loans and distributions

Until 1 January 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 1 January 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 31 December, 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. This restriction applies to all insurance or reinsurance companies, regardless of whether they are entitled to distribute dividends or not.

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, after a voting procedure, 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 Swedish FSA must also consent to the conversion. The demutualisation of three life insurance companies has been granted (Handelsbanken Life in 2001 and SPP Life and Nordea Life in 2005). In 2010, however, after an initial denial of its application for demutualisation, LF Life decided to abandon its demutualisation plans. LF Life was soon followed by Skandia Life. The latter company went even further and decided to abandon its hybrid structure and convert to a pure mutual one.

In 2006, a Swedish governmental committee suggested that all hybrid life insurance companies should be required to convert either to a pure mutual (remutualised) or to a divided-paying (demutualised) structure and several measures that will facilitate such conversions were proposed. In 2012, a new committee proposed a number of regulatory changes that would make it possible to reduce the risks for conflicts of interest between policyholders and shareholders in hybrid companies (mainly due to the confusion between risk capital and policyholder capital) without forcing hybrid companies to either remutualise or demutualise. However, to date, the government has not proposed any such amendments to be made to the Insurance Business Act.

4.6 Priority rights

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.

4.7 Supervision

4.7.1 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 financial supervision (i.e., where appropriate, supervision of solvency, technical provisions and assets covering technical provisions) from their home state but are still liable to provide the Swedish FSA with certain information, although not on a continuous basis. In addition hereto, the Swedish FSA monitors the organisation of compliance functions and claims adjustment and complaint procedures of EEA branches and general agencies in Sweden.

Thus, the Swedish FSA has published general guidelines for management and control in English where the Swedish FSA provides advice on how to ensure good compliance, how an independent monitoring function or internal control should be organised, and how outsourcing should be managed. The Swedish FSA also provides recommendations in English for complaints management, where the Swedish FSA advises companies to have complaints managers and to register the complaints they receive.

4.7.2 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 Swedish FSA since they need a permit to carry on insurance operations in Sweden. If the insurer has also 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.

4.8 PRIIP

Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) entered into force on 1 January 2018. The EU Regulation intends to increase the transparency regarding PRIIP-products offered to non-professional investors. The purpose of the EU Regulation is to simplify the understanding of the most

important characteristics and risks of PRIIP-products and also make it possible for investors to compare different PRIIP-products in order to make well-grounded investment decisions.

Developers of PRIIP-products have to prepare a Key Information Document (KID) about their products, which contains information relating to the important characteristics and risks. The KID has to be supplied to non-professional investors before they conclude a contract concerning the PRIIPs.

A Swedish statute supplementing the EU Regulation entered into force on 1 January 2018 (lagen (2017:317) med kompletterande bestämmelser till EU:s förordning om faktablad för Priip-produkter). This statute gives the Swedish FSA the right to order an adjustment, if a developer fails to comply with the EU Regulation. Moreover, when the PRIIP-developer does not act in accordance with the provisions of the EU Regulation, the Swedish FSA is entitled to impose a sanction fee. The sanction fee has a monetary limit equal to either: (i) SEK 47 600 000; (ii) three per cent of the developer´s revenue; (iii) two times the profit the developer gained from the breach; or (iv) two times the costs that the developer avoided based on the breach. PRIIP-developers can also be liable for losses if they intentionally or negligently provide information that is incorrect in the KID.

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 (**OECD**). The ordinary corporation tax rate of 22 per cent also applies to financial institutions. In addition, the following additional tax regulations apply to insurance companies, however.

5.2 Swedish insurance companies

A Swedish non-life insurance company is taxed on its net profits. An increase of funds allocated to technical reserves is 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 Swedish FSA 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 30 per cent on other life assurance on a notional yield corresponding to a sum equal to a government loan interest rate, minimum 0.5 per cent for pension assurance and 1.25 per cent for other life assurance, applied on the difference between the company's assets and liabilities at the beginning of the financial year.

> *"The company is also entitled to allocate part of its profits to a specfic untaxed reserve, the "safety reserve", in accordance with Swedish FSA guidelines.*

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 22 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 2 February 2007, pension contributions that an employer makes for his employees are 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 Agency, on a regular basis, about, *inter alia*, premiums paid and payments made.

5.5 Recent proposals

The Swedish government presented a proposal in March 2018 under which the general corporate tax rate will be reduced to 20.6 per cent in 2021. In a first step the tax rate is reduced to 21.4 per cent from 1 January 2019 for companies with calendar year as financial year. The proposal also includes a general limitation of interest deductions computed as 30 per cent of EBITDA. Under the proposal the safety reserve will be subject to a notional taxable income corresponding to a sum equal to a government loan interest rate, minimum 0.5 per cent, applied on the reserve at the beginning of the financial year. In addition, 6 per cent of the safety reserve will be subject to tax over a six year period starting 1 January 2021. Following an ongoing consultation process, a bill to the parliament on the proposals will be presented later in 2018.

6 FUTURE REGULATORY CHANGES – IMPLEMENTATION OF IORP II

A proposal to the Parliament for adopting a new regulation regarding occupational pension products business is expected to be submitted in late 2018. On 1 September 2017 the Swedish Financial Supervisory Authority published its proposal for capital requirements for occupational pension companies. The capital requirement consists of a flat-rate minimum requirement and a risk-sensitive requirement. In July 2018, this proposal was followed by a draft new regulation produced by the Ministry of Finance. According to this draft, the new regulation will be based upon the revised Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (the IORP II-directive). The regulation will entail that insurance companies which conducts occupational pension business will have a choice of which regulation to follow; either the Solvency II-directive based IBA for insurance companies or the IORP II directive based new legislation for occupational pension companies. The new IORP II-directive based regulation is proposed to enter into force on 1 May 2019.

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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.