Insurance Services in Sweden

2024

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There are more insurance companies per inhabitant in Sweden than in any other European country. In 2023, Swedish insurance companies generated premium income of about SEK 469 billion, employed more than 22,000 people, paid a total of SEK 358 billion in compensation (life and non-life) and invested more than SEK 6,970 billion in the global economy. The Swedish insurance industry consists of more than 300 insurance companies. Most of the Swedish 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 37 foreign insurance companies represented via branches or agencies. Numerous other foreign insurance companies market insurance services in Sweden cross-border.

Set forth below is a summary of some of the main features of the Swedish regulations affecting foreign insurers with existing or contemplated business activities in Sweden.

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

Insurance Services in Sweden is updated to reflect legislation in force as of 1 September 2024.

Welcome to Sweden

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1. Financial services and investment relations

The past decade has 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, 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 of the insurance industry.

A Swedish company may conduct insurance or reinsurance business in Sweden only after having been duly authorised by the Swedish FSA pursuant to the Swedish Insurance Business Act (2010:2043) (Sw. *försäkringsrörelselagen*) (the **IBA**). Authorisation is only granted to a company limited by shares (Sw. *försäkringsaktiebolag*) (**insurance company**), a mutual insurance undertaking (Sw. *ömsesidigt försäkringsbolag*) (**mutual insurance company**) or an insurance association (Sw. *försäkringsförening*) (**insurance association**). Insurance companies, mutual insurance companies and insurance associations, whether they are conducting insurance or reinsurance business, are below collectively referred to as **insurance undertakings**.

> *Banking, securities brokerage and insurance are governed by different regulations but supervised by the same authority*

Authorisation may also be granted to Institutions for Occupational Retirement Provisions (**IORP undertakings**) pursuant to a specific act for IORP undertakings (2019:742) (the **IORP Act**) that implements directive (EU) 2016/2341 of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision (the **IORP II directive**). An IORP undertaking can be either an IORP company limited by shares (Sw. *tjänstepensionsaktiebolag*) (**IORP company**), a mutual IORP company (Sw. *ömsesidigt tjänstepensionsbolag*) (**mutual IORP company**) or an IORP association (Sw. *tjänstepensionsförening*) (**IORP association**). IORP companies, mutual IORP companies and IORP associations are below collectively referred to as **IORP undertakings**.

Authorisation to conduct insurance or IORP business in Sweden is granted when the requirements defining insurance business (or, as applicable, IORP business) are satisfied. Moreover, for an authorisation to be granted, the applicant's articles of association must be compliant with the IBA or the IORP Act and the proposed business must be compliant with the relevant laws and regulations regarding

the business of the applicant. In addition, the qualifying holder(s) of shares in an insurance or IORP undertaking must be judged to be appropriate to exercise a significant influence over the management of the 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, must possess the knowledge and experience deemed to be sufficient as well as being considered as fit and proper persons in this respect.

Insurance or IORP undertakings, other than companies limited by shares, must be established in accordance with the regulations of the IBA or the IORP Act. Thus, mutual insurance companies and insurance associations must apply for a permit to conduct insurance or IORP business before the company or the association have been established. Further, subject to certain conditions, any already existing authorised life insurance undertaking may become an IORP undertaking and vice versa.

2.2 Establishing an insurance or IORP undertaking

Authorisation by the Swedish FSA is required for an insurance or IORP undertaking to conduct insurance or IORP business in Sweden. An application is granted where the undertaking 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 (or a holding which makes it possible to exercise a significant influence over the management of that undertaking), 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 legislation.

2.3 Acquisition of an insurance or IORP company

Direct or indirect acquisitions, both Swedish and foreign, of qualified holdings in Swedish insurance or IORP 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 or the increase. 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 or IORP undertakings

Naturally, a Swedish insurance or IORP undertaking is required to comply with relevant EU regulations, Swedish law and regulations issued by the Swedish FSA. In addition, the Swedish FSA and the European Insurance and Occupational Pensions Authority (**EIOPA**) formulate guidelines and recommendations on a *"comply or explain"* basis, thus enabling insurance and IORP undertakings to determine the way the requirements should be satisfied. Further, the Swedish industry organization for insurance companies **Insurance Sweden** (Sw. *Svensk Försäkring*) issues recommendations to its members.

