

Group insurance in Sweden: general overview and implications of EU legislative acts

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Introduction

Overview of group insurance on Swedish market

Implications of EU legislative acts

Comment

Introduction

Group insurance is common on the Swedish market as the simplified risk assessment and low-cost administration enables relatively inexpensive cover for a wide range of situations – from traditional health insurance provided by employers to employees to more innovative products such as providing cover for all visitors to funfairs. Despite its frequency on the market, it is sometimes difficult to apply the legal provisions regulating group insurance in practice. In addition, the enactment and implementation of several EU legislative acts have raised a number of issues that must also be considered.

Overview of group insurance on Swedish market

The Insurance Contracts Act (ICA) 2006 contains an entire section dedicated to 'group insurance' (ie, insurance provided for a group of persons, including group insurance provided by employers under a collective bargaining agreement). Group insurance contracts may cover life risks, non-life risks or both.

Group insurance may be voluntary or mandatory. In a voluntary group insurance setting, a group's representative enters into a group agreement with an insurer, creating the right for individual policyholders to join the group insurance by entering into a separate, individual insurance contract with the insurer on the terms set out in the group agreement. The group is defined in the group agreement. Voluntary group insurance requires the individual policyholder to actively consent, or not actively object, to the insurance cover.

In mandatory group insurance, the group agreement entered into between the insurer and the group's representative also constitutes the insurance contract. The representative is the policyholder and all members of the group are automatically covered by the insurance as beneficiaries solely by qualifying as a member of the group. Group members may refrain from cover by declaration to the insurer or the representative. In mandatory group insurance, group members have no direct premium payment obligation to the insurer. The premium is paid by the representative but may indirectly be borne by the group members by, for example, membership fees or similar.

Voluntary group insurance is often offered in conjunction with the purchase and sale of goods (eg, cars or pets) or in conjunction with the transport of goods. In a business context, voluntary group insurance may cover professional indemnity for different groups such as realtors, accountants, lawyers and other consultants. Mandatory group insurance is often included in memberships, such as trade unions and sports associations, but may also apply to other groups such as the holders of certain types of credit card or the participants of travel programmes. They may also cover visitors in public arenas such as museums, funfairs and similar.

Legally binding provisions on group insurance were introduced to the ICA in 2006. However, the provisions on group insurance may give rise to several practical issues, for example:

- the conclusion and termination of the contract;
- information requirements (before and after the conclusion of the contract);
- premium administration; and
- the representative's role and allocation of responsibilities.

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All insurance products offered to consumers on the Swedish market must comply with Swedish general good provisions, including the ICA. For foreign insurers seeking to distribute group insurance on the Swedish market, it is difficult to determine which category of group insurance the contract should fall under, whether it is voluntary or mandatory and whether it contains elements of life risks. The applicable requirements on the conclusion and renewal of contracts, pre and post-information requirements, premium administration and the termination of the contract will vary depending on whether the group insurance is mandatory or voluntary. Another complicating factor concerning foreign insurers is that the group agreement entered into with the representative is sometimes drafted without consideration of the ICA and not subject to Swedish law. In such situations, the terms and conditions of the group agreement and the insurance terms and conditions must be adjusted to ensure compliance with the Swedish general good provisions.

Implications of EU legislative acts

The recent enactment and implementation of several important EU legislative acts, such as the EU Solvency II Directive (2009/138/EU) (implemented by the Swedish Insurance Business Act (IBA)), the EU Insurance Distribution Directive (IDD) (2016/97/EU) (implemented by the Swedish Insurance Distribution Act (IDA)) and the EU General Data Protection Regulation (GDPR) (2016/679/EU), have raised several issues for Swedish and EU entities which issue group insurance, particularly with respect to:

- the applicability of the IDA in general and, in particular, whether actions of the representative fall within its scope;
- the processing of personal data, including compliance with the GDPR; and
- the applicability of the IBA regarding insurers' outsourcing arrangements, whether a representative's tasks and responsibilities may constitute an outsourcing arrangement and whether this constitutes outsourcing of a critical function.

