

2009-11-09

D E C I S I O N



Aspis Liv Försäkrings AB
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Notification

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Decision on injunctive order to communicate financial recovery plan and request for statement

Finansinspektionen's decision

1. Finansinspektionen orders Aspis Liv Försäkrings AB, 516406-0203, to communicate a plan to Finansinspektionen for the rapid restoration of the company's own funds. The plan shall be submitted no later than 12PM on November 12.

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

To appeal Finansinspektionen's decision, see the appendix.

2. Finansinspektionen presents Aspis Liv Försäkrings AB, 516406-0203, with the opportunity to respond to the content of this decision. Finansinspektionen shall have received the statement no later than November 12, 2009, at 12PM. Finansinspektionen may make a decision based on the stated circumstances even if a statement is not received.

Summary

Aspis Liv Försäkrings AB, 516406-0203 (Aspis Liv) is a life insurance company within the Aspis Group that issues risk insurances. Finansinspektionen conducted an onsite evaluation of the company in October and November 2009, during which it became apparent that Aspis Liv does not have control over the majority of its assets. It is currently unclear how much of its funds the company actually has at its disposal. 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 policyholders. It is

namely unclear whether or not Aspis Liv is able to fulfil its commitments to its policyholders.

Finansinspektionen finds the situation to be of such a serious nature that it orders Aspis Liv to immediately, although no later than 12PM on November 12, 2009, submit a financial recovery plan for the rapid restoration of its own funds.

1. Background

1.1 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. Before registration, the operations were conducted as a branch office to Aspis Pronia General Insurance Company S.A. (hereafter Aspis Pronia). At that time, the company operated under the name Aspis Pronia Life Branch in Sweden.

According to the share register, Aspis Liv has three owners: Aspis Capital S.A., Aspis Pronia and the private individual, Theodoros Anagnostopoulos.

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 100 percent 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.

1.1.1 Intervention by the Greek supervisory authority

As of September 21, 2009, Aspis Pronia has been placed under compulsory liquidation by Greek authorities 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.

1.2 The case

1.2.1 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 and November 9 and written communications about the case were exchanged.

The following information has come forth.

In April 2009, Aspis Liv opened accounts in the bank, Credit Suisse, in Zurich. Account statements from the bank show that in April 2009 Aspis Liv transferred approximately SEK 329 million of the company's total assets of SEK 528 million to Credit Suisse.

The company has opened a total of four accounts with the bank – initially the company stated that there were two accounts. According to information from the company, the first two accounts were opened following suggestions from the company's 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 external asset management consultants. Information Finansinspektionen received from the company states that this request was due to the financial advisor, whom the company's asset management consultants 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. However, the holding account specified in that letter does not have the same account number as the account to which the company's assets were transferred in April.

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, which was signed by the Chairman of the Board of Directors and the Managing Director in conjunction with the opening of the account in Credit Suisse, entails that Aspis Liv waives all involvement in how its assets are invested but maintains the financial risk. 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 account does not appear to be sent from Credit Suisse directly, but rather is routed via a London-based company called Hestiun Limited. According to information presented by the Managing Director during a meeting with Finansinspektionen on November 6, 2009, the Managing Director had been informed by Pavlos Psomiades that Hestiun 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 explained that he did not know why Hestiun Limited was the first party to receive all information about Aspis Liv's accounts. The Managing Director had only begun to receive information about Hestiun Limited recently.

1.2.2 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 information that the transfer would start on October 30 and conclude on November 3. 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. A bank official in attendance confirmed this.

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 money should have been transferred. But even at that meeting it was evident that a 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 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 notice of termination provisions, which, the Managing Director explained, was an oversight when the agreement was signed.

However, the company's own documentation indicates that it had received information already 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 Limited and Aspis was resolved. Finansinspektionen has received a copy of this e-mail.

Finansinspektionen requested information from Aspis Liv about what this issue refers to and what Hestiun Limited's role is with regard to Aspis Liv's accounts at Credit Suisse and the assets placed there. Aspis Liv has communicated that the company does not currently have any information on this matter and an investigation is underway. However, Finansinspektionen notes that Aspis Liv received account statements as early as June that clearly indicate the statements are directed to Hestiun Limited.

2. Finansinspektionen's assessment

This section starts with a review of Aspis Liv's financial situation, continues with an account of applicable regulations and concludes with Finansinspektionen's assessment.

