

22/06/2020

DECISION

Maiden Life Försäkrings AB
via the Chair of the Board
107 24 Stockholm

FI Ref. 20-1343
Notification 1



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Warning and administrative fine

Finansinspektionen's decision (to be announced 23 June 2021 at 8:00 a.m.)

1. Finansinspektionen is issuing Maiden Life Försäkrings AB (516406-0468) a warning.

*(Chapter 18, sections 1 and 2 of the Insurance Business Act
[2010:2043])*

2. Maiden Life Försäkrings AB shall pay an administrative fine of SEK 5,500,000.

(Chapter 18, section 16 of the Insurance Business Act)

To appeal the decision, see *Appendix 1*.

Summary

Maiden Life Försäkrings AB (below referred to as Maiden Life or the company) has authorisation from Finansinspektionen to conduct insurance business in accordance with the Insurance Business Act (2010:2043).

Finansinspektionen's investigation shows that Maiden Life has not met the requirement that an insurance undertaking must have its head office in Sweden. The company has also not fulfilled requirements regarding outsourced operations, independence in key functions, conflicts of interest and sound and prudent management.

The deficiencies have been of such a nature that Finansinspektionen assesses there to be grounds on which to intervene against Maiden Life. Several of the matters refer to severe violations that have been ongoing for a long period of time. There is therefore cause for Finansinspektionen to consider withdrawing

the company's authorisation. However, Maiden Life has taken measures to rectify all of the deficiencies and has made changes to the company's Board of Directors and senior management. Finansinspektionen currently has no cause to assume anything other than that the violations observed during the investigation will not be repeated. It is therefore sufficient to issue the company a warning and an administrative fine of SEK 5,500,000.

1 Background

1.1 The company's operations

Maiden Life is a Swedish life insurance company that since 2006 has had authorisation from Finansinspektionen to conduct insurance business in accordance with the Insurance Business Act (2010:2043). The authorisation is valid for direct and indirect life insurance business in the life insurance classes Ia (life insurance) and Ib (supplementary insurance). The company also has authorisation for cross-border operations.

Maiden Life is part of a group and together with several other companies is a subsidiary of the parent company Maiden Holdings Ltd. The parent company has its registered office in Bermuda.

Maiden Life conducts business in Sweden and an additional eight countries. The company offers primarily private group insurance in the form of accidental death insurance and health insurance. Maiden Life does not have any employees and has outsourced all of its operations, including its key functions, to service providers within and outside its own group. The service providers are located in Sweden, the UK, a number of other European countries, and the USA. A significant portion of the company's insurance operations and parts of the key functions are carried out by Maiden Life's fellow subsidiary in the UK, Maiden Global Holdings Ltd. (the fellow subsidiary).

According to Maiden Life's annual report for the 2019 financial year, the company's turnover was around SEK 71 million and its technical provisions amounted to around SEK 37 million (SEK 23 million after reinsurance cessions). Gross premium income for 2019 was broken down into 17 per cent Swedish risks and 83 per cent foreign risks.

1.2 The case

In January 2020, Finansinspektionen opened an investigation into Maiden Life based on information the company had reported to the authority and information the company had made public about its operations. The investigation also eventually included the work of the key functions, the company's governance and follow-up of operations and functions subject to outsourcing, and the company's technical guidelines and basis for technical calculations. Based on the

observations made, the investigation also later included whether Maiden Life has its head office in Sweden.

Finansinspektionen's investigation refers to the years 2017–2019, with the exception of the matter of the head office, which is not limited to a specific period.

As part of its investigation, Finansinspektionen requested written material from the company. Finansinspektionen has had two meetings with Maiden Life at the company's registered address and one digital meeting. After the matter of the head office was raised, Finansinspektionen conducted an unannounced visit on 10 November 2020 at the company's specified head office.

On 6 May and 24 November 2020, Finansinspektionen sent verification letters to the company for comments. Finansinspektionen received Maiden Life's answers to the letters on 17 June and 22 December, respectively, of the same year.

When the matter had been submitted for a sanction assessment, Finansinspektionen sent a request for statement to Maiden Life on 12 February 2021. The company was thus given the opportunity to submit a statement regarding the circumstances at hand and the authority's preliminary assessments and considerations regarding intervention against Maiden Life. The company submitted its statement to Finansinspektionen on 12 March 2021. The authority thereafter exchanged further written communication with the company.

2 Applicable provisions

The regulations for insurance undertakings are largely based on Community law through Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II), hereafter the Solvency II Directive. In this Directive, the European Commission is authorised to supplement the Directive with delegated and implementing acts pursuant to Articles 290 and 291 of the Treaty on the Functioning of the European Union. The Commission, for example, has adopted Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), hereafter the Solvency II Regulation.

The Solvency II Directive has been implemented into Swedish law through provisions in the Insurance Business Act, with related provisions in the Insurance Business Ordinance (2011:257) and Finansinspektionen's regulations. In addition, the European Insurance and Occupational Pensions Authority (EIOPA) has adopted guidelines that in Sweden are the equivalent to Swedish general guidelines and provide guidance on how the binding provisions in, for

example the Solvency II Regulation, can be met.¹ For example, EIOPA has adopted guidelines for systems of governance (the governance guidelines).² There are also provisions in the Insurance Business Act about, for example, guidelines for conflicts of interest that supplement the Solvency II Directive without being part of the Directive's implementation into Swedish law.

Applicable provisions for insurance undertakings are thus found in several different legislative documents that are layered such that the different components complement one another.

Finansinspektionen describes in more detail in each section below and *Appendix 2* the provisions the authority applies when assessing the matter.

3 Finansinspektionen's assessment

3.1 Maiden has not had a head office in Sweden

Regulation

According to Chapter 4, section 17 of the Insurance Business Act, an insurance undertaking must have its head office in Sweden. There is a corresponding requirement in the Solvency II Directive and in the requirements for several financial institutions other than insurance undertakings.

The preparatory works for the provision in the Insurance Business Act (Bill 1995/96:173, p. 92) states that it is important that the country that has authorised a financial institution – and thus bears main responsibility for the supervision – has the conditions for conducting effective supervision, and it is thus of importance that the institution firm not make the supervision more difficult by placing both the head office (in other words the actual management of the financial institution) and the operations in a country other than where it has been authorised.

Finansinspektionen's regulations state that an insurance undertaking's priority rights register³ must be kept at its head office (Chapter 5, section 3 of Finansinspektionen's regulations and general guidelines (FFFS 2015:8) regarding insurance business).

Investigation

Since 18 December 2017, Maiden Life has listed its registered address at an office hotel at World Trade Center in Stockholm. After the two onsite visits that

¹ See the memorandum "Genomförande av de europeiska tillsynsmyndigheternas riktlinjer och rekommendationer", FI Ref. 12-12289. Available in Swedish.

² EIOPA's Guidelines on System of Governance, EIOPA-BoS-14/253 (the governance guidelines).