> *An authorisation is in general valid indefinitely but can be withdrawn in case of serious breach of legislation.*

A Swedish insurance or IORP undertaking may not engage in business other than insurance or IORP business and activities that relate to such business (such as claims handling, investment management etc.). Swedish life insurance undertakings can combine unit-linked life insurance business with regular life insurance business. Furthermore, both life and non-life insurance undertakings may provide short-term health and accident insurance. IORP undertakings may only provide occupational retirement products.

Insurance and IORP undertakings need to fulfil certain basic requirements, such as satisfactory solvency, liquidity and control over insurance risks, operating risks and investment risks. Furthermore, insurance and IORP undertakings must conduct the business in accordance with generally accepted insurance practices.

> *...both life and non-life insurance undertakings may provide short-term health and accident insurance*

Insurance and IORP undertakings 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 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 relating to insurance undertakings may result in considerably higher penalties, both for the undertaking and its directors. IORP undertakings are not subject to money laundering provisions. Certain violations of other rules and regulations, such as violations of the General Data Protection Regulation (**GDPR**) may also result in high penalties, for which both the undertaking and certain individuals may be held liable.

2.5 Cross-border services/Branch offices/General agencies

In accordance with the Undertakings of Foreign Insurers and Institutions for Occupational Retirement Provision in Sweden Act (1998:293) (Sw. *lag om utländska försäkringsgivares och tjänstepensionsinstituts verksamhet i Sverige*) (the **FIAA**), an insurer, reinsurer or IORP domiciled within the European Economic Area (the **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 - and supervision by - the Swedish FSA. An EEA insurer that does not have a separate permit in Sweden may also be hired for such assignments. Further, non-EEA insurers are entitled to provide *passive* insurance services, i.e. reverse solicitation (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 IORP 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.

The Swedish FSA supervises the activities of EEA insurers and IORPs regarding market conduct, e.g. consumer protection, insurance contract practices and insurance business practices. EEA insurers and IORPs must provide the Swedish FSA with information regarding their activities that is necessary for the supervision. Insurance undertakings must also hold accounts and other documents available for review.

3. Applicable laws

3.1 Applicable laws in general

The IBA and the directly binding Commission Delegated Regulation (EU) 2015/35 (the **Solvency II Regulation**) constitute the main legal framework applicable to insurance business in Sweden. The main legal framework for IORPs is the IORP Act. Supplementary company law for insurance and IORP companies is provided in the Swedish Companies Act (2005:551) (the **SCA**) and for mutual insurance and IORP companies in the Swedish Economic Associations Act (2018:672) (the **SEAA**). In addition, the Swedish FSA issues regulations and general guidelines that must be observed.

> *EEA insurers must comply with Swedish legislation adopted in the interest of the general good*

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

In accordance with the Commission Interpretative Communication 2000/C43/03, EEA insurers must comply with Swedish legislation adopted in the interest of *the general good*. According to the Swedish FSA, such legislation includes all market conduct regulations, such as laws and regulations relating to consumer protection, insurance contract practices and insurance business practices.

3.2 Regulation regarding the insurance contract

The Swedish Insurance Contracts Act (2005:104) (Sw. *försäkringsavtalslagen*) (the **ICA**) must be adhered to if the insurance contract is governed by Swedish law. Contracts issued by IORPs are considered insurance contracts and are consequently also covered by the ICA. 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 or IORP undertaking 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 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; and
- the possibilities for the insured to direct the compensation to someone else (beneficiary).

The choice of applicable law on insurance contracts concerning risks situated in Sweden is governed by Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (the **Rome I Regulation**), which restricts the right of the parties to choose the applicable law. 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 (1915:218) (Sw. *avtalslagen*) (the **CA**) and international law.

An insurance or IORP contract governed by Swedish law must comply with the provisions of the Swedish Discrimination Act (2008:567) (Sw. *diskrimineringslagen*), which may prohibit certain discriminatory terms in contracts. Insurance and IORP contracts are also subject to the Swedish Distance and Doorstep Sales Act (2005:59) (Sw. *lag om distansavtal och avtal utanför affärslokaler*) (the **DDSA**), the Consumer Contracts Act (1994:1512) (Sw. *lag om avtalsvillkor i konsumentförhållanden*), the Contract Terms (Enterprises) Act (1984:292) (Sw. *lag om avtalsvillkor mellan näringsidkare*) and the CA.

