THE BANKING REGULATION REVIEW

Eleventh Edition

Editor
Jan Putnis

THE LAWREVIEWS

THE BANKING REGULATION REVIEW

Eleventh Edition

Reproduced with permission from Law Business Research Ltd
This article was first published in May 2020
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Jan Putnis

THE LAWREVIEWS

PUBLISHER
Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

BUSINESS DEVELOPMENT MANAGER
Joel Woods

SENIOR ACCOUNT MANAGERS
Pere Aspinall, Jack Bagnall

ACCOUNT MANAGERS
Olivia Budd, Katie Hodgetts, Reece Whelan

PRODUCT MARKETING EXECUTIVE
Rebecca Mogridge

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Tommy Lawson

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Katrina McKenzie

SUBEDITOR
Hilary Scott

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-83862-437-8

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ADNAN SUNDRA & LOW

ADVOCATUR SEEGER, FRICK & PARTNER AG

ADVOKATFIRMAET BAHR AS

ADVOKATFIRMAN VINGE

AFRIDI & ANGELL

ALFA MONACO

ALLEN & GLEDHILL LLP

ANDERSON MŌRI & TOMOTSUNE

ARTHUR COX

BANWO & IGHODALO

BECCAR VARELA

BONELLIEREDE

BREDIN PRAT

BUN & ASSOCIATES

CASTRÉN & SNELLMAN ATTORNEYS LTD

CHANCERY CHAMBERS

CRÉDIT AGRICOLE CORPORATE & INVESTMENT BANK (CHINA) LIMITED

DAVIS POLK & WARDWELL LLP

DE BRAUW BLACKSTONE WESTBROEK

GORRISSEN FEDERSPIEL

HENGELER MUELLER PARTNERSCHAFT VON RECHTSANWÄLTEN MBB

HOGAN LOVELLS

LEE AND LI, ATTORNEYS-AT-LAW

LENZ & STAEHELIN

MC JURIST ATTORNEYS-AT-LAW

MORALES & JUSTINIANO

NAUTADUTILH

NOUR & PARTNERS IN ASSOCIATION WITH AL TAMIMI & COMPANY

PINHEIRO NETO ADVOGADOS

PIPER ALDERMAN

RUSSELL MCVEAGH

SAMVAD: PARTNERS

SLAUGHTER AND MAY

URÍA MENÉNDEZ

WERKSMANS ATTORNEYS

CONTENTS

PREFACE vii
Jan Putnis

Chapter 1 INTERNATIONAL INITIATIVES 1
Jan Putnis and Tolek Petch

Chapter 2 ANGOLA 36
Nuno de Miranda Catanas and Laura Maia Lucena

Chapter 3 ARGENTINA 44
Pablo José Torretta and Ivana Inés Grossi

Chapter 4 AUSTRALIA 55
Andrea Beatty, Gabor Papdi, Chelsea Payne and Chloe Kim

Chapter 5 BARBADOS 78
Sir Trevor Carmichael QC

Chapter 6 BELGIUM 88
Anne Fontaine and Pierre De Pauw

Chapter 7 BRAZIL 100
Tiago A D Themudo Lessa, Rafael José Lopes Gaspar, Gustavo Ferrari Chauffaille and Vittoria Cervantes de Simoni

Chapter 8 CAMBODIA 113
Bun Youdy

Chapter 9 CHINA 130
Shengzhe Wang and Fugui Tan

Chapter 10 DENMARK 145
Morten Nybom Bethe

Chapter 11 EGYPT 155
Hossam Gramon and Karima Seyam

Chapter 12 EUROPEAN UNION 167
Jan Putnis, Tamara Raoufi and Jennyfer Moreau

Chapter 13 FINLAND 200
Janne Lauha, Hannu Huotilainen, Viola Valtanen and Julian Lagus

Chapter 14 FRANCE 212
Didier Martin, Samuel Pariente, Jessica Chartier, Béna Mara and Gaël Rivière

