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Contributing editor:
Paul Kanefsky
Edwards Angell Palmer
& Dodge LLP

Business development manager
Joseph Samuel

Marketing managers
Alan Lee
Dan Brennan
George Ingledew
Edward Perugia
Robyn Hetherington
Dan White
Tamzin Mahmoud

Marketing assistant
Ellie Notley

Subscriptions manager
Nadine Radcliffe
Subscriptions@
GettingTheDealThrough.com

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Subeditors
Jonathan Allen
Kathryn Smuland
Sara Davies
Laura Zúñiga
Ariana Frampton
Sarah Dookhun

Editor-in-chief
Callum Campbell

Publisher
Richard Davey

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87 Lancaster Road
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Sweden

Susanna Norelid

Advokatfirman NorelidHolm

Regulation

1 Regulatory agencies

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

The Swedish Financial Supervisory Authority (Finansinspektionen) is the competent authority responsible for supervising activities on the financial markets, including insurance and reinsurance companies. Finansinspektionen authorises, supervises and monitors all companies operating on the Swedish financial markets.

2 Formation and licensing

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

According to the Insurance Companies Act (Försäkringsrörelselagen 1982:713) (FRL) companies offering financial services in Sweden require permits (concession) issued by Finansinspektionen.

It is necessary to have at least one founder to form an insurance or reinsurance company in Sweden. All categories of Swedish or EEA juridical persons may be founders, including governments and municipalities.

A physical person may also be a founder of such a company. The requirement is that such person shall be domiciled in an EEA country, but does not have to be a Swedish citizen. The founder must be over 18 years of age, and may not be in a state of bankruptcy, have a legal custodian or be under trade prohibition.

An application for concession shall be signed by the founders and must be accompanied by a business plan. Finansinspektionen has issued a regulation on what should be included in such a plan (FFFS 2008:8). Furthermore, the application shall also state the conditions of the formation of the company and a copy of the articles of association and the memorandum of association shall be attached.

The prospective shareholders with a qualified holding of stocks in the insurance or reinsurance company must pass a qualification test. If it is found that these shareholders are not suitable, the application for concession will be denied. A qualification test of the company's directors is also made. There are higher qualification demands on the directors than on the shareholders. A mandatory requirement is that the directors of the board and the managing director shall have sufficient knowledge, or are able to obtain such knowledge, about the specific insurance or reinsurance area. General guidelines regarding owners' and directors' qualification tests are found in Finansinspektionens Regulation FFFS 2007:22.

3 Other licences, authorisations and qualifications

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

The requirements and permits needed for setting up new insurance and reinsurance companies are described in the answer to question 2.

An insurance or reinsurance company authorised in another EEA state may conduct insurance activities in Sweden. In order to do so, the company must first contact its home state regulator who in its turn will notify Finansinspektionen. Swedish national laws must be complied when carrying on business in Sweden. One month after Finansinspektionen receives the message from the company's home authority, the insurance or reinsurance company may conduct business in Sweden.

For secondary establishment or cross-border activity, insurance and reinsurance companies with a registered office in a non EEA-country may carry out business through a general sales agency or a branch in Sweden after concession is obtained from Finansinspektionen.

As from 1 January 2006, Sweden has had a new Insurance Mediation Act (2005:405), regulating brokers' activities on the Swedish market. According to this new Act, insurance products may only be offered by insurance agencies and only if they meet the requirements set up in the Act. Finansinspektionen has issued a regulation with further guidelines for insurance brokers (FFFS 2007:23).

4 Officers and directors

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

See question 2.

5 Capital and surplus requirement

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

In the application form to Finansinspektionen, an insurance or reinsurance company shall state the size of the companies' capital stock. Mutually insurance companies shall state the sum guaranteed. Regulations stating which posts the capital base may comprise are found in the FRL and in Finansinspektionen's practice.