Pursuant to the DDSA, the mandatory provisions of the 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. Insurance and IORP 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 contract entailing the costs and the scope of the undertakings, in particular in relation to exclusion clauses. If the pre-contractual information is not provided, e.g. in relation to an exclusion clause, the exclusion clause may be declared void.

3.3 Insurance Distribution

3.3.1 The Insurance Distribution Directive

The Insurance Mediation Act (2005:405), based on the former Directive 2002/92/EC of the European Parliament and of the Council on Insurance Mediation (the **IMD**), is since 1 October 2018 replaced by a new Insurance Distribution Act (2018:1231) (Sw. *lag om försäkringsdistribution*) (the **IDA**) based on the Directive (EU) 2016/97 of the European Parliament and of the Council on Insurance Distribution (the **IDD**).

IDD applies to all distributors of insurance products, even insurance and IORP undertakings, 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 the IDD are by ensuring a greater transparency of insurance distributors about the price and costs of their products, better and more comprehensible pro-duct information as well as improved conduct of business rules, in particular about giving advice. IDD allows for member states to deviate from certain requirements about 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 remu-neration. IDD contains a new general conduct of business principle, which provides that insurance distributors must 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 the IDD. When distributing non-life insurance products, the customer must be provided with an insurance product information document (**IPID**) on paper or another durable medium.

Certain exceptions can be found regarding information requirements when the insurance distributor carries out the insurance distribution in relation to insurance of large risks and reinsurance. Furthermore, the requirements regarding product approval processes shall not apply to insurance products which consist of insurance of large risks. Moreover, the general conduct of business principle is not mandatory in respect of insurance of large risks and reinsurance. It can also be noted that certain information requirements applicable to distribution of insurance-based investment products do not apply when the customer is a professional client.

Generally, the 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.

3.3.2 The Insurance Distribution Act

The general rules of the IDD are implemented in Sweden through the IDA in a directive conform way, including the general exemptions for large risks and reinsurance. There are however some areas where the Swedish legislator and the Swedish FSA have exercised the possibility to implement stricter requirements than as set out in the IDD (*gold-plating*). Such gold-plated provisions are, e.g., provisions regarding knowledge and competence requirements for employees, professional indemnity insurance, internal policies and procedures and complaints handling. In addition, certain provisions regarding remuneration are stricter than as set out in the IDD.

Because of the IDA, several conditions for distribution of life insurance products with a savings element have changed dramatically from the previous IMD regulations as the regulations related to the provision of investment advice are now like 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 that 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 (e.g. from an insurer) is limited.

> *...several conditions for distribution of life insurance products with a savings element have changed dramatically*

Generally, the IDA is not applicable in full in relation to insurance and reinsurance activities carried out outside Sweden. However, the rules pertaining to the company *"as a whole"*, professional requirements and such as internal guidelines etc., is likely to apply to the whole business including activities caried out in other EEA-countries and third countries.

3.4 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 Motor Traffic Damage Act (1975:1410) (Sw. *trafikskadelag*). As of December 2023, the Act has been adapted to the new (EU) 2021/2118 **Directive on Motor Insurance**.

Furthermore, several 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 Liability Act (1968:45) (Sw. *atomansvarighetslag*), the Aviation Act (2010:500) (Sw. *luftfartslag*), the Railway Act (2004:519) (Sw. *järnvägslag*) and the Maritime Code (1994:1009) (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 retirement provisions, sick pay pension and occupational injury insurance.

3.5 The marketing of insurance

The marketing of insurance services in Sweden, whether such services are provided by Swedish or non-Swedish insurers or IORPs, is regulated by the Swedish Marketing Act (2008:486) (Sw. *marknadföringslagen*) and regulations and recommendations issued by the Swedish FSA and the Swedish Consumer Agency. Further, Swedish insurers must also comply with recommendations issued by Insurance Sweden to its members.

