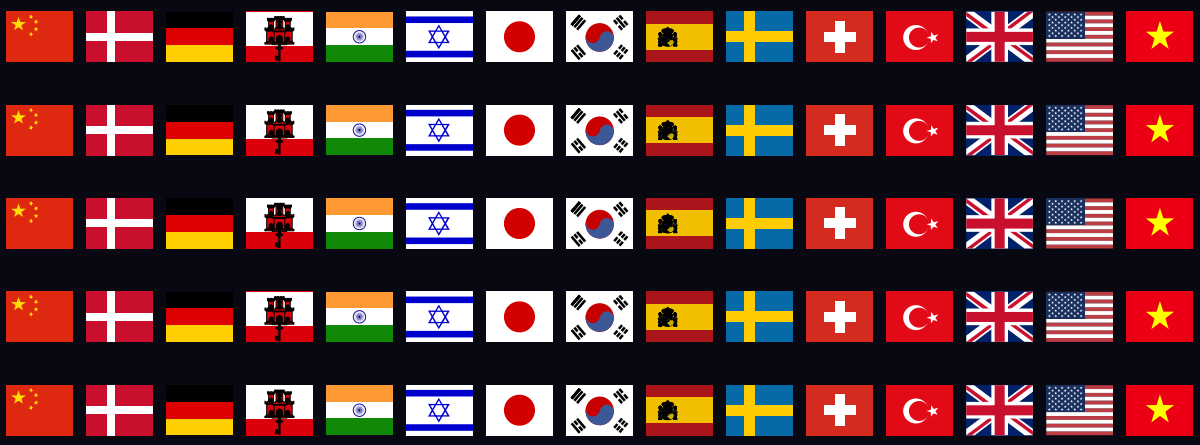
INSURANCE & REINSURANCE

Sweden



LEXOLOGY
Getting The Deal Through

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Insurance & Reinsurance

Consulting editors

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Sullivan & Cromwell LLP

Quick reference guide enabling side-by-side comparison of local insights into insurance and reinsurance issues worldwide, including regulation of insurance and companies and their activities; insurance claims and coverage; reinsurance principles and practices; disputes (including arbitration); and recent trends.

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REGULATION

Regulatory agencies

Identify the regulatory agencies responsible for regulating insurance and reinsurance companies.

The Swedish Financial Supervisory Authority (SFSA) is the regulator in charge of supervising insurance and reinsurance companies.

It is responsible for supervision, authorisations, sanction assessments, regulations and reporting matters for insurance firms, insurance intermediaries and mutual benefit societies.

Also, the SFSA is responsible for certain supervision of pension foundations. Further, it is responsible for the national coordination, evaluation and follow-up of supervision related to money laundering.

Law stated - 10 March 2023

Formation and licensing

What are the requirements for formation and licensing of new insurance and reinsurance companies?

Companies offering financial services in Sweden are required to apply for a licence issued by the SFSA to operate a business. In a licence application, the SFSA reviews the company's capital situation, business plan, owners and corporate management, among other things. The company's operating activities may require additional licences from the SFSA.

All insurance and reinsurance providers must be authorised by the SFSA or another financial supervisory authority within the European Economic Area (EEA). The provider can apply to the SFSA for advance notice on whether authorisation is necessary for the planned business.

The following requirements must be met for an insurance provider to obtain authorisation:

- the provider must be a limited liability company, a mutual insurance company or an insurance association;
- the provider's articles of association or by-laws must comply with relevant laws and regulations, and otherwise contain the specific provisions that are required concerning the scope and nature of the planned activities;
- the planned business must be assumed to comply with other applicable laws and regulations;
- whoever directly or indirectly holds shares representing 10 per cent or more of the company's share capital or voting rights, or otherwise holds shares allowing a significant influence over the management of the company, must be deemed appropriate to have such significant influence over the management of the company;
- a person that shall act as a board member, managing director or key position holder of the company must be deemed to have sufficient knowledge and experience, and be otherwise appropriate to participate in the management of the company;
- the provider must not have a close relationship with another entity if that prevents effective supervision of the provider's company; and
- the provider must have a certain amount of funds depending on the kind of insurance being provided.

Insurers and reinsurers that are authorised in another country within the EEA are not required to apply for authorisation in Sweden. They are instead subject to a specific notification process before they may conduct cross-border activities

or carry out insurance business through a branch or agent.

Law stated - 10 March 2023

Other licences, authorisations and qualifications

What licences, authorisations or qualifications are required for insurance and reinsurance companies to conduct business?

When the SFSA has licensed a company to conduct insurance business, no further authorisations are required as long as the business is carried out within the scope of the business plan without any alterations or amendments that the SFSA would need to approve. There are, however, ongoing requirements for insurance and reinsurance providers as regulated by the Insurance Business Act (IBA) and the Insurance Contracts Act (ICA), including:

- sound asset management;
- appropriate and sufficient funding;
- appropriate information to policyholders and other persons who are entitled to compensation pursuant to insurance;
- a sound and responsible system of governance;
- compliance with the principle of stability; and
- maintenance of good insurance standards.

Law stated - 10 March 2023

Officers and directors

What are the minimum qualification requirements for officers and directors of insurance and reinsurance companies?

