

2009-11-12

## DECISION



Aspis Liv Försäkrings AB  
Attn: Managing Director Jan Paju  
Box 1501  
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FI Reg. No. 09-10848  
Notification

**Finansinspektionen**  
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### **Decision on the limitation of the company's right of disposal**

#### **Finansinspektionen's decision**

1. Finansinspektionen limits the right of disposal of Aspis Liv Försäkrings AB, 516406-0203, in such a manner that the company, until further notice, is forbidden to undertake new commitments to policyholders or other persons entitled to compensation.
2. Furthermore, Finansinspektionen forbids Aspis Liv Försäkrings AB, 516406-0203, to dispose of its assets in Sweden without the approval of Finansinspektionen.
3. This decision enters into effect immediately.

*(Chapter 19, section 11, eighth paragraph of the Insurance Business Act (1982:713))*

To appeal Finansinspektionen's decision, see the appendix.

#### **Summary**

Aspis Liv Försäkrings AB, 516406-0203, Aspis Liv, is a life insurance company that issues risk insurances. After conducting onsite evaluations in October and November 2009, Finansinspektionen raised concerns that Aspis Liv did not have full control of its assets. Finansinspektionen therefore ordered Aspis Liv on November 9, 2009, to submit a plan for the rapid restoration of its own funds. It should have been able to be deduced with full certainty from the plan that sufficient funds to meet the requirements of the law on solvency and coverage of liabilities would again be under Aspis Liv's full control.

The submitted plan did not meet Finansinspektionen's requirements. Finansinspektionen finds the situation to be of such a serious nature that an immediate intervention is necessary. Finansinspektionen therefore decides to limit Aspis Liv's right of disposal by forbidding the company with immediate

effect to undertake new commitments to policyholders or other persons entitled to compensation. In addition, Finansinspektionen forbids Aspis Liv to dispose of its assets in Sweden without the approval of Finansinspektionen. The decision enters into effect immediately.

The funds that with certainty are available to the company are not sufficient to meet the regulations for liability coverage and solvency. These regulations exist to guarantee that an insurance company can fulfil the commitments it has undertaken with respect to its policyholders.

## **1. Aspis Liv operations**

Aspis Liv is a life insurance company within the Aspis Group. Aspis Liv was registered in 2004 and the company's operations include illness insurance, accident insurance and term life insurance. The company had 48 employees in 2008 and total sales, reported as premium income before reinsurance cessions, totalled SEK 169 million (for the full year 2008). The balance sheet total was SEK 616 million (December 31, 2008). Before registration, the operations were conducted as a branch office to Aspis Pronia General Insurance Company S.A. (hereafter Aspis Pronia) under the name Aspis Pronia Life Branch in Sweden.

According to the share register, Aspis Liv has three owners: Aspis Capital S.A. (85.5 %), Aspis Pronia (9.5 %) and a private individual, Theodoros Anagnostopoulos (5 %).

Aspis Capital S.A. and Aspis Pronia are companies that are registered in Greece. According to the Greek supervisory authority, Aspis Capital S.A. is solely owned by a private individual, Pavlos Psomiades. Pavlos Psomiades was previously the Managing Director and President in Aspis Pronia. Pavlos Psomiades is also the sole owner of Aspis Pronia.

### **1.1. Intervention by the Greek supervisory authority**

As of September 21, 2009, Greek authorities entered Aspis Pronia into compulsory liquidation due to insufficient capital, and the company's concession has been forfeited. According to information from the Greek supervisory authority, Greek authorities have placed an injunction on Pavlos Psomiades forbidding him to travel and he is also suspected of forfeiting a bank guarantee that was intended for use as a capital infusion in Aspis Pronia.

## **2. Finansinspektionen's investigation**

### **2.1. Background**

Finansinspektionen conducted an onsite evaluation of Aspis Liv on October 6 and 7, 2009. In addition, Finansinspektionen held discussions with representatives for Aspis Liv at meetings on November 6, 9, 10 and 12, 2009,

and written communications about the case were exchanged. On November 9, 2009, Finansinspektionen ordered the company to submit a financial recovery plan for the rapid restoration of its own funds. On November 12, 2009, Aspis Liv submitted a plan for the restoration of its own funds and a statement to Finansinspektionen.

#### *Course of events*

In April 2009, Aspis Liv opened accounts with the bank, Credit Suisse, in Zürich. Account statements from the bank show that in April 2009 Aspis Liv transferred assets that are now worth approximately SEK 329 million of the company's total assets of SEK 526 million to Credit Suisse.