3.6 Policyholders' right to cancel, surrender or transfer insurance policies

According to the ICA, Swedish life insurance policyholders are unconditionally entitled to cancel their policies upon notice to the relevant insurance undertaking. If not otherwise stated in the notice, the policy is considered to be cancelled on the day of such notice. As a rule, a life insurance policyholder is also entitled to surrender the policy or transfer savings in the form of payments to another policy within the same company or to a policy with another insurance company. Relevant terms regarding the policyholder's right to surrender and transfer shall be specified in the insurance contract. The policyholder's bonus rights regarding a surrender or a transfer shall be determined in accordance with the same principles as those applicable to insurance claims.

The IBA contains strict rules regarding what costs insurance undertakings may consider when determining fees for cancellations, surrenders and transfers of life insurance policies. As of 1 April 2021, the right to charge fees regarding cancellation, surrender or transfer has been decreased significantly in relation to unit-linked and deposit life insurance.

3.7 The Solvency II regime

On 1 January 2016, the Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (the **Solvency II Directive**) 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. Compared with Solvency I, the regulatory capital requirements under Solvency II more accurately reflect the specific risk profile of each undertaking.

The Solvency II Directive is implemented in Sweden primary through the IBA. The "level two" implementation measures set out in the Commission Delegated Regulation (EU) 2015/35 (the **Solvency II Regulation**) entered into force on 1 January 2016 and have direct effect in Sweden.

> *An insurance undertaking is required to have several polices in place as part of the system of governance*

3.7.1 System of governance

The Solvency II regime requires that all the insurance 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 several internal company 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 internal 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; and
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.

In the internal 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 undertakings to have an actuarial function, all insurance technical calculations in Swedish insurance undertakings (both life and non-life) shall be made under the supervision of an actuary. A non-Swedish actuary can 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.

3.7.2 Consumer complaints

An insurance undertaking is required to ensure that its customers and any other persons affected by the insurance services 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 by regulations issued by the Swedish FSA.

3.7.3 Conflicts of interest

According to the provisions of the IBA, an insurance undertaking which conducts direct insurance business must adopt and comply with guidelines concerning management of conflict of interests. The internal guidelines shall cover conflicts 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.

3.7.4 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 undertaking 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 and the EIOPA guidelines on outsourcing to cloud service providers (EIOPA-BoS-20-002).

3.8 The IORP II regime

On 15 December 2019, the IORP II directive was implemented in Sweden through the IORP Act. Compared with the previous IORP I legislation, the regulatory capital requirements in the IORP Act more accurately reflect the specific risk profile of each undertaking. Although the IORP requirements are less extensive than the Solvency II capital requirements implemented in the IBA, many other requirements, such as those relating to the system of governance, are similar to the requirements of the IBA.

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 undertakings in Sweden. Assets must 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 undertaking's own credit rating.

Similar valuation principles will be applied for valuation of the assets of an IORP undertaking. The value of the technical provisions will be calculated in accordance with a discounted cash flow method based on the expected future cash flows.

4.1.1 Solvency balance sheet

Insurance undertakings must prepare a specific solvency balance sheet for regulatory purposes. It includes the entire balance sheet,

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

An IORP will not be required to prepare specific solvency balance sheets. The capital base of an IORP undertaking will thus be calculated based on the ordinary balance sheet for financial reporting purposes.

4.1.2 The technical provisions

Insurance undertakings must establish technical provisions. The technical provisions must correspond to the amount that the insurance undertaking would value them if they were to be transferred to another insurance undertaking. The calculation shall be conducted in a prudent, reliable and objective manner. There are several 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.

The value of the technical provisions of an IORP undertaking will be calculated in accordance with a discounted cash flow method based on the expected future cash flows.

> *Insurance undertakings must establish technical provisions*

4.2 Capital base

Insurance 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.

An IORP undertaking must also have a capital base that meets specific solvency capital requirements. However, these requirements are calculated in a different manner (see section 4.3 below). The capital base is equal to the equity of the IORP undertaking in accordance with the ordinary balance sheet for financial reporting purposes.

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 several other requirements.

These features will mostly be applicable when assessing if debenture loans and different types

> *The capital base of an IORP undertaking is not classified in different tiers.*

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.

The capital base of an IORP undertaking is not classified in different tiers.

4.3 Capital requirements

As mentioned above, insurance 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 considered. This includes such risks as risks related to non-life underwriting, life underwriting, health underwriting and 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 twelve months with a 99.5 per cent probability. The purpose of the MCR is 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.

The SCR of an IORP undertaking shall ensure that the undertaking will be able to fulfil its obligations during the forthcoming 12 months with a 97 per cent probability.