Under the IBA, insurers and reinsurers are required to maintain adequate policies and procedures to comply with the fit and proper requirements. An insurer or reinsurer is thus required to ensure that its board of directors, the chief executive officer, any deputies for these positions and the persons responsible for, or conducting, work within any of its key functions (compliance, risk management, actuarial and internal audit) are at all times considered fit and proper for their assignment within the company.

'Fit and proper' means that any person assuming a position as covered by the previous paragraph should fulfil the following requirements:

- his or her professional qualifications, knowledge and experience are adequate to enable sound and prudent management (fit); and
- he or she is of good repute and integrity (proper).

The board of directors should also be assessed collectively, meaning that its members collectively shall possess appropriate qualifications, experience and knowledge about, at least:

- the insurance and financial markets;
- the business strategy and business model;
- the system of governance;
- financial and actuarial analysis; and

- the regulatory framework and requirements.

Also, there is a general requirement for insurers and reinsurers to have procedures in place for assessing the skills, knowledge, experience and personal integrity of relevant personnel other than those mentioned above.

Law stated - 10 March 2023

Capital and surplus requirements

What are the capital and surplus requirements for insurance and reinsurance companies?

Swedish rules on capital and solvency requirements can be found in the IBA and SFSA regulations, which implement the Solvency II Directive. Insurance and reinsurance companies are required to have a capital base, consisting of basic own funds and ancillary own funds, which at least equal the solvency capital requirement (SCR). The SCR is the minimum basic own funds required to ensure that the insurance company will be able to meet its obligations over the following 12 months with a 99.5 per cent probability. The SCR may be calculated either according to a statutory standard formula or an internal model, in which case the internal model must be approved by the SFSA.

There is also a minimum capital requirement (MCR), which establishes a floor that an insurance company must not fall below. The MCR must never be less than a statutory required guarantee amount, which varies depending on whether the insurance company provides life insurance, non-life insurance, reinsurance or captive insurance. The guarantee amount for direct non-life insurance companies currently ranges between €2.5 million and €3.7 million. The guarantee amount for direct life insurance companies is €3.7 million. For reinsurance companies that do not provide captive insurance, the amount is €3.6 million.

Law stated - 10 March 2023

Reserves

What are the requirements with respect to reserves maintained by insurance and reinsurance companies?

The provisions on technical reserves in the Solvency II Directive have partly been implemented in the IBA. Under these provisions, insurance and reinsurance companies must establish technical provisions to cover their insurance obligations. The value of the technical provisions must correspond to the amount the insurance or reinsurance company would have to pay if the insurance obligations were transferred to another insurance or reinsurance company. The calculation of the technical provisions must be based on prudent, reliable and objective assumptions of the risks, interest rates and operational costs of the company. Further, separate technical provisions must be made for different kinds of insurance risks. Detailed rules on the management and calculation of technical provisions are provided in implementation regulations issued by the SFSA. Reference should also be made to the Commission Delegated Regulation (EU) No. 2015/35, which sets out rules relating to technical provisions.

Law stated - 10 March 2023

Product regulation

What are the regulatory requirements with respect to insurance products offered for sale? Are some products regulated by multiple agencies?

Broadly, there are several laws and regulations governing insurance products; for example, the ICA, the Distance and Doorstep Sales Act , the Marketing Act , the Insurance Distribution Act (IDA) and other acts governing contract terms. The ICA is the main legislation governing insurance products and contains, inter alia, provisions governing the insurer's duty to provide information, the policyholder's duty of disclosure, rights under the insurance contract, limitation of the insurer's liability, premium payments, claims handling. The provisions of the ICA are mandatory for the benefit of the policyholder unless otherwise stated in the ICA. Further, the IDA, which implements the Insurance Distribution Directive, contains provisions regarding, inter alia, information and documentation requirements, product approval processes, remuneration, marketing, cross-selling and tie contracts, and the provision of product fact sheets. Also, the Packaged Retail and Insurance-based Investment Products (PRIIP) Regulation may be mentioned. Under the regulation, PRIIP manufacturers must produce a key information document regarding their products, which sets out certain key information and risks concerning such PRIIP products. The regulation is supplemented by a Swedish statute in which the SFSA is specifically appointed supervisory authority. Under the supplementing statute, the SFSA has the right to order adjustments and sanctions if a PRIIP manufacturer fails to comply with the regulation.

The terms and conditions of insurance policies are generally not subject to regulatory pre-approval by the SFSA or any other agency. However, the SFSA may naturally review insurance policies in exercising its regulatory and supervisory powers. Also, the Swedish Consumer Agency is responsible for the supervision of certain of the above-mentioned acts in relation to, for example, contract terms, and marketing and information requirements in so far as they relate to consumers.

Law stated - 10 March 2023

Regulatory examinations

What are the frequency, types and scope of financial, market conduct or other periodic examinations of insurance and reinsurance companies?