2.1. Aspis Liv's financial situation

2.1.1 Aspis Liv's coverage for its liabilities

According to its interim report, Aspis Liv's technical provisions totalled approximately SEK 385 million. If Aspis Liv does not have at its disposal the assets the company transferred to Credit Suisse (SEK 329 million), Aspis Liv no longer has the ability to fulfil its commitments to its policyholders.

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. Thusly, through its actions, Aspis Liv has not followed applicable provisions for technical provisions and coverage of liabilities.

2.1.2 Aspis Liv's solvency

It has become apparent that Aspis Liv neither can control nor does it have at its disposal assets with a market value of more than SEK 329 million. This means

that the company's solvency ratio given the current circumstances is – 3.45. The company's adjusted own funds total SEK – 204 million.

2.1.3 Protecting the interests of Aspis Liv's policyholders

The regulations governing business in the insurance sector aim to protect direct policyholders and other recipients eligible for compensation from insurance agreements. The basic rule concerning stability and risk management is set out in Chapter 1, section 1a of FRL, where it is stated that insurance undertakings shall be conducted with satisfactory solvency, liquidity and control of insurance risks, investments risks and operating risks. According to Proposition 1998/99:87, page 391 ff, this means that the company's capacity to pay must be good in both the long term and short term.

Aspis Liv has forfeited control of and its ability to utilise a large portion of its assets. Therefore, the company has compromised the entitlement of its policyholders to receive potential indemnification.

2.2 Rules governing intervention

Pursuant to Chapter 19, section 11, fifth paragraph of FRL, if a company's own funds falls below one third of the solvency margin or guarantee amount, Finansinspektionen shall order the company to prepare and submit for approval a plan for the rapid restoration of its own funds.

If the order is not complied with within a stated timeframe, Finansinspektionen, in cases that are of material significance or particular importance, shall report the event to the Government. Finansinspektionen may limit the company's right of disposal or forbid the company from exercising control over its assets in Sweden. The preparatory works, Proposition 1994/95:184, page 286, and Proposition 2002/03:94, page 25, set out that this measure should be applied with caution.

2.3. Finansinspektionen's assessment of the intervention

Insurance is a part of the security scheme. A customer entering into an agreement with an insurance company has a contractual right given certain established conditions to receive compensation from the insurance company. This right is protected by regulations governing the amount of assets the insurance company shall have and how the insurance company invests these assets. The first step in the protection is that certain assets, those that are directly attributable to commitments to customers, should be entered into a special liability coverage register. When assets are entered into this register, the policyholders have a special right of priority to these funds in the event of a bankruptcy.

It is unclear if Aspis Liv has at its disposal sufficient funding to fulfil the requirements on coverage of liabilities.

There are different intervention alternatives set out in FRL. This legislation states that if a company's solvency margin reaches one-third of the regulatory limit, Finansinspektionen shall intervene. 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. If the assets that Aspis Liv transferred to the accounts in Credit Suisse and that the company has not successfully had control of for a period of several weeks in order to re-transfer them to bank accounts in Sweden are deducted from the assets covering the company's liabilities, the solvency ratio is negative.

Aspis Liv has taken the position that they have control of the funds placed with Credit Suisse. The company thereby believes it has a positive solvency ratio and that it has sufficient assets to cover its liabilities. However, it is the opinion of Finansinspektionen, at least at this point in time, that it is not possible to include the funds deposited with Credit Suisse in the own funds since the company has thus far not been able to demonstrate that it has control of them, as demonstrated by Aspis Liv's unsuccessful attempts to transfer the funds between its accounts in different banks. Instead it appears that a third party has the right of disposal over Aspis Liv's funds. As a result, it is Finansinspektionen's opinion that there is uncertainty surrounding who actually controls the assets.

The lack of solvency resulting from this situation is serious. The rights of policyholders have been compromised. If the situation is not rectified immediately, Aspis Liv will not meet the conditions for conducting insurance business.

It is of utmost importance that Aspis Liv immediately and no later than 12PM on November 12, 2009, submit a plan to Finansinspektionen for the rapid restoration of the company's own funds. It shall be 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 are again under Aspis Liv's full control.

FINANSINSPEKTIONEN

Martin Andersson
Director General

Charlotta Carlberg
Department Director

The decision in this case was made by Finansinspektionen's Director General. The case was presented by Charlotta Carlberg, Chief Legal Counsel Per Håkansson, Unit Heads Ann-Marie Wancke Widemar and Jan Fritsch and Legal Counsellor Agneta Laurén 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.

Finansinspektionen must have received the appeal 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.