Under the old EU Insurance Mediation Directive, now replaced by the IDD, the question of whether a representative was an insurance intermediary (in a voluntary group insurance context) was somewhat uncertain. However, as the definition of 'insurance distribution' is wider under the IDD (and the IDA), the possibility for a representative in a voluntary group insurance to market insurance products, refer potential policyholders to insurers, otherwise assist in concluding insurance contracts, administer premiums or receive commissions without a licence as an insurance distributor has become limited.

Further, insurers and representatives must carefully review how personal data is processed. Under the GDPR, the parties may be separate controllers of personal data (ie, independently determining the purposes and means of the processing of personal data), whereby they must ensure that their internal procedures comply with said regulation. Alternatively, one party may act as a data processor (ie, processing data on behalf of the controller). In the group agreement, parties should clarify in what capacity (if any) the parties process data in order to avoid any uncertainty in this regard. Further, if the parties process data, the group agreement must be supplemented with a data processing agreement.

One of the main purposes of group insurance is to lower costs by delegating part of the administration to the representative. The question arises as to whether this falls within the scope of outsourcing in the IBA. Under the IBA, 'outsourcing' is defined as an insurer which contracts someone to perform activities or functions that are part of its business. In theory, this leads to the conclusion that giving the representative of a voluntary group insurance any administrative responsibilities constitutes outsourcing. However, delegating administrative tasks to the representative is the actual rationale behind the provisions regarding group insurance. This suggests that delegating certain customary administrative tasks to the representative (eg, sending information or other relevant documentation (provided by the insurer) to group members) does not constitute outsourcing. However, more substantial tasks (eg, executing schedules, sending annulments or reminders or processing personal data) may constitute outsourcing. Depending on the circumstances, delegating more substantial administrative responsibilities may also constitute the outsourcing of a critical function, which requires a written agreement between the insurer and the representative that must fulfil certain requirements under the IBA.

In general, the representative of a mandatory group insurance arrangement is not considered an insurance distributor since it is also the policyholder while the group members are insured beneficiaries. This also means that the arrangement will not constitute outsourcing by the insurer. However, it is not always possible to opt for a mandatory group insurance set-up. If the representative or insurer wishes to negotiate individual insurance terms or collect premiums separately from the applicable (membership) fee or directly from the insured beneficiaries, a mandatory group insurance arrangement is unsuitable.

All of the above aspects must be carefully considered in the group agreement between the insurer and the representative.

Comment

Non-compliance with the ICA may lead to intervention primarily by the Swedish Consumer Agency. However, failure to comply with the provisions of the IBA, the IDA and the GDPR may lead to intervention from the Swedish Financial Supervisory Authority (SFSA) or the Swedish Data Protection Authority for the company, the managing director or a member of the board, in addition to potential claims from the affected policyholder and insured beneficiaries.

Insurers are prohibited from distributing insurance via an unauthorised representative. Therefore, insurers must analyse the contemplated group insurance set-up (ie, voluntary or mandatory) and the delegation of tasks to the representative and its potential consequences before entering into any agreement with representatives. Vice versa, representatives within the regulated scope must obtain proper insurance distribution authorisation by becoming a tied insurance intermediary to the insurer or applying for an independent licence from the SFSA prior to distributing group insurance. Otherwise, the representative may also risk the SFSA's intervention.

To summarise – while the application of the ICA provisions on group insurance may prove to be a challenge in itself, there are several further insurance regulation and data protection aspects to consider when drafting a group agreement subject to Swedish law or offering group insurance on the Swedish market. That being said, due to the possibility of group insurance schemes reaching a large number of customers and the low-cost administration associated therewith, group insurance schemes will likely continue to be a substantial and important part of the Swedish insurance market.

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