4.4 Investment restrictions

Under Swedish law, an insurance undertaking must, about 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 several specific restrictions about the investment of funds that match the technical provisions. All insurance undertakings must adhere to a prudent person principle applicable to all investments. 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 consider in the assessment of its overall solvency needs. 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, an investment shall be made in the best interests of the insured and their beneficiaries.

Similar regulations apply for the investments of an IORP undertaking.

4.5 Loans and distributions

Until 1 January 2000, Swedish life insurance undertakings 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, could issue convertible bonds. Today both non-life insurance companies and dividend-paying life insurance companies can 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

> *Substantial loans for the financing of capital investments are generally not allowed*

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"*. IORP companies limited by shares may choose if they wish to be able to distribute dividends to their shareholders or not.

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 undertakings, regardless of whether they are entitled to distribute dividends or not. IORP undertakings are also subject to loan restrictions.

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.

4.6 Priority rights

According to the Swedish priority regulations, all policyholders (including ceding insurance undertakings in relation to reinsurance providers) will have priority rights to the assets that meet the technical provisions, provided, however, that the assets are noted in a register kept for this purpose.

4.7 Supervision of non-Swedish insurance undertakings

4.7.1 EEA insurers

Insurance undertakings 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. The Swedish FSA is however responsible for the supervision in general (for *the general good*), including, among other things, that the undertaking fulfils its obligation to provide information to its policyholders. The undertakings are therefore 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

> *Swedish life insurance undertakings are primarily subject to a specific yield tax*

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 undertakings 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.

5. Taxation

5.1 General

A permanent Swedish establishment of a foreign company will generally be taxed according to the same principles as domestic companies. Swedish tax treaties with other states normally contain a definition of *"permanent establishment"* that is similar to that provided by the model tax treaty of the Organisation for Economic Cooperation and Development (the **OECD**). The ordinary corporation tax rate of 20.6 per cent also applies to financial institutions. In addition, the following additional tax regulations apply to insurance undertakings.

5.2 Swedish insurance undertakings

A Swedish non-life insurance undertaking is taxed on its net profits. An increase of funds allocated to technical reserves is usually fully deductible in the computation of the undertakings' net income. The undertaking is also entitled to allocate part of its profits to a specific untaxed reserve, the *"safety reserve"*, in accordance with Swedish FSA guidelines. The safety reserve is subject to a notional annual 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 which started on 1 January 2021. Swedish non-life insurance undertakings are also subject to the general limitation of interest deductions computed as 30 per cent of earnings before interest, taxes, depreciation and amortisation on a tax adjusted basis.

Swedish life insurance undertakings 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 a governmental loan interest rate plus 1 per cent, minimum 1.25 per cent, for other life assurance, applied on the difference between the undertakings' assets and liabilities at the beginning of the financial year.

5.3 Foreign insurance undertakings

A foreign non-life insurance undertaking 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 20.6 per cent. The taxable income is assessed in the same way as for Swedish non-life insurance undertakings.

> *Services provided by insurance companies are often explicitly targeted by sanctions legislation*

Foreign life insurance undertakings conducting business in Sweden are subject to yield tax in accordance with the same principles as Swedish life insurance undertakings. 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 IORP undertakings

IORP undertakings are with effect from 15 December 2019 taxed according to the tax rules for life insurance undertakings, i.e. primarily subject to the specific yield tax referred to above.

6. Economic sanctions

6.1 Insurance services are targeted by sanctions legislation

Sweden does not issue any economic sanctions of its own but instead apply sanctions decided by the European Union, which include sanctions decided by the United Nations. The European Union has implemented 35 sanctions programmes containing various restrictive measures both in terms of asset freeze and other activities. Most of the sanctions programmes are directed against specific countries. Unsurprisingly, the sanctions against Russia have had a particular impact on Sweden's business life, including insurance companies.

It is generally prohibited to provide insurance in relation to the sale, supply, transfer, export or import of sanctioned goods. Furthermore, under the asset freeze provisions, it is generally not possible to fulfil obligations under an insurance contract with a sanctioned person, or a person owned or controlled by a sanctioned person. Hence, sanctions legislation entails comprehensive due diligence requirements on insurance companies. For marine insurance companies, the prohibition to provide insurance in relation to the transportation of Russian oil if this has been purchased above a certain price level (Article 3n of Council Regulation 833/2014) has proven to pose particularly difficult compliance challenges.