The SFSA conducts a risk assessment of all insurance undertakings and groups on an annual basis. The first step of this assessment is a quantitative analysis of the periodic reporting to the SFSA. The second step is a qualitative assessment in which the SFSA takes into consideration the risks and factors in an undertaking or a group that are not captured by the quantitative analysis. These may include previous supervisory experience, knowledge of significant events at the undertaking, the group or of the insurance market in general, or analysis of other qualitative reporting. All the undertakings and groups are then ranked on a basis of the overall risk assessment. This ranking serves as the basis for the coming year's supervision and the preparation of supervisory plans. A supervisory plan, which can include individual undertakings or groups, or a large number of undertakings or groups, presents the supervisory activities that the SFSA will carry out during the year. The activities are adapted to the operations of each undertaking and their identified risks. Depending on what the supervision uncovers, supervisory measures may be taken. The SFSA may carry out supervisory activities and take supervisory measures at any time of the year, if and when called for.

Law stated - 10 March 2023

Investments

What are the rules on the kinds and amounts of investments that insurance and reinsurance companies may make?

The IBA provides general rules on the investments that insurance and reinsurance companies may make. Insurance and reinsurance companies must make their investments in accordance with the prudent person principle, which means that they may only invest in assets and instruments of which risk the company can identify, measure, monitor

and control. Investments must not be made in a manner that makes the company dependent on a certain asset, issuer or geographic region. Investments in derivative instruments are admissible to the extent they reduce the risk, or facilitate efficient management of the risks and liabilities, of the insurance company. Investments in assets or instruments that are not listed on a regulated market must be kept at a prudent level. Assets held to cover the technical provisions of the company shall be invested with due regard to the nature and duration of the insurance or reinsurance liabilities.

Law stated - 10 March 2023

Change of control

What are the regulatory requirements on a change of control of insurance and reinsurance companies? Are officers, directors and controlling persons of the acquirer subject to background investigations?

An acquirer must obtain the approval of the SFSA before either:

- acquiring, directly or indirectly, 10 per cent or more of the share capital or voting rights of an insurer or reinsurer;
- increasing its direct or indirect holdings to, or above, 20, 30 or 50 per cent of the share capital or voting rights of an insurer or reinsurer; or
- obtaining the possibility to exercise significant influence over the management of the insurer or reinsurer.

The SFSA will approve the acquisition if both the acquirer is deemed fit and proper to exercise a significant influence over the management of the insurer or reinsurer, and the acquisition is financially sound.

The SFSA must provide its decision on an application for acquisition within 60 business days of the day the application is deemed complete. The assessment period can be extended if additional information is required to make a decision.

A direct or indirect owner must notify the SFSA in writing if it decides to reduce its holdings:

- in full (only if the holding is equal to or greater than 10 per cent of the company's share capital or voting rights); or
- below any of the thresholds listed above.

Acquisitions or increases in holdings of non-EEA insurers authorised to conduct business in Sweden are not subject to the SFSA's approval. However, the SFSA must be notified of proposed acquisitions and changes in control of these insurers.

Law stated - 10 March 2023

Financing of an acquisition

What are the requirements and restrictions regarding financing of the acquisition of an insurance or reinsurance company?

There are no specific requirements or restrictions regarding financing of the acquisition of an insurance or a reinsurance company. However, as part of the SFSA's approval regime, the acquirer must disclose how the acquirer intends to finance the acquisition and present sufficient proof of the intended financing.

Law stated - 10 March 2023

Minority interest

What are the regulatory requirements and restrictions on investors acquiring a minority interest in an insurance or reinsurance company?

There are no restrictions on investments, or direct or indirect holdings of less than 10 per cent of the share capital or voting rights of the insurance or reinsurance company, unless the acquirer of the minority interest can exercise significant influence over the management of the insurance or reinsurance company, or the direct or indirect holdings exceed any of the specified thresholds. In such cases, or if the investment directly or indirectly amounts to 10 per cent or more of the share capital or voting rights, a change of control approval regime will apply.

Law stated - 10 March 2023

Foreign ownership

What are the regulatory requirements and restrictions concerning the investment in an insurance or reinsurance company by foreign citizens, companies or governments?

There are no specific regulatory requirements or restrictions concerning the investment in a Swedish insurance or reinsurance company by a foreign citizen, company or government. However, a foreign natural or legal person making such an investment must fulfil applicable requirements governing the assessment of qualified owners.

Law stated - 10 March 2023

Group supervision and capital requirements

What is the supervisory framework for groups of companies containing an insurer or reinsurer in a holding company system? What are the enterprise risk assessment and reporting requirements for an insurer or reinsurer and its holding company? What holding company or group capital requirements exist in addition to individual legal entity capital requirements for insurers and reinsurers?

The Swedish supervisory framework relating to groups containing an insurer or a reinsurer was updated through the Swedish implementation of the Solvency II Directive. The current supervisory framework for groups is focused on the respective group as a whole, rather than on the individual companies of the group. Each company is, however, subject to individual supervision in addition to group supervision. In other words, group supervision constitutes a supplement to the rules concerning individual supervision.

Group supervision applies for insurance companies that are parent companies or have ownership interests in at least one other insurance company, insurance companies that share common management with at least one other insurance company, and insurance companies whose parent company is an insurance holding company or mixed financial holding company with its seat within the European Economic Area. If a group contains several insurance companies on different levels, the group supervision framework shall only apply to the insurance company at the top of the group.

