

Insurance contract law in Sweden and practical challenges



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Along with general development in society, the Swedish insurance market continuously develops. In recent years, new and more complex insurance products have emerged in order to meet the new demands of the increasingly sophisticated market. In this respect, the Swedish insurance market is greatly influenced and affected by the UK insurance market. New and creative insurance products emerging in the UK are often imported to Sweden. This development requires a legal system able to follow and correspond to its progress, something which is a challenge for Swedish insurance law.

This article gives a brief introduction to insurance contract law in Sweden and highlights some challenges in its practical application.

Swedish regulation of insurance contracts

Arguably the most important piece of legislation on insurance contracts in Sweden is the Swedish Insurance Contracts Act (Sw. *försäkringsavtalslag* (2005:104), the ICA), which primarily regulates the relationship between insurer, policyholder and insured.

The ICA applies to all categories of insurance contracts with the exception of reinsurance contracts. However, the ICA distinguishes between various types of insurance policy, which are regulated differently; non-life consumer insurance, personal insurance, corporate insurance, group non-life insurance, group personal

insurance, collective agreement-based non-life insurance and collective agreement-based personal insurance.

The ICA includes provisions on pre-purchase information, termination and amendment of the insurance policy, limitation of the insurer's liability, settlement of claims, and statutory limitation. For most types of insurance, the ICA is largely mandatory to the benefit of the policyholder, its assignee and the insured. This applies also with respect to corporate insurance, although the ICA's mandatory nature is subject to more exceptions in the field of corporate insurance, where the freedom of contract is greater.

A main objective behind the ICA is to protect the weaker party – the policyholder. In the early stages of the legislative process, it was suggested that the provisions applicable to corporate insurance policies should be entirely non-mandatory. However, shortly before the legislation was passed, the winds changed and corporate insurance effectively obtained its own chapter with provisions that were to a greater extent mandatory for the benefit of the policyholder, its assignee and the insured. The legislator's intention was to maintain the safeguards in respect of small business owners, who (much like consumers) were considered to be in need of protection. As a result, policyholders and the insured under corporate insurance policies are, as a general rule, afforded certain safeguards by the ICA.

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Challenges in the practical application of Swedish insurance contract law

Although the ICA contains guidance with respect to several aspects of insurance contract law, its practical application is subject to challenges, especially for corporate insurance.

There are, in fact, a number of mandatory provisions in the ICA that commonly involve uncertainties in their practical interpretation and application. This includes the provisions on statutory limitation, the insured's right to interest, and the insured's duty to mitigate loss. There is also an array of insurance legal issues on which the ICA is largely silent and statutory guidance is absent. The extent to which insurers may become liable for damages due to a breach of contract and the issues surrounding series of losses are examples of areas not dealt with by the ICA.

The primary source of law in the Swedish legal system is the statutory provisions, such as the ICA, and when interpreting the statutory provisions, the courts generally look to the preparatory works (*travaux préparatoires*) and the intention of the legislator. Although holdings by the Swedish Supreme Court are afforded great significance, Sweden does not apply the doctrine of *stare decisis*. Swedish case law within the field of insurance is also rather

limited and does not account for the fact that the ICA is subject to gaps and ambiguities.

All of this combined has resulted in somewhat patchy insurance legislation, which occasionally is rather difficult to apply in practice. In addition, many legal questions arising in connection to corporate insurance policies have to be solved largely by way of construction of the policy terms and conditions, which in itself might be a challenge when the wordings are complex and foreign and fit poorly within the ICA structure. As a consequence, Swedish lawyers are often inclined to glance at case law and industry practice in the UK for guidance in construing policy wordings. This is, for example, often the case with more advanced products such as cyber insurance policies and certain types of directors' and officers' liability insurance policy. Also with regard to reinsurance contracts, which as previously mentioned are exempt from the ICA, the UK legal system often serves as inspiration.

Although the fact that introducing insurance products from the UK to the Swedish insurance market may mean that UK legal and industry practice can serve as an aid in the construction of the policy, in our experience it may also mean that the policy terms and conditions are not fully adapted to the

Swedish insurance legal landscape, even when the policy explicitly is governed by Swedish law. There is therefore a risk that the policy terms and conditions, to a varying degree, conflict with – or may be argued to conflict with – mandatory provisions of the ICA. This is common with regard to, for example, premature termination of the insurance policy and makes construction and application difficult and unpredictable.

Concluding remarks

As briefly outlined, the practical application and interpretation of Swedish corporate insurance policies frequently entails challenges and there is room for improvement in order to fully adapt Swedish insurance contract law to the developing insurance market. The fact that many insurance products stem from the UK also entails another dimension in the practical application and interpretation of corporate insurance policies. As a result, many interesting legal questions arise in the practical application and we continue to monitor the developments in the field of insurance contract law and on the Swedish insurance market with great interest. ■

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