6.2 Consequences of a breach of sanctions legislation

Breach of sanctions legislation entails criminal liability in Sweden. For individuals the maximum penalty is four years imprisonment and a fine of SEK 150,000. Legal persons cannot be subject to criminal liability in Sweden although if an individual has committed an offence in the exercise of a company's business activities, the company may be subject to a corporate fine amounting to a maximum of SEK 500 million.

Notably, on 12th April 2024 the EU Council adopted a directive with the aim to harmonize sanctions enforcement within the EU. Members States have one year to implement the directive, which, inter alia, provides for liability for legal persons when a breach has been committed by a person having a leading position in the organisation. In such cases, the penalty may include the withdrawal of e.g. business permits.

7. Recent regulatory changes

7.1 Taxonomy

On 12 July 2020, the EU regulation on the establishment of a framework to facilitate sustainable investments (the **Taxonomy Regulation**) entered into force, forming a framework for the EU taxonomy by setting out four overarching conditions that an economic activity must meet to qualify as *"environmentally sustainable"*. The taxonomy is one of the measures in the EU action plan on financing sustainable growth published by the European Commission in March 2018. Together with the **Disclosure Regulation**, the Taxonomy Regulation will require companies to, inter alia, disclose the degree of environmental sustainability of mainstream funds and pension products that are promoted as environmentally friendly, or to include disclaimers where they do not.

In June 2023, the EU **Taxonomy Delegated Acts** were adopted by the Commission targeting the objectives of sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control and protection and restoration of biodiversity and ecosystems. The delegated acts entered into force on January 1, 2024.

To ensure that uniform requirements apply to the use of the designation 'European Green Bond' or 'EuGB', the EU **Regulation on European Green Bonds** will come into force at the end of 2024. The Regulation will be supported by new Swedish legislation.

7.2 DORA

Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (the DORA) establishes technical standards that financial entities and their critical third-party technology service providers must implement in their ICT systems. DORA applies to all financial institutions in the EU. That includes financial entities, such as banks, investment firms, credit institutions and insurance and IORP undertakings. The EU Council and the European Parliament formally adopted the DORA in November 2022. Financial entities and third-party ICT service providers have until 17 January 2025 to comply with DORA before enforcement starts. The European Supervisory Authorities (ESAs) are in charge of drafting the regulatory technical standards (RTS) and implementing technical standards (ITS) that covered entities must implement. These standards are expected to be finalized in 2024. The European Commission is developing an oversight framework for critical ICT providers, which is also expected to be finalized in 2024.

7.3 The AI Act

In April 2021, the European Commission proposed the first EU regulatory framework for artificial intelligence (AI). The AI Act aims to ensure that AI systems in the EU single market are safe, respect human rights and facilitate innovation and investment in AI. In short, the AI Act will follow a risk-based approach where AI systems are categorised into different risk categories based on the risk they are considered to pose to human safety, health and rights. The higher the risk, the higher the requirements. Examples of high-risk AI systems include AI systems intended to be used for risk assessment and pricing in relation to natural persons in the case of life and health insurance.

The European Parliament and the Council of Ministers reached a provisional agreement on 9 December 2023. The text is currently in the process of being formally adopted and translated. The AI Act will enter into force 20 days after its publication in the Official Journal, and will be fully applicable 2 years later, with some exceptions: prohibitions will take effect after six months, the governance rules and the obligations for general-purpose AI models become applicable after 12 months and the rules for AI systems – embedded into regulated products – will apply after 36 months.

Vinge's Insurance Practice Group

Vinge is one of Sweden's leading independent commercial law firms with approximately 450 employees. We continuously receive top rankings by institutes such as Mergermarket, Chambers & Partners, The Legal 500 and IFLR. Vinge's business concept is to be the leading Swedish business law partner, contributing to the success of its clients through its level of commitment, simplicity in approach and focus on results.

Vinge's insurance practice group was founded in 1990, which made Vinge the first law firm in Sweden with an insurance business law specialisation. Vinge's insurance practice is insurer-led and is particularly strong in the field of insurance-related transactions and regulatory work.

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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 needto 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.