Group supervision entails the following special framework:

- special solvency provisions apply to the group;

- reporting requirements apply, meaning that significant risk concentrations and significant transactions within the group must be reported to the SFSA at least annually. The SFSA decides for each individual group what constitutes relevant risk concentrations and transactions;
- special management, risk management, internal control and reporting provisions apply; and
- a report for the operations and solvency of the group must be published at least annually.

Law stated - 10 March 2023

Reinsurance agreements

What are the regulatory requirements with respect to reinsurance agreements between insurance and reinsurance companies domiciled in your jurisdiction?

The ICA explicitly excludes reinsurance contracts from its scope of application. A reinsurance contract is subject to general contract law principles and is not governed by any specific regulatory requirements.

Law stated - 10 March 2023

Ceded reinsurance and retention of risk

What requirements and restrictions govern the amount of ceded reinsurance and retention of risk by insurers?

There are no such requirements or restrictions.

Law stated - 10 March 2023

Collateral

What are the collateral requirements for reinsurers in a reinsurance transaction?

There are no specific collateral requirements in a reinsurance transaction under Swedish law.

Law stated - 10 March 2023

Credit for reinsurance

What are the regulatory requirements for cedents to obtain credit for reinsurance on their financial statements?

The financial reports of insurance companies are governed by the Act on Annual Accounts in Insurance Undertakings , and the regulations and guidelines issued by the SFSA. The Act on Annual Accounts in Insurance Undertakings contains a model balance sheet structure, which insurance companies must use. Reinsurers' share of the insurance companies' technical provisions shall be treated as an asset of the ceding company according to the prescribed balance sheet structure. For the cedent to take credit for reinsurance on their financial statements, there must be an actual reinsurance agreement that effectively transfers the risk to the reinsurer.

Under the IBA, insurance companies must establish a solvency balance sheet for solvency purposes. The reinsurers' share of the insurance companies' technical provisions shall be included among the assets in the solvency balance sheet. Detailed rules on the calculation of the reinsurers' share of the technical provisions are provided in SFSA regulations and the Commission Delegated Regulation (EU) No. 2015/35.

Law stated - 10 March 2023

Insolvent and financially troubled companies

What laws govern insolvent or financially troubled insurance and reinsurance companies?

The IBA implements the Solvency II Directive regarding solvency requirements for insurance and reinsurance companies. Consequently, the IBA includes provisions relating to insolvent and financially troubled insurance and reinsurance companies.

The bankruptcy procedure is regulated by the Bankruptcy Act and the priority of claims by the Rights of Priority Act .

Law stated - 10 March 2023

Claim priority in insolvency

What is the priority of claims (insurance and otherwise) against an insurance or reinsurance company in an insolvency proceeding?

Under the Swedish implementation of the Solvency II Directive, insurance companies must keep a register of the assets used to cover the company's technical provisions. The assets taken up in this register at the time of the initiation of an insolvency proceeding are subject to special priority rights.

This special priority right means that claims based on an insurance policy, as well as claims for a premium refund if the insurance policy is cancelled or invalid, rank higher than most other claims by other creditors. Liens relating to aircraft and sea vessels, as well as rights of retention, however, rank higher.

Law stated - 10 March 2023

Intermediaries

What are the licensing requirements for intermediaries representing insurance and reinsurance companies?

Swedish insurance distributors must be authorised by the SFSA to conduct insurance distribution in Sweden. In Sweden, the term 'insurance distribution' includes providing advice on insurance policies, other preparatory work before the conclusion of an insurance contract, entering into insurance contracts, and administrating and assisting the fulfilment of an insurance contract. However, claims adjusters do not require authorisation.

To obtain authorisation, a company must be financially stable, have professional liability insurance, have appropriate management and employees, and may not have such contacts that could impair the efficient supervision of the company. Management and employees may not appear in the criminal register, and they must have an adequate level of knowledge and competence for the business. Further, they must be continuously trained and up to date with the industry.

In addition to the authorisation, insurance distributors must also register with the Swedish Companies Registration Office.

A tied ancillary insurance intermediary does not need authorisation. Nevertheless, such intermediaries must still be registered with the Swedish Companies Registration Office.

Law stated - 10 March 2023

INSURANCE CLAIMS AND COVERAGE

Third-party actions

Can a third party bring a direct action against an insurer for coverage?

As a general rule, third parties cannot bring a direct action against an insurer for coverage. However, in cases of liability insurance, the Insurance Contracts Act provides that a third party can bring a direct action against the insurer where liability insurance is required by statute. Liability insurance is required for certain professions as well as for motor vehicles. Also, a third party can bring a direct action under a liability insurance policy if the insured is bankrupt, subject to court-ordered liquidation or is a legal person that has been dissolved.

In a recent judgment , the Swedish Supreme Court ruled that the third party's claim against the insurer was ancillary to a claim that the insured had under the policy. Therefore, the same limitations in terms of, for example, late notices of claims applicable for the insured apply in relation to the third party.

Further, in the case of liability insurance and where the insured is a natural person, a third party may bring a direct action against an insurer to the extent that damages cannot be claimed directly from the insured.