The company opened a total of four accounts with the bank. According to information from the company, the first two accounts were opened following a suggestion by the company's external asset manager in order to streamline management of the company's assets and create ties to a strong financial partner. An additional two accounts were opened in May 2009 at the request of the company's asset manager. Information Finansinspektionen received from the company indicates that this request was due to the financial advisor, whom the company's asset manager in turn had engaged, having a bank account in the Basel office. According to the company, the company's transferred assets are today placed in two of these accounts.

Information received from Credit Suisse dated October 12, 2009, specifies that Managing Director Jan Paju "*has the sole signatory power*" for two accounts in the bank.

Finansinspektionen received a copy of the contract Aspis Liv signed on April 3, 2009, with Credit Suisse. The contract consists of an agreement for asset management that assigns extensive authorities to Credit Suisse to implement changes to the investments, even without requiring the approval of Aspis Liv. The contract contains instructions to Credit Suisse to send all information regarding the status of the account and any changes to Aspis Liv's head office in Norrköping.

However, information about Aspis Liv's accounts is not sent directly from Credit Suisse to Aspis Liv, but rather is routed via a London-based company called Hestiun Europe Limited. According to information presented by the Managing Director during a meeting with Finansinspektionen on November 6, 2009, the Managing Director had been informed that Hestiun Europe Limited was a company that functioned as a broker or intermediary and that the Aspis Group used such a company for this type of business. At the meeting on November 6, 2009, the Managing Director said that he did not know why Hestiun Europe Limited was the first party to receive all information about Aspis Liv's accounts. On November 9, 2009, Aspis Liv presented an account statement from Credit Suisse showing that the assets at Credit Suisse are pledged. In addition, the bank stated that Hestiun Europe Limited is the bank's customer.

## 2.2. Closing of the Credit Suisse accounts

After Finansinspektionen's initial inquiries into the accounts at Credit Suisse, Aspis Liv reported on October 12, 2009, that the company would close the accounts. The assets would be transferred back to a bank account in Sweden. According to the company, this was due to problems among the company's minority shareholders as a result of the financial crisis. As proof that the transfer would occur, Aspis Liv submitted a copy of a letter on October 19, 2009, to Finansinspektionen from the Managing Director of Aspis Liv to Credit Suisse requesting that the company's accounts be immediately closed and the balance of assets transferred to the company's accounts in Sweden. The letter was not dated.

Since the amounts deposited with Credit Suisse constitute a major portion of Aspis Liv's total assets, Finansinspektionen requested additional information about when the transfer would actually be carried out. Finansinspektionen was first informed that the accounts would be closed on the same day, i.e. October 12, 2009. Finansinspektionen then inquired on several occasions whether the transfer was completed. On October 27, 2009, Finansinspektionen finally received word that the transfer would start on October 30, 2009, and conclude on November 3, 2009. As proof, Aspis Liv submitted an e-mail to Finansinspektionen. The e-mail was sent on October 23, 2009, from Credit Suisse to the Managing Director and one other person. This person, according to the company, was Pavlos Psomiade's right-hand man and responsible within the Aspis Group for the management of the Group's assets.

Finansinspektionen booked a meeting with representatives for the company to be held at the office of the company's Swedish bank on November 4, 2009, to verify that the company actually had at its disposal the SEK 329 million that had been deposited with Credit Suisse. The company then announced that the transfer would be carried out first on November 5, 2009, and the meeting was moved to the morning of November 6, 2009. However, at this meeting, which was attended by Finansinspektionen and representatives from Aspis Liv, it was determined that the transfer of funds from Credit Suisse to the Swedish bank account had not been carried out yet. This was confirmed by a bank official in attendance.

Aspis Liv informed Finansinspektionen that the transfer would be finalised at the earliest later the same day. According to the Managing Director, the investment manager had informed him of this the same morning via a text message. Finansinspektionen and the company's representatives therefore agreed to a new meeting at the bank the same afternoon after the time the assets should have been transferred. But even at that meeting it was evident that the transfer had not occurred.

The Managing Director reported that he had received information there was an overarching agreement between the Aspis Group, Credit Suisse and Hestiu

Europe Limited that contained a notice of termination clause. This notice of termination clause was presented as the reason why the transfer to the Swedish bank account was delayed. The Managing Director said that Aspis Liv's own contract with the bank for its accounts was lacking provisions regulating the notice of termination, which, the Managing Director explained, was an oversight when the agreement was signed.