According to FRL, chapter 1, section 8a, the capital base shall at least amount to the guarantee sum when an insurance or reinsurance company is founded. For a life insurance and reinsurance company, the guarantee sum shall at least amount to €3 million (chapter 7, section 26) and for a property and casualty insurance company, the guarantee sum shall at least amount to €2 million, (chapter 7, section 27).

If a property insurance company includes insurance or risk that assigns to any of the categories stated in paragraphs 10 to 15 of the

FRL, chapter 2, section 3a, the guarantee sum shall be €3 million. Note that these amounts can vary with the retailer price index.

Finansinspektionen's practice for capital claims on concession is as follows. The capital base required for a property and casualty insurance company's concession shall from the start amount to 1.5 times the company's forecasted guarantee sum for the third financial year. The capital base shall at least reach the solvency marginal for the same financial year. Captives are treated in the same way as insurance companies. For a life insurance company with considerable saving insurances, the required capital base, when the solvency marginal is greater than the guarantee sum, shall at least amount to 1.5 times the solvency marginal. When the guarantee sum is greater than the solvency marginal, the capital base shall at least amount to the guarantee sum without enumeration. For a life insurance company with considerable risk insurances, the capital base shall at least amount to 1.5 times the highest of the solvency marginal or the guarantee sum.

The above-mentioned applies under normal circumstances. In some cases the requirements can be increased. An individual judgement must be made in every case to verify that the normal standards are sufficient. For the judgement of a life insurance company, a business plan of more than three years is needed to see the long-term development of the capital base. The minimum capital base required by law (the guarantee sum or in the occurring cases, solvency marginal) shall consist of restricted equity.

When practicing the business, the capital base shall at least amount to a level that is estimated on the basis of the nature and the extent of the company (the solvency marginal). The capital base may never be below the guarantee sum.

6 Reserves

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

There are no actual requirements. However, Finansinspektionen has issued guidelines regarding reserves for insurance and reinsurance companies (FFFS 2000:4). The guidelines are generally formed and admit different solutions for different companies.

According to this general advice the board of directors should ensure that instructions regarding the reserves are drawn up. The instructions should be drawn up so that the identification of the differences between various risk or product groups is observed. The instructions should contain decision orders for adoption of reserves.

It should appear from the instructions for direct insurance how a type of damage, expected insurance compensation and expected regulation time, should be observed when considering the occurred and reported insurance when setting the reserve.

In the instructions for received reinsurance, the principles for how the information from the giving companies, regarding how the reserve is made, ought to be stated. It should appear from the instructions what methods shall be used when setting the reserve of occurred, but not yet reported, insured events.

7 Insurance products

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

The insurance contracts offered on the Swedish market must comply with the Insurance Contract Act (2005:104). This Act contains mandatory requirements to the benefit of the insured.

Methods of marketing insurance products in Sweden must be in

compliance with the Marketing Act (2008:486). To avoid obstacles that hinder efficient competition companies must comply with the Competition Act (1993:20). The Competition Act is modelled on the competition rules of the EU as laid down in the Treaty of Rome and the corresponding rules of the EEA Agreement.

According to the Act on the Filing of Income Tax Returns and Statements of Income (2001:1227), insurance companies conducting business in Sweden without establishing a branch office in this country must furnish Finansinspektionen with an undertaking to file an annual statement of income to the National Tax Board (Skatteverket) not later than 31 January of the year following the income year.

Traffic insurance, insurance for motor vehicle liability, is compulsory in Sweden. The applicable law is the Traffic Damage Act (1975:1410). Insurers who provide traffic insurance in Sweden are obliged to cover such risks.

Insurers who intend to cover such risks must have a representative in Sweden. The representative must be authorised to handle claims on behalf of the company and the insurer must be a member of the Association of Motor Insurers.

Another mandatory insurance in Sweden is patient insurance. An insurer who intends to pursue patient insurance in Sweden must be a member of the Swedish Patient Insurance Association (Patientförsäkringsföreningen).