³ In Swedish: *förmånsrättsregister*

Finansinspektionen conducted at the beginning of the investigation, the question arose about whether the company has its head office at this address. For this reason, the authority conducted an unannounced visit at the address on 10 November 2020. At the time of this visit, there was no one from the company present at the premises. Reception staff at the office hotel stated that Maiden Life had a service at the hotel that included telephone services, handling of post and the possibility to rent premises if necessary. According to the staff, the company's management had not been in the office hotel's premises since the COVID-19 pandemic escalated. Prior to this, the company had been onsite a few days every other month, approximately.

Finansinspektionen's assessment

Finansinspektionen shall state its position on whether Maiden Life has met the requirement on having its head office in Sweden.

Finansinspektionen found in a previous sanction decision from 2013⁴ that an institution's head office is not necessarily the location where the operations are carried out. What is most important is where the actual management and the actual control of the operations is located, in other words where the institution has its central management and control. The location where the senior executives make material and commercial decisions about the institution's central administration and day-to-day activities is therefore important. If an institution, like Maiden Life, has outsourced its operations to a third party, the institution is still responsible for the operations (Chapter 10, section 19 of the Insurance Business Act). The institution's actual management therefore also includes the outsourced operations.

As stated in the decision in 2013, according to Finansinspektionen the head office must exercise sufficient governance and control over both the operations carried out by the institution and the operations outsourced to a third party. This means that there must be persons at the head office who are responsible for ensuring the control of and decision-making for the operations.

The investigation shows that Maiden Life – at least up until Finansinspektionen's visit on 10 November 2020 – did not have its own premises at the registered address; rather, it only had the possibility of booking office premises if needed. The company had only utilised this option a few days every other month. The company had not been present at all at the address for a long period of time.

Maiden Life has objected with the argument that meetings were also held at other locations than at the office hotel and the fact that the office has not been manned at all times has not affected Finansinspektionen's supervision negatively. In addition, the company takes the position that businesses are

⁴ Finansinspektionen's decision dated 15 April 2013 in FI Ref. 12-6004. Available only in Swedish.

operated differently today than when the provision in the Insurance Business Act was introduced. Most meetings are now held using telephone or video calls and not in person, like before. Given these circumstances, it would be incorrect to assign the provision the interpretation that the actual management must be performed at the head office. The company has also asserted that the proportionality principle in Chapter 4, section 5 of the Insurance Business Act must be applied when determining if the head office requirement has been met.

Finansinspektionen notes that the presence at Maiden Life's registered address at World Trade Center has demonstrably been very limited and cannot even approximately be considered to entail that the company's actual management has been performed there. Maiden Life's assertions about a changed meeting culture since the requirement for the head office was introduced cannot assign the head office requirement new meaning. The reasoning for the requirement is to enable Finansinspektionen to perform effective supervision; for example, the authority must be able to conduct onsite visits at the institution's premises to meet management and go through document onsite to gain a better understanding of the institution's operations. Whether or not the authority's supervision has been made more difficult in this specific case is therefore not of importance for whether a head office has been established or not. Given the now stated circumstances, and since the provision about the head office in Sweden is also not one of the provisions that according to Chapter 4, section 5 of the Insurance Business Act must be applied proportionately in relation to the nature, scope, and complexity of the risks in the firm's operations, Maiden Life's objections in this part can be dismissed.

Finansinspektionen therefore makes the assessment that Maiden Life, at least during the period 18 December 2017–10 November 2020, did not meet the requirement set out in Chapter 4, section 17 of the Insurance Business Act of having its head office in Sweden.

The investigation does not include Maiden Life's keeping of a priority rights register according to Chapter 5, section 3 of Finansinspektionen's regulations and general guidelines regarding insurance business. However, it is worth inserting a reminder here that such a register must be kept at the firm's head office.

3.2 Extensive deficiencies in the system of governance

3.2.1 Introduction

Provisions on governance and the system of governance for an insurance undertaking are set out in Chapter 10 of the Insurance Business Act, the Solvency II Regulation, and Finansinspektionen's regulations and general guidelines regarding insurance business. The governance guidelines from EIOPA contain guidelines on how the Solvency II Regulation's requirements on the system of governance can be met.

The provisions set out in Chapter 10 of the Insurance Business Act and the requirements in the Solvency II Regulation must be applied proportionately in relation to the nature, scope and the complexity of the risks in each insurance undertaking's operations. This is set out in Chapter 4, section 5 of the Insurance Business Act and Recital 1 of the Regulation.

The government has expressed in part the following with regard to the meaning of the proportionality principle (Bill 2015/16:9 p. 230):

That the proportionality principle shall be considered when applying all requirements in the Solvency II Directive and the provisions that implement the Directive does not mean that all requirements can change meaning through such consideration. Even less can this mean that a requirement may be disregarded. Many provisions are formulated such that it is natural when applying them to make proportionality considerations. This applies to the provisions that contain a qualitative specification of what is valid in a certain respect, such as the requirement on "effective corporate governance system". When valuing expressions are used, their detailed content should in the specific case be determined in part by considering the proportionality principle. It may fall to practical application of the law to determine which requirements could be mitigated or enhanced with regard to the proportionality principle.

Maiden Life considers that an application of the proportionality principle should result in the company being viewed as meeting the requirements in all provisions on governance and the system of governance. According to Maiden Life, it is specifically to companies similar in size, operations, risks and complexity as Maiden Life that the proportionality principle is intended to be applied.

Finansinspektionen discusses the proportionality principle's application and importance in each section.

In terms of the proportionality principle, Maiden Life has also raised as an objection that the Solvency II regulation is currently under review, which may result in improvements in terms of the application of the proportionality principle and that the work should – as Finansinspektionen understands the company – have an impact already now in the application of the current regulations. The ongoing review, however, cannot release an institution from its obligation to follow current rules. Maiden Life's objection in this part can therefore be dismissed already in this context.

3.2.2 Missing policy documents with required monitoring procedures

Introduction

As previously stated, Maiden Life has outsourced all of its operations and its key functions to service providers within and outside the group. Finansinspektionen has therefore investigated whether the company has policy documents that meet the requirements on monitoring procedures.

According to Article 274(1) of the Solvency II Regulation, an insurance undertaking which outsources or proposes to outsource functions or insurance activities to a service provider shall establish a written outsourcing policy which takes into account the monitoring arrangements to be implemented in cases of outsourcing.

Guideline 63(b) of the governance guidelines clarifies what is meant by monitoring procedures, namely that the policy document should specify how and how often a service provider's performance and results are assessed.

Finansinspektionen notes that Maiden Life has one policy document for all of its outsourced activities. The document is dated 20 March 2018. Finansinspektionen must state its position on whether the content in the policy document meets the requirement set out in the Solvency II Regulation with regard to monitoring procedures. For such procedures, the policy document states that there must be a process for monitoring the outsourced activities and that the board of directors must regularly assess the company's arrangement for these operations. The document also states that the company and the service provider must establish a review process to determine that the jointly defined targets have been met.