The documentation shows that the company had already received notification from Credit Suisse on November 5, 2009, that the assets could not be transferred. Credit Suisse had sent an e-mail to the Swedish bank with a copy to both the Managing Director and the CFO of Aspis Liv stating that Credit Suisse only considered itself to be the executing party in the transfer and that Credit Suisse could only commence the transfer after "the issue" between Hestiun Europe Limited and Aspis was resolved (without specifying which Aspis company it was referring to).

Finansinspektionen requested information from Aspis Liv about what this issue entailed and what Hestiun Europe Limited's role was with regard to Aspis Liv's accounts at Credit Suisse and the assets placed there. On November 9, 2009, Aspis Liv submitted information stating that, according to information from Credit Suisse, the assets were pledged. The company's Managing Director reported that he had received this information the same day, i.e. November 9, 2009. The Managing Director asserted that the information about the assets in the account at Credit Suisse being pledged was incorrect. The company was investigating the issue and was going to contact Credit Suisse.

On November 9, 2009, based on the seriousness of the situation within the company, Finansinspektionen decided to order Aspis Liv to submit a financial recovery plan for the rapid restoration of its own funds no later than November 12, 2009. It should have been able to be deduced with full certainty from the plan that Aspis Liv had regained control over sufficient funds to meet the requirements of the law.

### **3. Aspis Liv's position**

Aspis Liv submitted a financial recovery plan and a statement regarding the current circumstances.

In the financial recovery plan, Aspis Liv states that it considers itself to have control over the funds deposited with Credit Suisse since the company received information from Credit Suisse that its assets will be transferred at the latest on November 25, 2009. In addition, the company reported that it has assets in Sweden totalling approximately SEK 147 million and that its operations generate a monthly surplus. According to Aspis Liv, taken together, this indicates that the company should be considered to have sufficient control over its funds to rapidly restore its own funds.

The company also added that it has reinsured all new commitments for the period November 9-25, 2009. A copy of this commitment was submitted to Finansinspektionen.

The following is a summary of the statement issued by Aspis Liv in conjunction with the financial recovery plan.

Aspis Liv and the subsidiary Aspis Fastighets AB together build a group but are not part of any other group. The company confirms that it decided to transfer assets from Credit Suisse to the Swedish bank, but states that this occurred on the company's own initiative. The agreement entered into with Credit Suisse in conjunction with the opening of the accounts is a standard agreement. The agreement shall be read in combination with the authorisation instructions prepared for the accounts and presented to Credit Suisse. The company has not forfeited its decision-making rights on how the assets should be invested. When the company's Managing Director discovered that account information was sent to the company via Hestiun Europe Limited, the Managing Director contacted the company's previous asset manager, from whom information was received that the asset manager used Hestiun Europe Limited as an advisor in asset management issues. Hestiun Europe Limited handled this service on behalf of the asset manager. The asset manager requested that the situation remain the same. Aspis Liv consented.

The word "issue" that was used in the letter from the bank does not mean that there is a dispute, but rather a contractual agreement between two parties. The reason the transfer is delayed is because there is an agreement between Hestiun Europe Limited and a company within the Aspis Group. With reference to this agreement, Credit Suisse cannot transfer the assets within two weeks.

Hestiun Europe Limited is a multinational finance company that is active in a number of different business areas, one of which being the financial sector.

The company is continuing to investigate what may have happened, which to date unidentified agreements may be in place that affected the transfer of the funds and to what extent Hestiun Europe Limited or other parties may be involved. Representatives for the company will visit Credit Suisse at the bank's offices in Basel on November 13, 2009, to discuss in person the situation at hand.

The company emphasises in its statement that today it is not known which person(s) has/have placed the company in this situation.

#### **4. Finansinspektionen's assessment**

This section starts with an account of applicable regulations and continues with a review of Aspis Liv's financial situation. Finansinspektionen then details its

complete assessment regarding the issue of an intervention and finally concludes with the intervention itself.