8 Change of control

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

As of 1 July 2007, Sweden has adopted new regulations regarding how shareholders shall notify the market about major changes in ownership ('flagging'). The regulations are based on EU's Transparency Directive.

The regulations states that that shareholders must notify both the issuing company and Finansinspektionen about such major change. This must be done no later than the trading day after the transaction was completed. Finansinspektionen is then responsible for making such information official and public to the market.

Flagging is required when shareholders acquire or dispose of shares in a listed company and thereby reach, exceed or fall below the certain thresholds for voting rights or number of shares in the company.

Flagging may also be required when several shareholders have entered into an agreement that obliges them to pursue a common stance or when a party holds shares in their own name on behalf of a third party.

In Sweden the term officers and directors only includes the legally defined directors (ie, only the directors of the board and the managing director). For background investigation and qualification test regarding the directors and officers, see question 2.

9 Financing of an acquisition

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

There are no actual requirements regarding the financing of the acquisition of an insurance or reinsurance company. However, according to FRL chapter 2, section 2 the price for a share may not be set to an amount less than the share's nominal value. Payment by assets contributed in kind is also accepted as long as the asset has an economic value and the asset is of use for the company.

10 Foreign private investment

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

See question 2.

11 Foreign state investment

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

Any kind of Swedish legal entity and legal entities within the EEA may be a founder of an insurance or reinsurance company in Sweden. This includes foreign governments and local authorities.

12 Reinsurance agreements

What are the regulatory requirements with respect to agreements for reinsurance ceded and assumed by insurance and reinsurance companies domiciled in your jurisdiction?

There are no such regulatory requirements according to Swedish law. However, there are rules in the Insurance Companies Act (1982:713) regarding financial requirements for insurance and reinsurance companies, see questions 14 and 13.

13 Ceded reinsurance and retention of risk

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

Normally, Finansinspektionen grants companies exception from the formal requirements mentioned in question 14 for ceded reinsurance according to the FRL, chapter 1 section 10, paragraphs 1 and 3.

14 Collateral

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

The collateral requirements for all insurance companies are regulated by the FRL, especially chapter 1, section 8a and chapter 7, section 1 regarding the capital base, guarantee amount and the margin of solvency (see question 5).

Finansinspektionen is the supervisory body that issues detailed requirements and monitors the insurance companies.

15 Insolvent and financially troubled companies

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

The Bankruptcy Act (1987:672) contains the main regulations concerning insolvent or financially troubled companies in general, whereas the FRL complements the Bankruptcy Act.

16 Intermediaries

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

The Insurance Mediation Directive (2002/92/EC) has been implemented into Swedish law.

Relevant regulations for the activities of insurance mediation are the Insurance Mediation Act (2005:405) and Finansinspektionens regulations and general guidelines concerning insurance mediation (FFFS 2005:11). See also question 7.

Insurance claims and coverage**17 Third-party actions**

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

Direct action is normally not allowed under Swedish law. However, exceptions do occur by law. Such exceptions are found in the Insurance Contract Act (2005:104), chapter 9, sections 7 and 8 and cover:

- mandatory liability insurance (eg, energy installations, brokers);
- when the insurance company has been declared bankrupt or has been legally dissolved; and
- when the insurance company has paid the insured under a liability insurance but the suffering party is not paid by the insured.

These are exceptions to the main rule not to allow direct action.

18 Late notice of claim

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

An insurer must prove it has suffered loss due to the late notification (Insurance Contracts Act, chapter 7, section 2).

The same Act, chapter 7, paragraph 2, regulates the policyholders' obligations in case of adjustment of loss. The policyholder has a duty to follow the conditions of the insurance policy regarding notice of claim. If a notice of a claim is late due to negligence, and this has caused the insurer losses, the indemnification can be diminished accordingly to the damage the insurer has suffered due to the late notification. This measure can only meet a negligent policyholder.

19 Wrongful denial of claim

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

No. Only against the insured in situations where a right to direct action exists (see question 17).