The company's position

In addition to Maiden Life's fundamental position that the proportionality principle's application leads to the company meeting all rules on governance and the system of governance, the company takes the position that the policy document still meets the requirements set out in the Solvency II Regulation and that it is in line with Guideline 63(b). According to Maiden Life, the Regulation does not specify how extensive or detailed the monitoring procedures must be. The company notes that the guidelines also do not include any requirements on the amount of detail in the description of how the service providers' performance and results should be assessed. In addition, Maiden Life takes the position that the company can deviate from the guidelines if the Regulation's requirement is still met and that its policy document contains what is set out in the explanatory text to Guideline 63.

Finansinspektionen's assessment

Finansinspektionen notes that the content of Maiden Life's policy document is very general and does not contain any actual procedures for how the service providers' performance and results should be assessed. To meet the requirement on monitoring procedures, the policy document must at least contain information about which *actual* monitoring procedures will be applied when monitoring outsourced activities. It is not enough to merely state that there must be a process for monitoring, that the board of directors must regularly assess the arrangement, and that a review process must be established to determine if the targets are met for the policy document to be considered to contain procedures within the meaning of the regulation. In terms of monitoring the outsourced activities, the

policy document must be viewed as having fulfilled a very limited function in the governance of the activities.

Finansinspektionen thus makes the assessment that the content of the policy document does not agree with Guideline 63(b) of the governance guidelines or in any way meet the requirement set out in Article 274(1) of the Solvency II Regulation. The explanatory text that Maiden Life refers to in this part does not comment on Guideline 63(b) and is not of importance for the assessment.

It is not possible to lighten the requirement on Maiden Life by referring to the proportionality principle since there are no monitoring procedures at all. If a firm, like Maiden Life, outsources its entire operations, this rather increases the demands on the firm. Finansinspektionen thus makes the assessment that Maiden Life has circumvented its obligations set out in the Solvency II Regulation.

3.2.3. Deficiencies in the outsourcing agreement with the fellow subsidiary

Introduction

Maiden Life has signed an outsourcing agreement with its British fellow subsidiary. The agreement, which went into effect on 1 July 2018, specifies that the fellow subsidiary can provide the company with a number of different services. The outsourcing agreement, which covers a significant portion of Maiden Life's operations and key functions, includes critical or important operational functions or activities. Finansinspektionen has investigated whether the outsourcing agreement contains the information required by the Solvency II Regulation.

Outsourcing agreement missing several parts

Article 274(4) of the Solvency II Regulations specifies a number of requirements on the content of a written agreement between the insurance undertaking and the service provider with regard to critical or important operational functions or activities. For example, the agreement must clearly contain both parties' duties and responsibilities. The duties also include that the service provider must undertake to comply with the policies approved by the insurance undertaking and to cooperate with the undertaking's supervisory authority with regard to the outsourced function or activity. The agreement must also contain the requirement that the service provider disclose any development which may have a material impact on its ability to carry out the outsourced functions and activities effectively and in compliance with applicable laws and regulatory requirements. There is no information of this type at all in the agreement between Maiden Life and its fellow subsidiary.

Furthermore, Article 274(4) of the Solvency II Regulations requires that the content of the agreement specify that the insurance undertaking must be entitled to be informed by the service provider about the outsourced functions and activities and their performance. The insurance undertaking must also be entitled

to issue general guidelines and individual instructions to the service provider about what has to be taken into account when performing the outsourced functions or activities.

Furthermore, there is a requirement that the agreement must require that the insurance undertaking, its external auditor and the supervisory authority have access to all information relating to the outsourced functions and activities including carrying out onsite inspections of the business premises of the service provider. The agreement must also require that, where appropriate and necessary for the purposes of supervision, the supervisory authority may address questions directly to the service provider to which the service provider must reply. The insurance undertaking is also entitled to obtain information about the outsourced activities and may issue instructions concerning the outsourced activities and functions.

This information is also not included in the agreement between Maiden Life and its fellow subsidiary.

It is not possible to lighten the requirements on what the agreement shall contain by referring to the proportionality principle. This would mean that the requirements on the agreement would not apply to Maiden Life. As Finansinspektionen describes in section 3.2.1, the proportionality principle cannot result in a requirement being disregarded.

Finansinspektionen thus notes that large parts of the requirements set out in the Solvency II Regulation are missing from the outsourcing agreement between Maiden Life and its fellow subsidiary. Maiden Life has thus circumvented its obligations set out in the Solvency II Regulation.

3.2.4 Compliance and risk management functions have not been independent

Introduction

Pursuant to Chapter 10, section 4 of the Insurance Business Act, an insurance undertaking must have functions for risk management, compliance and internal auditing, as well as an actuarial function (key functions). Finansinspektionen discusses two of these key functions in the following section, namely the compliance function and the risk management function.

The required tasks of the compliance function are set out in Chapter 10, section 16 of the Insurance Business Act. The tasks of the risk management function are set out in Article 269(1) of the Solvency II Regulation. Common for both functions is that, according to Article 268(1) of the Solvency II Regulation, they must be incorporated into the organisational structure in a way which ensures that each function is free from influences that may compromise its ability to undertake its duties in an objective, fair and independent manner.

Finansinspektionen has investigated whether Maiden Life has incorporated the compliance function and the risk management function into the organisational structure in the manner specified in the Solvency II Regulation.

One of the purposes of the functions is for the board of directors and the senior management in an insurance undertaking to obtain an accurate overview of the undertaking's situation within the area for which each respective function is responsible.

Due to the proportionality principle and the business Maiden Life conducts in terms of its nature, scope and complexity, the authority assumes in the following that a Board member of Maiden Life can be responsible for a key function without this conflicting with the requirement on independence set out in Article 268(1) of the Solvency II Regulation.

Compliance function

One of the Board members of Maiden Life, during the period to which the investigation refers (2017–2019), was responsible for the company's compliance function (hereafter function responsible) and performed work in the function. Other persons have also performed work in the function. One of them was an employee of one of Maiden Life's service providers outside the group. The others were employees of the fellow subsidiary.

In addition to the roles of board member and responsible for the compliance function, the function responsible, who is an employee in the fellow subsidiary, also performed several key operational tasks. These include tasks related to technical provisions, underwriting⁵, calculating cash flows and preparation of data for solvency capital requirement calculations. The functional responsible was also responsible for parts of the work related to the company's own risk and solvency assessment (ORSA) and notified Finansinspektionen about outsourcing agreements signed by the company. Furthermore, during the period 2017–2019, she was responsible for the company's follow-up of the outsourced internal audit and actuarial functions and even assessed the performance of these functions. In 2019, the function responsible also assessed the performance of the risk management function.