#### **4.1 Applicable regulations**

According to Chapter 19, section 11, eighth paragraph of FRL, Finansinspektionen may limit the company's right of disposal or forbid the company to dispose of its assets in Sweden if

1. the company does not follow the applicable provisions for technical provisions and coverage of liabilities,
2. the company's own funds fall below one-third of the solvency margin or do not meet the requirements on guarantee amounts.
3. the company's own funds fall below the solvency margin or, for an insurance company as referred to in Chapter 7a, section 1, first paragraph, line 1, the Group own funds fall below the Group solvency margin in accordance with section 4 of the same chapter, and there are special grounds to assume that the company's financial position will deteriorate further, or
4. it is deemed to be necessary to protect the interests of the policyholders in the event the company's concession is forfeited in accordance with section 2 or the tenth paragraph.

According to Proposition 1994/95:184, page 286, the eighth paragraph of the provision sets out that possibilities for forbidding or limiting an insurance company's disposal of its assets here in the country are extended. Measures can be taken already at the point the own funds fall below the solvency margin and Finansinspektionen makes the assessment that it is not sufficient to prepare a plan for the restoration of a sound financial base. Since this entails a very invasive measure at an early stage, the measure shall naturally be applied with caution.

#### **4.2. Aspis Liv's financial situation and coverage of liabilities**

In September, Aspis Liv's total assets were approximately SEK 526 million. The company's technical provisions totalled approximately SEK 385 million.

An insurance company shall always have a solvency ratio of at least one, which means that the company has assets that correspond to its commitments.

The deciding factor for whether or not Aspis Liv meets the solvency requirements is if the company can be considered to have control and the ability to dispose of the funds (approximately SEK 329 million) transferred to and now deposited with Credit Suisse. If the answer is affirmative, there is currently no capital shortage.

However, if the answer is no, both the solvency ratio and the own funds would be negative and thereby far from in agreement with the regulations set forth by law. The company's solvency ratio would be  $-3.45$  and the adjusted own funds SEK  $-204$  million. If this is the case, the company's ability to fulfil its

commitments to its policyholders and other persons entitled to compensation would be compromised.

Aspis Liv will thus not have followed applicable provisions for technical provisions and coverage of liabilities, either. Pursuant to Chapter 7, section 1 of the Insurance Business Act (1982:713), FRL, an insurance company's technical provisions shall correspond to the amount necessary for the company at any time to be able to fulfil all commitments that reasonably can be expected to arise as a result of entering into insurance agreements. Furthermore, according to Chapter 7, section 10, fifth paragraph of the FRL, pledged assets or assets burdened by another security right may not be used to cover liabilities.

The company would not meet the requirement that its capacity to pay must be good in both the long term and the short term (cf. Proposition 1998/99:87, page 391 ff).

#### **4.3. Finansinspektionen's assessment in the issue of intervention**

It is clearly set out in the case, and uncontested by Aspis Liv, that, in October and November, the company has not been able to dispose of the funds deposited with Credit Suisse despite repeated attempts to instruct the bank to transfer the funds to the bank accounts in Sweden.

Aspis Liv has not been able to explain the circumstances that stopped the transfers and does not have an explanation for why Credit Suisse believes it is prevented from carrying out the transfer. The only information available on this matter is that there appears to be a question or "issue" concerning a company (Hestiun) that Aspis Liv has not engaged for asset management but that receives financial information from the bank about Aspis Liv accounts and that has a claim to the funds or in any case a right of disposal to the funds.

Aspis Liv has also not explained why Credit Suisse stated on account statements that the assets in the accounts were "pledged". Aspis Liv has not commented at all on this circumstance, which must be considered material, in its statement.

Aspis Liv has presented a certification from Credit Suisse from November 9, 2009, that the funds will be transferred to the company's Swedish bank account no later than November 25, 2009. That Credit Suisse provides a specific date further in the future could imply that the bank's information on the account statements about the pledged assets is correct, since Credit Suisse, as far as can be understood from the certification, does not consider itself to be prevented from completing the transaction in the future. One speculation could be that the bank is allowing that at that time the pledge will have been returned by the party currently holding the pledge. However, Finansinspektionen considers the circumstances in this area to be much too uncertain to draw any concrete conclusions. What is apparent, and has already been mentioned, is that Aspis Liv currently cannot dispose of the assets. This in and of itself constitutes a serious

breach of the regulations governing insurance companies – regulations that are intended to protect policyholders.

In addition, there is also cause to question whether a transfer will actually occur by November 25, 2009. Finansinspektionen has on several earlier occasions starting October 12, 2009, received information that a transfer would occur on a given date but the transfer was never actually carried out. Similarly to the current situation, information about an imminent transfer was provided by Credit Suisse. The bank has considered itself to be prevented from carrying out the payment on these occasions. It is doubtful that this is due to anything else than that a third party has a claim that Credit Suisse cannot ignore. This means that, at best, Aspis Liv's right of disposal is under contention, or, at worst, that the right of disposal belongs to another party. The latter would strongly imply that Aspis Liv obviously does not have control over its dealings with Credit Suisse or Hestiu Europe Limited.