20 Defence of claim

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

Normally there is full contractual freedom for the parties to an insurance contract to agree upon what triggers a claim. Under normal liability insurance the insurer's duty to defend a claim normally occurs when a claim has been directed against the insured in a substantive way, including the identity of the claim and the occurrence of the claim. However, it is normally not necessary however to know the size of the claim.

21 Indemnity policies

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

The insurer's indemnity obligation falls within the contractual freedom of the parties. Normally an insurer to indemnity insurance puts up a large number of facts which must all be fulfilled before this obligation is triggered. This is done simply to prevent a payout under the insurance before absolute surety is reached that the insured is legally bound to pay the claim for which he or she has bought an indemnity insurance.

22 Incontestability period

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

Yes, according to the Insurance Contracts Act, chapter 12, section 4, paragraph 2, such contest of coverage based on misrepresentation in the application for life insurance cannot normally be made since five years have expired from the date when the life insurance agreement first entered into force. (Note the exception for certain wilful acts in paragraph 3.)

23 Punitive damages

Are punitive damages insurable?

Yes, any 'legal interest' can be insured. However, it is exceptionally unlikely that punitive damages will be insured since normally the premium for such coverage of mainly North American business activity would be prohibitively high.

24 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?

No such legal obligation exists according to Swedish law. However, 'drop-down and defend' clauses are very common, especially in professional liability insurances, but they always come with a price.

25 Order of payment

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

There is a special regulation regarding multiple claims under the same policy in the Insurance Contracts Act, chapter 9, section 3, which states that all claims under the same policy shall be treated equal, irrespective of the time the claim is filed.

In order for an insurer to prevent too large payouts to the first claims filed, it is entitled to pay out reduced sums calculated as a percentage of each claimant's justified claim, as preliminary payments. This rule is applicable until two years after the first claim has been filed.

26 Allocation of payment

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

Multiple policies triggered by the same claim regulated by the Insurance Contracts Act chapter 6 section 4 and chapter 8 section 18, paragraphs 2 and 3.

It means that every insurer is liable against the insured for the full amount; however, the insured must never be compensated for more than the full amount of his or her loss. If the total liability sum from all the policies triggered by the claim exceeds the loss, each insurance policy sum is reduced proportionally in relation to the cap so that the total payout under all policies does not exceed the insured's loss.

Reinsurance**27 Reinsurance disputes**

Are formal reinsurance disputes common, or do insurers almost always reach business solutions for their disputes without formal proceedings?

In Sweden reinsurance disputes are not very common. Almost always there are amicable settlements without formal proceedings.

However, during the last 20 years, three big insurance companies went into bankruptcy – Njord (1986), Svenska Kredit (1991) and Folksam International (2003) – and in the following bankruptcy proceedings numerous disputes arose between reinsurers and the bankruptcy estates. These disputes were solved by formal arbitration proceedings.

Arbitration is also by far the primary means for such formal resolutions. These arbitration procedures either follow the Arbitration Act (SFS 1999:116) or are procedures handled by the Stockholm Chamber of Commerce Arbitration Institute.

28 Common dispute issues

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

Reinsurance disputes, uncommon as they may be, are almost always initiated because of large claims directed to reinsurers by insurers. Huge product liability claims, hurricane damages and asbestos claims are some of those causes. Questions that frequently arise are the correctness of the calculated claims, interpretations of claims cooperation or claims control clauses or the legal effect of the lack of such clauses.

29 Arbitration awards

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

Arbitration awards shall be in writing according to the Swedish Arbitration Act. The said Act does not contain any regulations stating that it is necessary for the arbitrators to include the reasoning for the outcome of the arbitration award, but normally it does. However, there is no absolute duty to include the reasoning and the motivation for the arbitral tribunals' conclusion, even though this is practically without exception the case. Also, one of the formal grounds for which an arbitration award may be set aside by a court is if it is so unclear that it cannot be understood.

