

SWEDEN

Insurance mediation from a Swedish perspective



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The insurance intermediary market is under review and subject to discussion, not only in the EU but also on a national level in Sweden. The Swedish Financial Supervisory Authority (SFS) recently stated that the authority is in favour of a ban on intermediaries receiving commission by insurance undertakings.

This article aims to describe Swedish legislation on insurance intermediaries and the view of the Swedish Government and the SFS of changes needed.

Swedish legislation

Directive 2002/92/EC on insurance mediation (IMD) was implemented in Sweden in 2005 by the Swedish Insurance Mediation Act (SFS 2005:405). Under this Act, an insurance intermediary (a private individual or a legal entity) may conduct business as an independent or a tied intermediary. The definition of “tied insurance intermediary” set out in the IMD (“any person who carries on the activity of insurance mediation for and on behalf of one or more insurance undertakings in the case of insurance products which are not in competition but does not collect premiums or amounts intended for the customer and who acts under the full responsibility of those insurance undertakings for the products which concern them respectively”) has been implemented in the Swedish Insurance Mediation Act. It is understood that this is how the IMD has been implemented in all jurisdictions within the EU/EEA. Independent intermediaries (often referred to as brokers) must apply to the SFS for a licence and, when a licence is obtained, register the intermediary business at the Swedish Companies Registration Office. A tied intermediary on the other hand, is not required to conduct business through a licence. Instead, a tied intermediary acts under the liability of the insurer to which it is tied, but must nonetheless be registered at the Registration Office.

A Swedish licence may be granted for one or several insurance classes within the segments of life or non-life insurance as defined in the Insurance Business Act (SFS 2010:43). The insurance classes in the Insurance Business Act correspond to the insurance classes set out in Directive 73/239/EEC (non-life) and 79/267/EEC (life). A registration of a tied intermediary at the Registration Office must clearly state within which insurance class(es) the intermediary is tied to the insurer. The requirement for tied insurance intermediaries to register if it conducts life or non-life insurance mediation (or both), and within which insurance class(es) it is tied to the insurer is not set out in the IMD but is a requirement under Swedish law.

THE REQUIREMENT TO PROVIDE THE CONSUMER WITH
TRANSPARENT AND COMPREHENSIVE INFORMATION
ABOUT COMMISSION MAY NOT BE SUFFICIENT TO
ADDRESS THE PROBLEM OF CONFLICT OF INTEREST

By defining the scope of business within the licence/registration, the insurance intermediary is able to ensure that the legal requirements to conduct business are met (for example to ascertain knowledge and competence of the intermediaries, liability of management and employees, and so on). Thus, the specification of the licence/registration enables a company to exercise a degree of “risk control” over its business. It also provides transparency towards its clients, since the scope of the licence/registration is published in official registers.

In Sweden, there are no restrictions on commission, other than the requirement to provide the client with transparent and sufficient information of how and to what extent the intermediary receives its commission.

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Legislation under review

As mentioned above, the Swedish insurance intermediary market is under scrutiny and the Swedish Ministry of Finance has commented on the European Commission's Consultation Document, welcoming it to level the playing field for all participants involved in the selling of insurance products and to strengthen consumer protection.

The Swedish Ministry of Finance stated that the requirement under Swedish law to provide the consumer with transparent and comprehensive information about commission may not be fully sufficient to address the problem of conflict of interest when the intermediary is remunerated by

the insurance undertaking, while serving the customer.

Additionally, the Swedish Ministry of Finance stated that the advantages and disadvantages of regulating compensation practices, also

by prohibiting any compen-

sation by insurance undertakings to intermediaries (other than agents), must be further examined. However, in the absence of consensus, a revised IMD should provide the Member States with an opportunity to maintain and/or strengthen their national systems to ensure consumer protection.

IT CANNOT BE RULED OUT THAT A BAN ON COMMISSION MAY BE PROPOSED

The view of the Swedish Ministry of Finance is further that the insurance market is in transition; for example banks are controlling a growing share of the distribution of insurance products. Another growing area is sale through web portals. In the view of the Swedish Ministry of Finance, such sales have cost advantages for consumers, whereas there may be disadvantages in respect of consumer protection. It can be assumed that sale through web portals may not always provide the consumer with sufficient information to make the best choice.

Independent of the official Swedish response, the SFSA has expressed its view that the authority is in favour of a ban in Sweden on insurance intermediaries receiving commission by insurance undertakings. The SFSA has further initiated a review of the insurance intermediary market. In particular, the SFSA means that the boundary between marketing and investment advice is not sufficiently transparent. The SFSA has also expressed that information requirements regarding fees and liability insurance by an independent intermediary to the consumer must be reviewed. The SFSA will evaluate its guidelines to clarify the meaning of "good insurance intermediary practice" and intends to tighten the requirements when licensing intermediaries. This includes the requirements of competence and knowledge of the employed intermediaries. As part of this review it cannot be ruled out that a ban on commission may be proposed.

In this context it should be noted that the Swedish Insurance Brokers' Association (*Sw. Svenska försäkringsförmedlares förening*), as well as individual companies conducting insurance mediation, has expressed its worries concerning a ban. In the view of the Association, a ban would be particularly hard on small operators in the intermediary market.

There is no definite plan by the legislature to amend the Insurance Mediation Act in this respect. However, it can be assumed that the Swedish intermediary market will be subject to changes in the not too distant future, in view of the review of the current IMD as well as national initiatives. National initiatives can be expected by the SFSA as well as the Swedish Ministry of Finance.