In addition to the operational tasks that the function responsible has had, this person was also part of the risk management function – and in this role prepared the function's annual report to the Board of Directors – and the actuarial function. The function responsible has performed extensive parallel work in the operational activities and other key functions, and this work also included a large number of different areas and roles. It could also be noted that the function responsible performed tasks in the operational activities and other key functions that, pursuant to Chapter 10, section 16 of the Insurance Business Act, are

⁵ Refers to the activities, and risk assessment in particular, performed by an officer of an insurance undertaking when offering different insurance solutions.

included in the compliance function's responsibility to assess the company's compliance.

Even the person who performed the work in the function, and who was employed by a service provider (see above), has performed tasks in Maiden Life's operational activities that the function should audit pursuant to the Insurance Business Act. In parallel to the role in the function, this person participated in the work with the solvency capital requirement calculations and the company's ORSA and was responsible for reporting to Finansinspektionen.

It also came to light during the investigation that the function responsible has audited the areas where she had been operationally active, in contrast to what Maiden Life had asserted. This refers to the audit of the company's calculations of technical provisions and participation in the audit of the control of the notification of outsourcing agreements to Finansinspektionen, despite the function responsible being the person who submitted the application. According to Finansinspektionen, this is specified in clear and convincing manner in the audit documents prepared in February 2017 and March 2018.

Finansinspektionen notes, in other words, that the function responsible has performed a large number of tasks in the operational side of the business as well as in other key functions for which the person had the mission of auditing compliance. In addition, the function responsible audited areas where she had been operationally active. Even the person performing work in the function, who was employed by the service provider, held parallel roles by performing operational tasks the compliance of which the function was responsible for assessing. Thus, according to Finansinspektionen, Maiden Life has not incorporated the compliance function in a way which ensures the function's ability to undertake its duties in an objective, fair and independent manner. According to Finansinspektionen, the proportionality principle cannot lighten the requirements without the requirement on independence completely being disregarded. The company has thus breached the provision in Article 268(1) of the Solvency II Regulation.

Risk management function

Points of departure

In order to be able to assess whether Maiden Life has incorporated the risk management function into the organisational structure in the manner specified in the Solvency II Regulation, Finansinspektionen must first take a position on what has constituted the company's risk management function.

According to Maiden Life's risk management policy, dated 20 March 2018 and 19 March 2019, the risk management function consisted of a risk management committee. The same information is in the presentation material the company used at Finansinspektionen's onsite visit on 11 February 2020 and 12 February 2020. At the visit on 12 February, the authority also asked the person responsible

for the risk management function (hereafter the function responsible) if the function consisted of the risk management committee and received confirmation. In addition, all members of the risk management committee – but no one else – annually self-assessed their suitability to perform tasks in the risk management function.

At a later stage in the investigation, in its response to Finansinspektionen's verification letter, Maiden Life changed its position and asserted that the risk management function did not consist of the risk management committee. The company takes the position that due to a mistake in the company's policy document, there were incorrect references to the risk management committee when in reality it was the risk management function that was meant. According to the company, it is instead the company's chief risk officer (CRO) and other staff in the fellow subsidiary who have performed the work in the function. In the same response to the verification letter, though, Maiden Life states that one of the changes the company is making is that the risk management committee will not perform work in the risk management function; rather, the tasks of the function will be performed by others.

Given the information in the policy document and the information that Maiden Life and the function responsible provided to Finansinspektionen at the beginning of the investigation, the authority considers it to be clear that Maiden Life's risk management function consisted of the risk management committee. The objections Maiden Life raised later, in Finansinspektionen's view, were constructed in retrospect and are not supported in the investigation. The objection can therefore be disregarded.

Investigation

One of Maiden Life's Board members was also responsible for the risk management function during the investigation period. The company has tasked its fellow subsidiary with performing the work of the function.

The risk management committee, and thus also the risk management function, has consisted of five persons: the persons responsible for the risk management function and the compliance function, Maiden Life's CEO, and others. Everyone on the committee had operational positions in the fellow subsidiary, where they were also employed, in parallel to their tasks in the risk management function. The function responsible was also responsible for Maiden Life's business development. In this role, the person provided suggestions to the company's Underwriting Committee on new business relationships to launch new insurance programs.

Maiden Life's Board of Directors, based on suggestions by the function responsible, also decided to enter new business relationships with firms in Germany and Denmark. In terms of the person responsible for the compliance function, this person, as described above, has had a large number of operational tasks in the business. The CEO has been responsible for the day-to-day

management of the business. The others in the risk management committee performed operational work for investments and underwriting, respectively, and one of them was responsible for the company's financial reporting.

Maiden Life's position

Maiden Life takes the position that the risk management function has met the requirement to be independent. The potential conflicts of interest in the function were managed in such a way that the person who was operationally involved in a task subject to the monitoring responsibility of the function was not active in the function's monitoring of that part. Maiden Life comments that the risk management policy shows that this matter had been raised by specifying there that the company has established a framework for governance that is based on, for example, a principle of appropriate task allocation so key functions can function independently.

Finansinspektionen's assessment

Finansinspektionen notes that pursuant to Article 269(1) of the Solvency II Regulation, the risk management function's tasks include monitoring the company's general risk profile and risk management system. The authority takes the position that the risk profile and the risk management system are typically influenced by everything that happens in the company's operations.

Finansinspektionen makes the assessment that all persons in the risk management function have had roles that included operational tasks with a direct impact on both the risk profile and the risk management system. Since the function's tasks include monitoring the risk profile and the risk management system in an objective and independent manner, the authority considers there not to have been conditions in place to conduct such monitoring by any of the persons who were part of the function. It is instead clear that the combination of roles in the operational business and the risk management function have made it impossible for the function to be objective and independent. Conflicts of interest within the function, in contrast to what the company asserts, have thus not even been possible to manage.

In terms of the function responsible's combination of roles, Maiden Life comments that the person in the role as responsible for the company's business development has not had a mandate to make decisions on his own about new or changed products and transactions, but rather such decisions have required an additional decision-maker. The company takes the position that the function responsible's operational role thus has not influenced the risk management function's ability to assure objectivity and independence. Finansinspektionen does not share the company's view since the functional responsible has been active in the decisions.

Finansinspektionen thus takes the position that Maiden Life has also not incorporated the risk management function in a way which ensures the function's

ability to undertake its duties in an objective, fair and independent manner. According to the authority, it is not possible to lighten the requirements with reference to the proportionality principle without the requirement on independence completely being disregarded. The company has thus breached the provision in Article 268(1) of the Solvency II Regulation.

3.2.5 Maiden Life has not followed its guidelines for conflicts of interest

Introduction

When executives in a firm represents two or more interests that are potentially contradictory, this can give rise to conflicts of interest. As Finansinspektionen describes above, several of Maiden Life's Board members have also been responsible for key functions or held operational positions in the fellow subsidiary that performed services for Maiden Life. Finansinspektionen has investigated whether Maiden Life complied with the provision set out in Chapter 10, section 24 of the Insurance Business Act that an insurance undertaking shall adopt and follow guidelines for managing conflicts of interest between the undertaking's stakeholders.