Law stated - 10 March 2023

Late notice of claim

Can an insurer deny coverage based on late notice of claim without demonstrating prejudice?

The terms and conditions of insurance provided to consumers as well as to businesses often stipulate that the insured must notify the insurer of an insured event within a certain period. If the insured negligently fails to notify the insurer in time, the insurer may deny full or partial coverage to the extent the insurer has incurred damage as a result of the late notice, and it is deemed appropriate taking into account the particular circumstances of the case. However, regarding insurance provided to businesses, the insurance contract may include a requirement that the claim must always, and regardless of any negligence or damage incurred by the insurer, be notified to the insurer within a certain period for the insured to be entitled to compensation. This period may not be shorter than one year from the event that entitles to insurance cover occurred.

The statutory period of limitation for claims under a consumer insurance policy is 10 years from the date the insured became entitled to indemnification under the terms and conditions of the insurance policy (most often, the occurrence of an insured event). If the insured has notified the insurer of the claim within 10 years of that date, the insured shall have at least six months from the date of the final decision of the insurer to commence legal proceedings against the insurer, even if the insurer has made its final decision more than 10 years after the date of the occurrence of the insured event.

The statutory period of limitation of 10 years is applicable also with regard to insurance provided to businesses. However, upon written notice to the insured under a business insurance, the insurer may require the insured to commence legal proceedings regarding a claim within a certain period even if the statutory period of limitation has not ended. The period given to the insured in such a notice must not be less than one year.

Law stated - 10 March 2023

Wrongful denial of claim

Is an insurer subject to extra-contractual exposure for wrongful denial of a claim?

An insurer would not be subject to extra-contractual exposure for wrongful denial of claims. If a court finds that a claim has been wrongfully denied, the insurer will be ordered to pay the claim and interest thereon. If the insured has suffered damage as a result of the wrongful denial, the insurer may also have to pay compensation for the damage. As a general rule, the insurer would also have to pay the policyholder's legal expenses in the court proceedings.

Law stated - 10 March 2023

Defence of claim

What triggers a liability insurer's duty to defend a claim?

There are no specific statutory provisions on this matter. The terms and conditions of the individual policy will establish the circumstances under which the insurer must defend the insured against a claim before a court or in arbitration proceedings.

Law stated - 10 March 2023

Indemnity policies

For indemnity policies, what triggers the insurer's payment obligations?

The insurer's payment obligation is triggered when it has been established that an insured event, as defined by the terms and conditions of the insurance policy, has occurred. The policyholder has the burden of proof concerning the occurrence of the insured event, whereas the insurer has the burden of proof concerning exclusions that may apply.

As a general rule under the Insurance Contracts Act, the insurer must indemnify the insured no later than one month after the insured has notified the claim and put forth reliable evidence of its right to indemnification unless the indemnification shall be paid out periodically under the terms of the policy. If the exact amount of the indemnification is uncertain but the insured is clearly entitled to at least some indemnification, the insured may request a partial payment of the final settlement.

Law stated - 10 March 2023

Incontestability

Is there a period beyond which a life insurer cannot contest coverage based on misrepresentation in the application?

The insurer may only deny coverage based on misrepresentation if the death occurs within five years of the date when the information was provided by the insured, or if the insurer notifies the insured that it has become aware of the misrepresentation within the same period. The insurer may not deny coverage based on misrepresentation if the insurer was aware or reasonably should have been aware of the misrepresentation at the time the information was provided by the insured. Regardless of the foregoing, a life insurer can always deny coverage based on fraudulent deceit or if the insured has acted in bad faith.

Law stated - 10 March 2023

Punitive damages

Are punitive damages insurable?

Punitive damages in a narrow sense – namely, not including administrative penalty fines, contractual penalty fines, etc – are not awarded under Swedish law. Damages that are similar to punitive damages can be awarded for infringements of certain laws, such as labour laws, intellectual property law and the Trade Secrets Act. Whether and to what extent punitive damages in the narrow sense are insurable under Swedish law is a debated and complex issue. Regardless, the terms and conditions of most liability insurance policies exclude administrative penalty fines, contractual penalty fines and punitive damages. However, in this regard, the Swedish Supreme Court held in a recent case that a clause in a liability insurance policy, which excluded contractual penalty fines, was not applicable regarding the relationship between a policyholder and the third party that had incurred a contractual penalty fine as a result of an act committed by the policyholder.

Law stated - 10 March 2023

Excess insurer obligations

What is the obligation of an excess insurer to 'drop down and defend', and pay a claim, if the primary insurer is insolvent or its coverage is otherwise unavailable without full exhaustion of primary limits?

There is no statutory requirement for an excess insurer to 'drop down and defend' and pay a claim under these circumstances. The obligation of an excess insurer to provide coverage that would have otherwise been provided by the primary insurer will be regulated by the terms and conditions of the individual insurance policy.

Law stated - 10 March 2023

Self-insurance default

What is an insurer's obligation if the policy provides that the insured has a self-insured retention or deductible and is insolvent and unable to pay it?