30 Power of arbitrators

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

The main rule is that the power of the arbitration award only affects the parties formally involved. Therefore an arbitration award can not bind a third party. However, a third party can be affected, indirectly by the arbitration award through its legal effects, namely as evidence.

31 Appeal of arbitration awards

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

The main purpose of using arbitration is that it is fast, confidential and final. An arbitration award cannot be appealed to a public court on general material grounds. A party can only demand that the arbitration award shall be removed on the basis of procedural inaccuracies if the inaccuracies are violating a party's rights. If this is the case the unsuccessful party may indict nullity action or dispute claims to a public court. Nullity action and dispute claims are cassations actions. This means that a public court only can remove the arbitration award, if the claim is granted. If an arbitration award is removed by a public court the dispute can be re-examined by a public

court or by arbitration. It is very uncommon that a court sets aside an arbitration award.

Reinsurance principles and practices

32 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?

There are no mandatory regulations applicable to Swedish reinsurance business and contracts. It is one of the most international areas of the law where the same principles apply to Swedish reinsurers as in the London market.

However, if someone wants somebody else to pay, it is always up to the claiming party to prove the correctness of the claim in the same manner as the assured has to prove its loss against the insurer (the reinsured). Thus, in principle the reinsurer can raise the same defences that are open to the reinsured against the original assured. Since this would, for all practical purposes, be connected with difficulties in facultative reinsurance and in treaty reinsurance it would lead to an impossible situation. Therefore, most reinsurance contracts contain provisions obliging the reinsurer to, under at least the most normal circumstances, indemnify the reinsured according to the latter's settlement under its original policies.

33 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.

The duty of utmost good faith is implied in reinsurance agreements. Even though the Insurance Contracts Act (2005:104) is not applicable to reinsurance agreements, the standards set for an original assured is a standard that in most ways can be applied to a reinsured when entering into a reinsurance agreement. However, a reinsurer who shows no interest in such information, by just signing a slip or accepting a 'follow-the-fortunes' clause has considerably lowered the information level he or she might require, but not all together waived it.

34 Facultative reinsurance and treaty reinsurance

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

There is no set of laws (other than the Contract Act (1915:218), which applies to all contracts entered into in Sweden) specifically applicable either to facultative or treaty reinsurance.

35 Coverage action

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

General Swedish legal principles of contract law make it normally impossible for a third party to bring action against a party with whom it has not entered into an agreement on contractual grounds. For 'direct action' to be allowed, such action must be based on special law.

A non-signatory is a third party, and there is no contractual relation between the non-signatory and the reinsurer, therefore the non-signatory has no right to bring a direct action against the reinsurer for coverage. The proper way would be for the non-signatory party

to turn to its contracting party for coverage. The contracting party, the policy holder, can then bring an action against the reinsurer for coverage.

36 Insolvent insurer

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

There is no contractual relation between the policyholder and the reinsurer. Therefore, the reinsurer has no obligation to pay the policyholder's claim. The only option for the policy holder to get his or her money back is, together with the other creditors, to guard his or her claim in the bankruptcy estate of the insurer, since the bankruptcy estate has a derived claim against the reinsurers and shall collect such claims to the benefit of the creditors of the bankrupt insurer.

37 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?

In the area of reinsurance a complete freedom of contract prevails. This means that the outcome of a dispute between the parties always depends on the term of the contract. Normally, a claim will not be regarded as properly notified until the notice has actually been received by the reinsurer. As to how this is made, or what it shall include, depends on the term of the contract.

If a wording has been agreed, the contract may provide that the policy holder is obliged to notify the reinsurer of all events likely to give rise to a claim under the reinsurance contract, either within a specific time or, more commonly, 'immediately' or 'as soon as is reasonably practicable'. Where the stipulation as to time makes a condition precedent, the policy holder must give notice within the prescribed time or the policy holder will be precluded from enforcing the policy. Reinsurance damages are usually regulated regularly during the year in quarterly statements or in annual reports that the reinsurer receives from the policy holder.