Content of the guidelines

Maiden Life has adopted guidelines for handling conflicts of interest (the guidelines). The guidelines are dated 15 March 2017 and 18 November 2019, respectively. The guidelines state that Board members should not participate in or influence decisions in matters where they can be regarded as conflicted.

Investigation

Maiden Life's Chair of the Board has been one of three executive directors in the fellow subsidiary during the entire period of the investigation. The Board of Directors has approved the annual assessment of the company's outsourced activities, which included the fellow subsidiary's delivery to Maiden Life at the Board meetings on 14 December 2017, 11 December 2018, and 18 November 2019. According to the minutes from these meetings, Maiden Life's Chair of the Board of Directors did not abstain from participating when the Board passed decisions on matters related to the evaluation of the fellow subsidiary's delivery to Maiden Life. The minutes from the Board meetings also show that the Chair confirmed that there was in no way any conflict of interest in relation to any of the agenda points.

Two of Maiden Life's Board members have also been responsible for key functions (compliance function and risk management function) during the period of investigation and performed large parts of the work in the functions. Maiden Life's Board of Directors passed decisions at several Board meetings during the period in matters related to both of these key functions. Finansinspektionen has received the minutes from these Board meetings. None of them contain information about the Board members who are simultaneously function

responsible having abstained from participating as a Board member when the Board has passed decisions in matters relating to the functions. To the contrary, all of the Board minutes show that the two members confirmed that they do not in any way have a conflict of interest in relation to any of the agenda points.

Maiden Life's position

The company asserts that the guidelines were followed by the function responsible – when presenting their respective functions' reports to the Board – only representing their own function and not participating in discussions or decisions related to the functions' work or reporting to the Board. The company takes the position that in most cases it has been obvious when a person has been subject to a conflict of interest, which explains why this is not sufficiently reflected in the minutes of the meetings.

Finansinspektionen's assessment

In this part, Finansinspektionen will state its position on whether Maiden Life has followed its own guidelines about Board members not participating in or influencing decision in matters where they can be considered to have conflicts of interest. For this assessment, it is initially important that Maiden Life and the fellow subsidiary have financial ties that constitute a potential source of conflicts of interest given that Maiden Life has outsourced a large part of its operations to the fellow subsidiary and thus purchases services from it.

With regard to Maiden Life's Chair of the Board of Directors, Finansinspektionen notes that he has been responsible for the fellow subsidiary's delivery of insurance-related and administrative services to Maiden Life at the same time as he has been ultimately responsible in Maiden Life for evaluating the delivery according to the agreement regulating pricing between the company and the fellow subsidiary. According to Finansinspektionen, this has given rise to a conflict of interest. The company's guidelines for conflicts of interest have thus not been followed when the Board's Chair participated in decisions related to the evaluation of the fellow subsidiary's delivery to Maiden Life.

Even the fact that two of the Board members have simultaneously been responsible for key functions and performed large parts of the work in the functions gives rise in Finansinspektionen's view to conflicts of interest. Both of the key functions are part of the system of governance, and the Board is ultimately responsible for the system's compliance and ongoing evaluation⁶. Two of the members of the company's Board of Directors, in other words, performed large parts of the tasks in functions that are part of the system of governance and are subject to the Board's ongoing evaluation. In addition, the Board is the recipient of the reports submitted by both key functions. In their role as Board members, they are thus also recipients of their own functions' reporting

⁶ See the preparatory works to the provision in Chapter 10, section 1 of the Insurance Business Act, Bill 2015/16:9 p. 304.

to the Board of Directors, and these reports were largely based on their own work. This means that the person responsible for the work that a function must report to the Board at the same time is also responsible for evaluating the function as part of the evaluation carried out by the Board and deciding on the need for measures based on what has been reported.

Finansinspektionen notes that there is nothing in the minutes from the Board meetings during the period of investigation – when matters were discussed and decisions passed that relate to both functions – about the Board members who were simultaneously functional responsible abstaining from participating as a Board member. Both members have confirmed in the same minutes that they have not had a conflict of interest in relation to any of the agenda points. Thereby, Finansinspektionen considers the members to have demonstrated that they did not abstain from participating in or influencing decisions related to the functions. The company has thus also not in this respect followed its guidelines for conflicts of interest.

In summary, Finansinspektionen notes that Maiden Life has not followed its own guidelines for conflicts of interest when the Chair of the Board and two of the other Board members on several occasions participated in decisions where they can be considered to have conflicts of interest. This means that Maiden Life has not fulfilled the provision set out in Chapter 10, section 24 of the Insurance Business Act. The proportionality principle does not give rise to any other assessment. It is the authority's assessment that a milder application of the requirement on a firm to follow its own guidelines would result in the requirements being disregarded. This would not be justifiable pursuant to the proportionality principle for any insurance undertaking, regardless of their nature, scope and complexity.⁷

3.2.6 Governance has not been sound and prudent

Regulation

Chapter 10, section 1, first paragraph of the Insurance Business Act states that an insurance undertaking must have a system of governance that ensures the undertaking is governed in a sound and prudent manner. It requires the system to meet the requirements laid forth for a system of governance but also that the system is efficient and reviewed regularly (Df. Bill 2015/16:9 p. 304).

Maiden Life's position

Maiden Life takes the position that the company has a system of governance that ensures that the company is managed in a sound and prudent manner. The company refers to what it has asserted about the governance requirements being followed, particularly considering the proportionality principle.

⁷ See section 3.2.1.

Finansinspektionen's assessment

In sections 3.2.2–3.2.5, Finansinspektionen has noted several breaches of the provisions on governance in the Insurance Business Act and the Solvency II Regulation, namely that Maiden Life is non-compliant by not meeting the requirements laid forth for outsourced activities, key functions' independence and conflicts of interest. The breaches are related to provisions that are central for functional governance in the company. This means, according to Finansinspektionen, that Maiden life, through these breaches, has also not met the requirement set out in Chapter 10, section 1, first paragraph of the Insurance Business Act of having sound and prudent governance. The proportionality principle does not justify any other assessment in this respect.

4 Consideration of intervention

4.1 Applicable provisions

On 1 August 2017, new provisions entered into force in Chapter 18 of the Insurance Business Act regarding interventions. For example, separate provisions were introduced that stated the circumstances that Finansinspektionen should take into account when considering intervention. According to a transitional provision, older regulations apply to breaches that occurred before the new provisions entered into force.

Some of the regulatory breaches noted by Finansinspektionen began before the new intervention rules entered into force but persisted also after the new rules had entered into force. Finansinspektionen takes the position that the point of departure for the application of both the previous and the recent provisions is that all relevant circumstances should be considered when choosing the intervention. It is therefore relevant even when applying the older rules to consider the circumstances that are now set forth by law.