If the insurance concerns the policyholder's own risk, the insurer is only obliged to cover the amount exceeding the retention or deductible. In the case of liability insurance, where the insurer covers a third party's claim against the insured, the insurer's obligations depend on the type of insurance. In the case of motor vehicle insurance, the insurer will indemnify the third party in full and have a claim against the policyholder for retention or deductible, although this claim might be unenforceable if the insured is insolvent. In other cases, the terms and conditions of the policy will often hold that the insurer is liable only for the amount exceeding the retention or deductible. The third party will then have a claim against the insured for the remaining amount.

Law stated - 10 March 2023

Claim priority

What is the order of priority for payment when there are multiple claims under the same policy?

In the case of liability insurance, where multiple parties have claims concerning the same occurrence and under the same policy, and the claims exceed the cover amount of the policy, each party shall be indemnified pro rata in relation

to their claim.

Regarding other types of insurance, there are no statutory provisions on the priority between different claims under the same policy.

Law stated - 10 March 2023

Allocation of payment

How are payments allocated among multiple policies triggered by the same claim?

If an insured event is covered by multiple policies, the insurers are jointly and severally liable to indemnify the insured to the extent the loss is covered by the individual policies. Thus, the insured may choose the insurer he or she wishes to make a claim against. The total indemnification from all insurers may not exceed the total loss of the insured. The insurers may agree on how the liabilities will be distributed between themselves. If the different insurers have not agreed otherwise, they will liable between themselves in proportion to the cover they have granted in the individual policies.

Law stated - 10 March 2023

Disgorgement or restitution

Are disgorgement or restitution claims insurable losses?

Disgorgement and restitution claims generally have a punitive function under Swedish law and may, therefore, not be considered as an insurable interest.

Law stated - 10 March 2023

Definition of occurrence

How do courts determine whether a single event resulting in multiple injuries or claims constitutes more than one occurrence under an insurance policy?

There is no statutory definition of 'occurrence' under Swedish law. Therefore, the definition of 'occurrence' will often be given in the terms and conditions of the insurance policy, although that is not always the case. In general, multiple injuries or claims will be considered as one occurrence if they are closely connected to each other in terms of time, place and reasonable causality. The extent to which these factors are taken into consideration and assessed by courts in the event of a dispute will vary greatly depending on the insurance line, types of injuries or losses and the particular circumstances of the case.

Law stated - 10 March 2023

Rescission based on misstatements

Under what circumstances can misstatements in the application be the basis for rescission?

If the insured has fraudulently deceived the insurer or acted in bad faith by making misstatements in the application, the contract is considered void and the insurer is released from all its obligations under the contract, regardless of whether the insured is a consumer or business.

Regarding consumer insurance, wilful or neglectful misstatements in the application will otherwise be a basis for

rescission if they constitute a gross breach of the insured's obligation to disclose all relevant information in the application. Misstatements may also be the basis for full or partial denial of a claim to the extent the misstatements have had significance for the insurer's assessment of the insured risks and approval of the application.

Regarding business insurance, wilful or neglectful misstatements in the application will be a basis for rescission if they constitute a significant breach of the disclosure obligation. These wilful or neglectful misstatements will also release the insurer from some or all of the obligations under the contract to the extent it can be shown that insurance would not have been approved, or would have been approved under different terms and conditions, if the correct information was provided. The threshold for when the contract may be rescinded is thus somewhat lower in relation to insurance for businesses.

Law stated - 10 March 2023

REINSURANCE DISPUTES AND ARBITRATION

Reinsurance disputes

Are formal reinsurance disputes common, or do insurers and reinsurers tend to prefer business solutions for their disputes without formal proceedings?

Reinsurance disputes are normally settled by arbitration or by amicable settlement. No body of law serves as a precedent for substantive issues in reinsurance disputes. There is also a lack of court precedents as reinsurance disputes are normally resolved through arbitration. This means that the terms and conditions of the reinsurance contract will be of primary importance in reinsurance disputes.

Law stated - 10 March 2023

Common dispute issues

What are the most common issues that arise in reinsurance disputes?

Common issues in reinsurance disputes are the principles of utmost good faith, general principles of Swedish contract law and the issue of quantum. The possibility of inspection is also often an issue in reinsurance disputes.

Law stated - 10 March 2023

Arbitration awards

Do reinsurance arbitration awards typically include the reasoning for the decision?

The Arbitration Act does not require an arbitration tribunal to give reasons for its award or decision. However, according to court precedents, arbitral awards shall contain at least some reasons. Nevertheless, it is common practice in Sweden to give detailed reasons for awards and decisions of arbitral tribunals.

Law stated - 10 March 2023

Power of arbitrators

What powers do reinsurance arbitrators have over non-parties to the arbitration agreement?

As a general rule, the arbitration agreement can only bind the parties to the agreement. In certain situations, however, an arbitration agreement may also become binding on third parties. Examples of when this can be the case include: a

party voluntarily transferring all of its rights and obligations under a contract, including an arbitration agreement; and a bankruptcy estate being bound by the bankrupt debtor's arbitration agreement.

However, the circumstances in each case must be considered and can imply that the third party is not bound by the arbitration agreement.

Law stated - 10 March 2023

Appeal of arbitration awards

Can parties to reinsurance arbitrations seek to vacate, modify or confirm arbitration awards through the judicial system? What level of deference does the judiciary give to arbitral awards?