As a rule, reinsurance contracts contains a provision that gives the cedent the right to immediately demand a cash payment of the amount of damage that surmount a certain in advance, agreed limit. These damages are called cash claims and are usually due for payment seven days after announcement. Further more, it is the cedent's duty to inform the reinsurer currently, even though the agreed limit is not yet reached, about all greater damages that could burden the reinsurance contract.

38 Allocation of underlying claim payments or settlements

In the case of multi-year occurrences, such as pollution, how are underlying claim payments or settlements allocated among policy years covered by multiple reinsurance agreements?

The problems facing the insurance industry as a whole regarding long tail risks are not regulated by law in Sweden but are up to the industry as such to face. There is no such rule in Sweden equivalent to the old Lloyds system that a calendar year remains open for another two years and that it is closed at the end of the third year.

If the original policy is written on 'occurrence' basis, all claims originating from this 'occurrence' shall be allocated to the year of the 'occurrence', which means that very long tail risks could take very long to settle, since the Swedish Supreme Court has stated that the 10-year statutory time bar of a claim is to be calculated from the

Update and trends

With the financial crisis in mind it is probable that in the near future we will see an increase in claims directed towards directors and officers (D&Os), which in turn will help insurers identify ways of improving existing products. We anticipate that future insurance products will be more focused on issues relating to bankruptcies and liquidation for D&Os. We will definitely see some innovative solutions as a result of the financial crisis. New products will be presented and competition will increase among the innovative insurers. D&O

insurers appear to have a prominent role to play in the near future. Volatile markets around the world have left firms and their directors scrambling to ensure coverage against potential litigation. Since insurers will be more restrictive on reimbursements in certain cases, directors and officers may seek to spread their cover across several providers, partly to avoid a scenario where a sole provider defaults and is unable to pay out.

date the injury (in case of personal injury claims based on pollution, asbestos etc) shows and not the time the injury 'occurred', while the latter will be the year to which such claims will be allocated between insurers and reinsurers.

Of course this has shown in the market and newer policies are now normally written on a 'claims made' basis, which restricts cover to claims made during the policy period with a tail for reporting losses of a very short period, normally another three months. It is possible to buy longer reporting periods after the expiration of a 'claims made' policy period but this is normally a new contract to which new reinsurance agreements can be tied and new premiums paid.

39 Review

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

If not otherwise agreed a cedent's claims handling must always be up to 'good insurance standard'. It is thus monitored against the ethical standards applied by the regulatory body for the Swedish insurance market, Finansinspektionen. Allocations of claims must be made according to the above principles for allocation claims, 'occurrence' or 'claims made'. Settlement must always be based strictly on correct claims handling and normally no ex gratia payments made by a cedent are covered by a reinsurer's obligation to remunerate the cedent.

40 Reimbursing of commutation payments

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

A commutation agreement is a totally voluntary agreement under which a reinsurer against a certain payment to the reinsured is released by the reinsured from future ongoing liabilities under certain, or all, reinsurance policies between the parties.

It is in the interest of the reinsurer to have as wide a 'release' as possible while the contrary is in the interest of the reinsured.

An inspection of the cedent's records shall be made by the reinsurer, all negotiations shall be on a 'without prejudice' basis and each reinsurance policy covered by the commutation agreement shall be listed as an attachment to the agreement.

In all commutation agreements, in order for the reinsurer to reach a watertight commutation and release agreement, payment for IBNR shall always be included. Otherwise the reinsured at a later date might want to attempt to argue that IBNR's were not covered by the commutation agreement and wants to reopen negotiations.



Advokatfirman NorelidHolm

Susanna Norelid

susanna.norelid@norelidholm.com

Birger Jarlsgatan 15
Box 7394
Stockholm
Sweden

Tel: +46 8 463 04 60
Fax: +46 8 463 04 70
www.norelidholm.com