Finansinspektionen presents below the current wording of relevant provisions in Chapter 18 of the Insurance Business Act. Where necessary, it is stated in which respects the provisions prior to 1 August 2017 were worded differently.

Chapter 18, section 1 of the Insurance Business Act states that Finansinspektionen shall intervene if, for example, an insurance undertaking has circumvented its obligations pursuant to the law, other regulations that govern the undertaking's business, guidelines for handling conflicts of interest or policy documents based on regulations that govern the undertaking's business.

Chapter 18, section 2 of the Insurance Business Act states that an intervention pursuant to section 1 of the same chapter is carried out by issuing an injunction to take remedial measures within a certain period of time, an injunction on executing resolutions or a remark. If the infringement is serious, the

authorisation of the insurance undertaking should be withdrawn or, if sufficient, a warning issued.

Chapter 18, section 3, first paragraph of the Insurance Business Act states that when determining the intervention, Finansinspektionen should take into consideration the gravity of the infringement and its duration. Special consideration should be given to damages arising and the degree of liability. A similar provision was not included in the Insurance Business Act prior to the 2017 amendments. The list in the provision includes circumstances that are typically relevant and may impact the choice of intervention in both an aggravating and mitigating way. The list is not exhaustive. The preparatory works state that all relevant circumstances should be considered when choosing the intervention (Bill 2016/17:173 p. 625).

Chapter 18, section 3, second paragraph of the Insurance Business Act prescribes that Finansinspektionen may refrain from intervening if the infringement is negligible or excusable, if the insurance undertaking rectifies the matter or if any other authority has taken action against the undertaking and such action is deemed sufficient.

Chapter 18, section 3a, first paragraph of the Insurance Business Act states that whether the insurance undertakings has previously committed an infringement must be considered as an aggravating circumstance. The second paragraph of the same section states whether the undertaking to a significant extent, through active cooperation, facilitated Finansinspektionen's investigation and the undertaking promptly ceased the infringement after it was reported or identified by Finansinspektionen must be considered as a mitigating circumstance. A similar provision was not included in the Insurance Business Act prior to the 2017 amendments.

According to Chapter 18, section 16 of the Insurance Business Act, Finansinspektionen may combine a remark or warning with an administrative fine.

Chapter 18, section 17 of the Insurance Business Act sets forth that the administrative fine should be set to a minimum of SEK 5,000 and a maximum of SEK 50 million. However, the fine may not exceed ten per cent of the insurance undertaking's turnover in the immediately preceding financial year. The fine may also not be so large that the insurance undertaking thereafter does not meet the requirements on stability pursuant to Chapter 4, section 1 of the Insurance Business Act.

When determining the size of the administrative fine, according to Chapter 18, section 18 of the Insurance Business Act, special consideration should be given to such circumstances as those set out in section 3, first paragraph, and section 3a of the same chapter and to the firm's financial position and the profit the undertaking realised as a result of the regulatory infringement, if such can be ascertained. There was also a similar provision prior to the amendments made in

2017. Then, it was prescribed that special consideration should be given to the seriousness of the breach that led to the remark or warning and the period of time the breach had existed.

4.2 Maiden Life's position

In its statement on 12 March 2021, Maiden Life states that all remarks about any infringements had resulted in rectification as quickly and effectively as circumstances allowed. Maiden Life therefore takes the view that Finansinspektionen may refrain from intervention against the company. The measures the company has taken are described in summary as follows.

Maiden Life has been renting a permanent office in Stockholm since 1 December 2020. Two deputy managing directors have been appointed to ensure that the company can be managed, governed and controlled more or less on a daily basis from the head office.

The company has updated its outsourcing policy with clarification of its monitoring procedures for outsourced activities. Maiden Life has also entered into new outsourcing agreements with its fellow subsidiary that meet all applicable requirements.

To enhance the compliance and risk management functions' independence, Maiden Life has appointed new persons responsible for each function. Furthermore, the functions have new persons responsible for the performance of the work in the functions. The policy documents for the functions have also been updated to clarify the functions' independence. The updated outsourcing policy states that the order responsible person for a key function can be appointed within the Board, but that this person in this position may not at the same time also carry out the operational duties in the function or compile reports to the Board.

Maiden Life has made extensive organisational changes that sharply reduced potential sources of conflicts of interest. The company has also ensured that the minutes of the Board meetings more clearly account for the handling of conflicts of interest.

In terms of sound and prudent governance, Maiden Life conducted an extensive reorganisation that has included the appointment of new order responsible persons for the risk, compliance and actuarial functions. The aim has been in part to enhance the division between the undertaking's first and second lines of defence. To further enhance the separation between the work of the Board of directors and the operational duties, and the independence of the key functions, the company has changed the composition of the Board. The persons previously responsible for the compliance and risk management functions have been replaced with new Board members, who are also function responsible. The person carrying out the duties in the actuarial function has been named to the Board and appointed responsible for the actuarial function. The persons

responsible for the risk management function and the actuarial functions are not employees of the Maiden Group. The person responsible for the compliance function is employed in a company of the Maiden Group, but does not carry out operational work for Maiden Life. The company's former managing director has been replaced by one of the Board members, who has stepped down from the Board.

Maiden Life furthermore asserts that no damages have been observed related to any infringement and neither has there been any indications that any damages have occurred. There has also not been any intent not to follow the rules, rather the company has made efforts to follow them and even rectified any comments in conjunction with Finansinspektionen's ongoing supervision. The degree of liability must therefore be considered low, according to the company.

Maiden Life also states that the company, through active cooperation to a significant extent, has facilitated Finansinspektionen's investigation, which should be considered as a mitigating circumstance.

The company also highlights that the proportionality principle in section 5 of the Administration Act (2017:900) should be considered when an authority's measures result in consequences and sanctions.

4.3 Infringements require intervention

Finansinspektionen's investigation shows that Maiden Life has not had its head office in Sweden. Furthermore, there have been clear deficiencies in how the company has complied with the regulatory requirement on key functions' independence, outsourcing policy, outsourcing agreements, and the handling of conflicts of interest. The company has also not fulfilled the requirement on sound and prudent governance.

The identified deficiencies mean that Maiden Life has circumvented its obligations under the Insurance Business Act and other regulations that govern the company's business. The violations cannot be considered negligible or excusable.

Maiden Life has asserted that Finansinspektionen may refrain from intervention since the company has rectified the deficiencies through the stated measures. According to Finansinspektionen, however, the infringements are of such a nature that there is no room for this. It is the authority's position that it can only refrain from intervention if the nature of the infringements is less serious (cf. Bill 2006/07:115 p. 500).

In summary, Finansinspektionen takes the position that as a whole the identified infringements, even considering section 5 of the Administration Act, have been of such a nature that there are grounds to intervene against Maiden Life.