Taken as a whole, Finansinspektionen believes that this demonstrates that Aspis Liv cannot dispose of its assets in a way that fulfils the requirements of the law for property that will be used as coverage for liabilities. As a result, the answer to the question of whether Aspis Liv currently meets the requirements for solvency and coverage of liabilities is negative.

In order to, in its own words, "eliminate all doubt that the Company will not be able to fulfil new commitments", Aspis Liv reinsured all new commitments 100 percent as of November 9, 2009. The reinsurance agreement entered into by Aspis Liv specifies that the reinsurance applies until November 25, 2009, and is limited to the claims arising during the same period of time. According to Finansinspektionen, the reinsurance does not compensate for the lack of funds resulting from the company's loss of control over the assets transferred to Credit Suisse. FRL sets out that a company, in addition to assets required to cover its liabilities, *at any time* shall have sufficient own funds. The company's reinsurance for new commitments does not alter this situation. A contractual relationship can not replace the capital the company must have pursuant to FRL to maintain sufficient financial strength and stability. In addition, the extended reinsurance agreement represents an additional cost for Aspis Liv.

The full protection offered to new policyholders via the reinsurance arrangement is only meaningful if the funds now deposited with Credit Suisse really are transferred to the company's Swedish bank accounts and if the company will thereafter have the sole right of disposal of them. As mentioned previously, Finansinspektionen believes that this has not been clarified. The reinsurance arrangement therefore cannot be considered to represent a solution for Aspis Liv's capital shortage, even temporarily.

In its submitted plan for the restoration of its own funds, Aspis Liv has not provided any other method for restoring its own funds. That the company currently is profitable is not relevant in this context.

In summary, Finansinspektionen's assessment is that Aspis Liv has not been able to prove that the company has sufficient funds for meeting the regulations stipulated by law with regard to solvency and coverage of liabilities. The plan Aspis Liv submitted is not sufficient and therefore cannot be approved.

If the own funds fall below the solvency margin or the guarantee amount, according to Chapter 1, section 8a, fourth paragraph of FRL, Finansinspektionen shall take measures pursuant to the provisions in Chapter 19, section 11, eighth paragraph.

Through its actions, Aspis Liv has materially failed to comply with applicable provisions for its operations. Finansinspektionen finds that the right of the policyholders is compromised. In order to protect both old and new policyholders and other persons entitled to compensation, Finansinspektionen finds that it is necessary to take intervention measures. In summary, Finansinspektionen finds that the conditions for intervention as set out in Chapter 19, section 11, eighth paragraph, first, second and fourth points of the FRL are met.

#### **4.4. Finansinspektionen's intervention**

Finansinspektionen limits Aspis Liv's right of disposal so that the company with immediate effect may not enter into new agreements. This means that the company does not have the right to undertake new commitments to policyholders or other persons entitled to compensation.

Furthermore, Finansinspektionen forbids the company to dispose of its assets in Sweden without the expressed consent of Finansinspektionen. This means that every action that involves the company's assets must be approved by Finansinspektionen before being taken. This decision enters into force immediately.

FINANSINSPEKTIONEN

Martin Andersson  
*Director General*

Per Håkansson  
*Chief Legal Counsellor*

The decision in this case was made by Finansinspektionen's Board of Directors. The case was presented by Chief Legal Counsellor Per Håkansson and Legal Counsellor Agneta Laurén. Department Directors Ann-Marie Wancke Widmar and Jan Fritsch also participated in the final handling process.



## **HOW TO APPEAL TO THE COUNTY ADMINISTRATIVE COURT**

It is possible to appeal the decision if you consider it to be erroneous. Write the appeal to the County Administrative Court, but send the document to:  
Finansinspektionen, Box 7821, 103 97 STOCKHOLM.

Include the case number in your document, which decision you are appealing, the change you would like to see enacted and why you believe the decision should be changed. Sign the document and include your name and address.

The appeal must have been received by Finansinspektionen within three weeks of the day you received the decision. If the appeal is received later than this, it will not be examined.

Finansinspektionen sends the appeal to the County Administrative Court in Stockholm for review if Finansinspektionen itself does not change the decision as you have requested.