An arbitral award cannot be challenged on the merits, only on formal grounds.

The grounds on which an award may be challenged are set out in the Arbitration Act. Under section 34, an award may be set aside if:

- it is not covered by a valid arbitration agreement between the parties;
- the arbitrators made the award after the expiration of the time frame decided by the parties;
- the arbitrators exceeded their mandate in a way that is likely to have influenced the outcome of the case;
- the arbitral proceedings, according to the Arbitration Act, should not have taken place in Sweden;
- an arbitrator was appointed contrary to the agreement between the parties or the Arbitration Act;
- an arbitrator was unauthorised owing to any circumstance set out in the Arbitration Act, such as a lack of impartiality; or
- there occurred, without the fault of a party, an irregularity in the course of the proceedings that is likely to have influenced the outcome of the case.

An award may further be invalid if:

- it includes a determination of an issue that, under Swedish law, may not be decided by arbitration;
- it, or the manner in which it arose, is clearly incompatible with the basic principles of the Swedish legal system; or
- it does not fulfil the requirements with regard to the written form and signature under the Arbitration Act.

Law stated - 10 March 2023

REINSURANCE PRINCIPLES AND PRACTICES

Obligation to follow cedent

Does a reinsurer have an obligation to follow its cedent's underwriting fortunes and claims payments or settlements in the absence of an express contractual provision? Where such an obligation exists, what is the scope of the obligation, and what defences are available to a reinsurer?

Swedish statutory law does not set out an obligation for the reinsurer to follow its cedent's underwriting fortunes and claims payments, or settlements. It is not clear whether a follow-the-fortunes principle would apply if there is no express contractual provision. Even though the principle of follow-the-fortunes may be regarded as an internationally established reinsurance principle or custom, or both, the interpretation of the contents of this principle differing not

only between countries but also between different actors on the reinsurance market, makes it difficult, from a Swedish perspective, to speak of follow-the-fortunes as a well-established reinsurance custom.

Law stated - 10 March 2023

Good faith

Is a duty of utmost good faith implied in reinsurance agreements? If so, please describe that duty in comparison to the duty of good faith applicable to other commercial agreements.

In Sweden, there is no duty of utmost good faith stipulated in statutory law. Instead, the contracting parties have a general duty of loyalty. Even though references to a duty of utmost good faith are made in relation to insurance law in general in Swedish insurance law literature, it is not specifically claimed that the duty can be implied in insurance and reinsurance contracts. Reinsurance case law is very scarce in Sweden, but there is an arbitration case from 1998 where the arbitral tribunal explicitly stated that the principle of utmost good faith is a fundamental principle of Swedish insurance and reinsurance law. It can therefore be considered that it may be possible to imply a duty of utmost good faith in reinsurance agreements, but the content of this duty would not be entirely clear from a Swedish law perspective.

Law stated - 10 March 2023

Facultative reinsurance and treaty reinsurance

Is there a different set of laws for facultative reinsurance and treaty reinsurance?

No, there is no different set of laws for facultative reinsurance and treaty reinsurance. However, the practical differences between them may naturally be of importance for the arbitral tribunal or the courts in deciding particular cases.

Law stated - 10 March 2023

Third-party action

Can a policyholder or non-signatory to a reinsurance agreement bring a direct action against a reinsurer for coverage?

The Supreme Court has held that, in general, unless specifically agreed to between the parties, there is no legal relationship established between the policyholder and the reinsurer, which means that the policyholder (or any other non-signatory, for that matter) cannot bring a direct action against a reinsurer for coverage. It is not entirely clear whether this is an absolute rule if the insurer is insolvent.

Law stated - 10 March 2023

Insolvent insurer

What is the obligation of a reinsurer to pay a policyholder's claim where the insurer is insolvent and cannot pay?

The Supreme Court has held that, as a general reinsurance principle, the cedent can claim payment from the reinsurer regardless of whether the cedent has made its claim payments to the policyholder. In an insolvency situation for the insurer, this entails that the insolvent cedent can claim payment under the reinsurance agreement from the reinsurer

before the policyholders have received their claim payments. However, the general rule on direct action applies also where the cedent is insolvent. Consequently, any payments under the reinsurance agreement between the cedent and the reinsurer shall be made to the bankruptcy estate and not directly to any policyholder. The Supreme Court has, however, held that although the reinsurer's payments are to be made to the cedent and not to any policyholder, the payments received shall not by default be allocated to the general estate. Rather, the policyholders may collectively be entitled to a right of separation of the proceeds from the reinsurance. However, the Supreme Court is quite vague in its conclusions and it is therefore not entirely clear whether such a collective separation right always applies or how it applies.

Law stated - 10 March 2023

Notice and information

What type of notice and information must a cedent typically provide its reinsurer with respect to an underlying claim? If the cedent fails to provide timely or sufficient notice, what remedies are available to a reinsurer and how does the language of a reinsurance contract affect the availability of such remedies?

Statutory law does not regulate what types of notice and information a cedent must provide its reinsurer. The scope of the notice and information obligations of the cedent, and the remedies available for non-compliance, is therefore dependent on the provisions of the reinsurance agreement. If the matter is not regulated by the reinsurance agreement, the general 10-year statute of limitation will apply to the cedent's claims.