4.4 Choice of intervention

As presented above, Finansinspektionen, when determining its choice of intervention, shall take into consideration in part the severity of the infringement and how long it has existed. Special consideration should be given to damages arising and the degree of liability.

The infringements are severe

The infringements that Finansinspektionen considers to be crucial for the choice of intervention are in part that Maiden Life has not had its head office in Sweden and in part that the undertaking has not fulfilled the requirement on having sound and prudent governance. The authority bases the following assessment on these two infringements.

In order for Finansinspektionen to be able to exercise effective supervision of an insurance undertaking and ensure that the undertaking complies with the rules that apply to its business, it is of fundamental importance that the undertaking have its head office in Sweden. It is particularly important that the supervision can be carried out effectively when the company, as in this case, also conducts business in other countries that rely on the home country supervision that Finansinspektionen exercises. The investigation shows that Maiden Life has not had its head office in this country for a long time. This could have a negative impact on policyholders and other beneficiaries in the long run. Finansinspektionen considers there to be grounds to view the absence of a head office in Sweden seriously.

Maiden Life has also not fulfilled certain central requirements on its governance. Finansinspektionen has found in sections 3.2.2–3.3.5 that the company has not had policy documents with necessary monitoring procedures, that there have been deficiencies in the outsourcing agreement with the fellow subsidiary, that the compliance and risk management functions have not been independent and that the company has not followed its own guidelines for conflicts of interest. Finansinspektionen made the assessment in section 3.2.6 that these infringements are related to provisions that are of central importance for functional governance in the company and that Maiden Life, through these infringements, has not complied with the requirement set out in Chapter 10, section 1, first paragraph of the Insurance Business Act to have sound and prudent governance.

It is Finansinspektionen's position that there is connection between the deficiencies and the company's organisational structure and the segregation of duties. The authority also takes the position that several of the identified deficiencies were similar in that the company did not distinguish between the areas of responsibility for different roles and did not distinguish between its own legal entity and the fellow subsidiary. The deficiencies appear to be largely linked to the Board and management not being willing or having the ability to lead Maiden Life in a sound and prudent manner in accordance with the

requirement in the regulatory framework. Finansinspektionen also views this seriously.

In terms of how long the infringements have occurred, Finansinspektionen notes that Maiden Life has not had a head office in Sweden for almost three years. The other infringements have occurred for differing lengths of time during the investigation period, and at the longest for three years. This long period is an aggravating circumstance.

Maiden Life's assertion that no damages have been identified as a result of the infringements and that the degree of liability must be considered to be low does not factor into Finansinspektionen's assessment of the infringements. There is also no special circumstance that would factor into the assessment.

Given what has been presented, it is Finansinspektionen's position that the infringements by Maiden Life from not having a head office in Sweden and not having sound and prudent governance are serious. This assessment is based primarily on the nature of the infringements and how long they have occurred.

Maiden Life will be issued a warning

Since Maiden Life's infringements are serious, the undertaking's authorisation must be withdrawn if it is not sufficient with a warning. Withdrawing an authorisation is a powerful intervention that may not occur without strong grounds.

Maiden Life asserts that the company, through active cooperation to a significant extent, has facilitated Finansinspektionen's investigation, and this should be considered as a mitigating circumstance. As described above, Finansinspektionen, as a mitigating circumstance, must consider if a company to a significant extent, through active cooperation, facilitated the investigation and promptly ceased the infringement after it was identified by Finansinspektionen. According to the preparatory works, this assumes that the undertaking at its own initiative produces important information that Finansinspektionen does not already have at its disposal and that the undertaking immediately ceases the infringement (Bill 2016/17:173 p. 626).

Finansinspektionen notes that Maiden Life, with some exceptions that were not of material importance for the investigation, has only provided documentation and information that the authority requested. Finansinspektionen therefore does not consider Maiden Life's cooperation to have been of such a nature that the company to a significant extent can be considered to have facilitated the authority's investigation.

There is therefore no such mitigating circumstance as set out in Chapter 18, section 3a, second paragraph of the Insurance Business Act that should be considered in the choice of intervention.

As Finansinspektionen accounts for in section 4.2, however, Maiden Life has described how the company in all parts has quickly taken measures to rectify the identified deficiencies. The company also made changes to its Board of Directors and management and appointed new persons responsible for key functions. Finansinspektionen considers these measures to mitigate the risk of new or similar regulatory infringements. Through these measures, Maiden Life may now be considered to have shown a willingness to comply with the rules that apply to its business. Finansinspektionen therefore stops, albeit with some hesitation, with the assessment that the expectation that Maiden Life will comply with the regulatory framework in the future is strong enough to be sufficient to issue the company a warning (cf. Bill 2003/04:109 p. 53 f).

The warning Finansinspektionen is issuing Maiden Life will be accompanied by an administrative fine.

4.5 Administrative fine

The administrative fine may be a minimum of SEK 5,000 and a maximum of SEK 50 million. However, it may not exceed ten per cent of the company's turnover in the immediately preceding financial year.

The items that are included in the turnover for an insurance undertaking is dependent on the type of insurance business the insurance undertaking conducts. The turnover for life insurance undertakings consists of premium income after reinsurance concessions (Bill 2016/17:162 p. 765). According to Maiden Life's most recently adopted annual report, which refers to the 2019 financial year, the company had a turnover of around SEK 71 million. In other words, 10 per cent of the turnover would be less than SEK 50 million. The highest possible administrative fine is therefore SEK 7,100,000.

The size of the administrative fine can be seen as a gradation of the severity of the infringements. Finansinspektionen has not been able to determine if the company profited as a result of the regulatory infringements. Finansinspektionen otherwise presents its assessment of the infringements in section 4.4. The circumstances presented there as grounds for the choice of sanction are also those that should be taken into consideration in setting the administrative fine.

Given the severity of the infringements, in particular the absence of a head office, and that they have occurred for a long period of time, Finansinspektionen takes the view that the administrative fine should be set at level that has a tangible impact. Finansinspektionen therefore sets the administrative fine at SEK 5.5 million. This administrative fine is not so large as to jeopardise the company's solvency and liquidity requirements in accordance with Chapter 4, section 1 of the Insurance Business Act.

The administrative fine shall accrue to the government and is invoiced by Finansinspektionen after the decision enters into force.

FINANSINSPEKTIONEN

Sven-Erik Österberg
Chairman of the Board of Directors

Maria Karlbom
Senior Advisor

The decision in this matter was made by the Board of Directors of Finansinspektionen (Sven-Erik Österberg, chair, Maria Bredberg Pettersson, Peter Englund, Astri Muren, Stefan Nyström, Mats Walberg, Charlotte Zackari and Erik Thedéen, Director General) following a presentation by Senior Advisor Maria Karlbom. Chief Legal Counsel Eric Leijonram, Department Director Sabina Arama Ström and Senior Supervisor Alexi Andersson also participated in the final proceedings in the matter.

Appendices:
Appendix 1 – How to appeal
Appendix 2 – Applicable provisions

Copy: Maiden Life Försäkrings AB's Managing Director

NOTIFICATION RECEIPT



FI Ref. 20-1343
Notification No. 1

Finansinspektionen
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SE-103 97 Stockholm
[Brunnsgatan 3]
Tel +46 8 408 980 00
Fax +46 8 24 13 35
finansinspektionen@fi.se
www.fi.se

Warning and administrative fine

Document:

Decision regarding a warning and administrative fine for Maiden Life Försäkrings AB issued on **23 June 2021**.

I have received the document on this date.

..... DATE SIGNATURE
 NAME IN BLOCK CAPITALS
 NEW ADDRESS (IF APPLICABLE)

This receipt must be returned to Finansinspektionen **immediately**. If the receipt is not returned, the notification may be issued in another manner, e.g. via a court officer.

Do not forget to **specify the date of receipt**.

How to appeal

It is possible to appeal the decision if you consider it to be erroneous by writing to the Administrative Court. Address the appeal to the Administrative Court in Stockholm, but send the appeal to Finansinspektionen, Box 7821, 103 97 Stockholm or finansinspektionen@fi.se.

Specify the following in the appeal:

- Name, personal ID number or corporate ID number, postal address, email address and telephone number
- The decision you are appealing against and the case number
- What change you would like and why you believe the decision should be changed.

If you engage an agent, specify the name, postal address, email address and telephone number of the agent.

Finansinspektionen must receive the appeal within three weeks from the day you received the decision.

If the appeal was received on time, Finansinspektionen will assess whether the decision will be changed and then send the appeal, the documents in the appealed matter and the new decision, if relevant, to the Administrative Court in Stockholm.

Appendix 2 – Applicable provisions

Head office

Chapter 4, section 17 of the Insurance Business Act states that an insurance undertaking must have its head office in Sweden.

Proportionality principle

Chapter 4, section 5 of the Insurance Business Act states that the provisions in Chapters 5–10, 17 and 19 must be applied proportionately in relation to the nature, scope and the complexity of the risks in each insurance undertaking's operations.

Outsourcing policy

According to Article 274(1) of the Solvency II Regulation, an insurance undertaking which outsources or proposes to outsource functions or insurance activities to a service provider shall establish a written outsourcing policy which takes into account the impact of outsourcing on its business and the reporting and monitoring arrangements to be implemented in cases of outsourcing.

Guideline 63 of the governance guidelines states that the undertaking that outsources or considers outsourcing should cover in its policy the undertaking's approach and processes for outsourcing from the inception to the end of the contract. Point b of the guideline states that this includes how a service provider of suitable quality is selected and how and how often its performance and results are assessed

Content of the outsourcing agreement

Article 274(4) of the Solvency II Regulation states that the written agreement between the insurance or reinsurance undertaking and the service provider as referred to in paragraph 3c must contain the following:

- a) the duties and responsibilities of both parties involved.
- b) the service provider's commitment to comply with all applicable laws, regulatory requirements and guidelines as well as policies approved by the insurance or reinsurance undertaking and to cooperate with the undertaking's supervisory authority with regard to the outsourced function or activity.
- c) the service provider's obligation to disclose any development which may have a material impact on its ability to carry out the outsourced functions and activities effectively and in compliance with applicable laws and regulatory requirements.
- d) a notice period for the termination of the agreement by the service provider which is long enough to enable the insurance or reinsurance undertaking to find an alternative solution.
- e) that the insurance or reinsurance undertaking is able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to policyholders.

- f) that the insurance or reinsurance undertaking reserves the right to be informed about the outsourced functions and activities and their performance by the service provider as well as a right to issue general guidelines and individual instructions at the address of the service provider, as to what has to be taken into account when performing the outsourced functions or activities.
- g) that the service provider shall protect any confidential information relating to the insurance or reinsurance undertaking and its policyholders, beneficiaries, employees, contracting parties and all other persons.
- h) that the insurance or reinsurance undertaking, its external auditor and the supervisory authority have effective access to all information relating to the outsourced functions and activities, including carrying out on-site inspections of the business premises of the service provider.
- i) that, where appropriate and necessary for the purposes of supervision, the supervisory authority may address questions directly to the service provider to which the service provider shall reply.
- j) that the insurance or reinsurance undertaking may obtain information about the outsourced activities and issue instructions concerning the outsourced activities and functions.
- k) the terms and conditions, where applicable, under which the service provider may sub-outsource any of the outsourced functions and activities.
- l) that the service provider's duties and responsibilities deriving from its agreement with the insurance or reinsurance undertaking shall remain unaffected by any sub-outsourcing taking place according to point (k).

Compliance and risk management functions

Article 268(1) of the Solvency II Regulation states that insurance and reinsurance undertakings must incorporate the functions and the associated reporting lines into the organisational structure in a way which ensures that each function is free from influences that may compromise the function's ability to undertake its duties in an objective, fair and independent manner. Each function must operate under the ultimate responsibility of, and report to, the administrative, management or supervisory body and shall, where appropriate, cooperate with the other functions in carrying out their roles.

Chapter 10, section 16 of the Insurance Business Act states that the compliance function must

1. report to the board of directors and the managing director on matters related to compliance with
 - a) provisions in this act and regulations issued pursuant to this act,
 - b) provisions issued by European Commission related to the Solvency II Directive, and
 - c) the guidelines and recommendations that have been issued due to this Directive by the European Insurance and Occupational Pensions Authority, Finansinspektionen, and, if the undertaking has established a secondary establishment in a country within the EEA, the competent authority in that country
2. advise the undertaking's board of directors and the managing director on preventing deficient compliance with provisions pursuant to point 1,
3. assess the impact of changes in provisions, guidelines and

- recommendations pursuant to point 1, and
4. identify and assess risks for deficient compliance with provisions, guidelines and recommendations pursuant to point 1.

Article 269(1) of the Solvency II Regulation states that the risk management function must include all of the following tasks:

- a) assisting the administrative, management or supervisory body and other functions in the effective operation of the risk management system.
- b) monitoring the risk management system.
- c) monitoring the general risk profile of the undertaking as a whole.
- d) submitting detailed reporting on risk exposures and advise the administrative, management or supervisory body on risk management matters, including in relation to strategic affairs such as corporate strategy, mergers and acquisitions and major projects and investments.
- e) identifying and assessing emerging risks.

Conflicts of interest

Chapter 10, section 24 of the Insurance Business Act states that an insurance undertaking shall adopt and follow guidelines for managing conflicts of interest between the undertaking's stakeholders.

Sound and prudent corporate governance

Chapter 10, section 1, first paragraph of the Insurance Business Act states that an insurance undertaking shall have a system of governance that ensures that the undertaking is governed in a sound and prudent manner. The provision in the second paragraph states that the undertaking must regularly review its system.