Law stated - 10 March 2023

Allocation of underlying claim payments or settlements

Where an underlying loss or claim provides for payment under multiple underlying reinsured policies, how does the reinsured allocate its claims or settlement payments among those policies? Do the reinsured's allocations to the underlying policies have to be mirrored in its allocations to the applicable reinsurance agreements?

Allocation of underlying claim payments or settlements is not regulated by Swedish statutory law. The reinsured, therefore, must allocate the underlying claim payments or settlements in accordance with the applicable reinsurance agreements.

Law stated - 10 March 2023

Review

What type of review does the governing law afford reinsurers with respect to a cedent's claims handling, and settlement and allocation decisions?

Statutory law does not provide for a right of review with respect to a cedent's claims handling, or settlement and allocation decisions. However, an inspection of books clause is commonly found in reinsurance agreements on the Swedish markets. Further, a right to inspect books might be derived from trade practice or custom.

Law stated - 10 March 2023

Reimbursement of commutation payments

What type of obligation does a reinsurer have to reimburse a cedent for commutation payments made to the cedent's policyholders? Must a reinsurer indemnify its cedent for 'incurred but not reported' claims?

There are no provisions in Swedish statutory law regulating whether a reinsurer is obliged to follow the cedent's settlements in relation to commutation payments. Consequently, this must be regulated in the relevant reinsurance agreement.

Law stated - 10 March 2023

Extracontractual obligations (ECOs)

What is the obligation of a reinsurer to reimburse a cedent for ECOs?

The obligation of a reinsurer to reimburse a cedent for ECOs depends entirely on the relevant reinsurance agreement. Swedish law is silent on this matter.

Law stated - 10 March 2023

UPDATES & TRENDS

Key developments

Are there any emerging trends or hot topics in insurance and reinsurance regulation in your jurisdiction?

A hot topic in Swedish insurance is the general digitalisation and innovation trend commonly described as insurtech, and this is often referred to as the 'new fintech'. Digitalisation under the insurtech spectrum spans many types of development – some insurers use new technical solutions to reach customers traditionally overlooked by the sector, while others focus on the larger scale of data analysis. From a regulatory perspective, it may be noted that the Swedish Financial Supervisory Authority (SFSA) has initiated what the authority calls an 'innovation centre', with the purpose of being the first point of contact for any financial businesses, including insurance companies, regarding rules, processes and principles in connection with innovation.

In relation to insurtech, 'open insurance' is currently a hot topic in Sweden.

The concept of 'open banking' was introduced by the EU Payment Services Directive (PSD2) in 2018 and now regulatory attention is turning to increasing the use of and access to data from banking to other areas of finance. Similar to open banking under PSD2, a regulatory framework for open insurance is expected to impose an obligation on insurance companies to provide third parties with access to insurance-related personal and non-personal data via APIs (Application Programming Interfaces). The general idea is that third-party access to data will increase innovation and competition in the insurance industry.

In its Digital Finance Strategy, published in September 2020, the European Commission announced that it aims to have an open finance framework in place by 2024. In October 2022, the European Commission published its Commission Work Programme 2023, whereby a legislative proposal on such open finance framework was scheduled to be delivered in the second quarter of 2023.

In Sweden, however, open insurance is already developing quickly on a voluntary basis. One example is a new insurtech

company that provides consumers with digital services including an overview of their existing (non-life) insurances, and offers the service of changing insurance provider.

Another hot topic in Swedish insurance is the EU Taxonomy Regulation (Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, adopted in June 2020), which is one of the measures in the EU action plan on financing sustainable growth published by the European Commission in March 2018. The Taxonomy Regulation constitutes a joint classification system to determine which economic activities should be viewed as being environmentally sustainable, with the aim of helping investors identify and compare environmentally sustainable investments. The requirements apply to certain financial market participants, listed companies and other large publicly owned companies that must prepare a sustainability report in conjunction with their annual report.

In order for a certain economic activity to be classified as environmentally sustainable according to the Taxonomy Regulation, it must make a substantial contribution to one or several of six established environmental objectives, not cause significant harm to any of the other objectives, and meet certain minimum sustainability requirements.

Together with the Disclosure Regulation (Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector, adopted in November 2019), 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.

Some of the requirements under the Taxonomy Regulation have been in force since 1 January 2022 and, as of 1 January 2023, all of the requirements now apply in full force.

Law stated - 10 March 2023

Jurisdictions

China	Jincheng Tongda & Neal
Denmark	Poul Schmith/Kammeradvokaten
Germany	Clyde & Co LLP
Gibraltar	Hassans
India	Tuli & Co
Israel	Kennedys Law LLP
Japan	Nagashima Ohno & Tsunematsu
South Korea	Yoon & Yang LLC
Spain	Bird & Bird LLP
Sweden	Advokatfirman Hammarskiöld
Switzerland	Lenz & Staehelin
Turkey	Cavus & Coskunsu Law Firm
United Kingdom	Debevoise & Plimpton
USA	Sullivan & Cromwell LLP
Vietnam	LNT & Partners