Chapter 15 GERMANY 234
Sven H Schneider and Jan L Steffen

Chapter 16 HONG KONG 248
Peter Lake

Chapter 17 INDIA 269
Vineetha M G, Aparna Ravi and Sitara Pillai

Chapter 18 IRELAND 280
Robert Cain and Sarah Lee

Chapter 19 ITALY 295
Giuseppe Rumi and Giulio Vece

Chapter 20 JAPAN 312
Hirohito Akagami and Yuhei Watanabe

Chapter 21 LIECHTENSTEIN 324
Mario Frick and Nils Vogt

Chapter 22 MALAYSIA 338
Rodney Gerard D'Cruz

Chapter 23 MEXICO 364
Federico De Noriega Olea and Juan Enrique Lizardi Becerra

Chapter 24 MONACO 374
Mireille Chauvet

Chapter 25 NETHERLANDS 385
Mariken van Loopik and Maurits ter Haar

Chapter 26 NEW ZEALAND 403
Guy Lethbridge and Debbie Booth

Chapter 27 NIGERIA 418
Ibrahim Hassan, Oluwatobi Pearce, Basirat Raheem and Ezomime Onimiya

Chapter 28 NORWAY 433
Richard Sjøqvist, Markus Nilssen and Steffen Rogstad

Chapter 29 PHILIPPINES 446
Rafael A Morales

Chapter 30 PORTUGAL 460
Pedro Ferreira Malaquias and Domingos Salgado

Chapter 31 SINGAPORE 473
Francis Mok

Chapter 32 SOUTH AFRICA 483
Natalie Scott

Chapter 33 SPAIN 498
Juan Carlos Machuca and Alfonso Bernar

Chapter 34 SWEDEN 521
Fredrik Wilkens and Henrik Schön

Chapter 35 SWITZERLAND 531
Shelby R du Pasquier, Patrick Hünerwadel, Marcel Tranchet, Maria Chiriaeva and Valérie Menoud

Chapter 36 TAIWAN 553
James C C Huang and Maggie Huang

Chapter 37 UNITED ARAB EMIRATES 565
Amjad Ali Khan, Stuart Walker and Adite Aloke

Chapter 38 UNITED KINGDOM 575
Jan Putnis, Nick Bonsall and David Shone

Chapter 39 UNITED STATES 595
Luigi L De Ghenghi, John W Banes and Karen C Pelzer

Appendix 1 ABOUT THE AUTHORS 645
Appendix 2 CONTRIBUTORS' CONTACT DETAILS 667

PREFACE

Writing this preface in the depths of the crisis sweeping the world with the spread of covid-19, it is tempting to wonder whether banking regulation will fall down the agenda of priorities for governments when matters of life and death loom. The wave of corporate and individual insolvencies that the crisis has caused means, however, that the way that banks respond to economic crisis has never been as important as it is now, and the law and regulation that controls that response has never before affected the lives of so many people so directly.

The way that governments and regulators handle this crisis in the coming months is likely to make the difference between the success and failure of millions of businesses, and the well-being of hundreds of millions of people. Banking regulation will have a critically important role to play in determining how and when banks can and must help their customers get through this difficult time, and financial regulators must play their part to help facilitate this.

Like much else in the financial world, banking regulation will never be the same again and this crisis is likely to lead to new regulatory initiatives to help banks to support stricken economies and businesses. Regulatory lawyers will also have their part to play in helping banks navigate the immediate crisis and any subsequent reforms.

While operational resilience was already at the heart of many financial regulators' agendas before the crisis, it will now surely feature even more urgently. It is important that reforms and still greater expectations in this area are developed in a joined-up way, recognising the critical need for market participants to work together closely to maximise resilience rather than running their own operational resilience projects in isolation.

Looking forward with hope to a time when the crisis eases, other pressing issues will move back up the agenda for banks, such as their continuing efforts to harness the benefits and avoid the pitfalls of emerging technologies, and the role of the financial sector in helping to address climate change and its consequences. Whatever the outcome of the crisis, it seems certain that there will be many lessons to learn, both for banks and regulators. It is to be hoped that as the crisis evolves, cross-border regulatory cooperation and, where necessary, regulatory deference, will operate effectively and not be inhibited by irrational political considerations.

This edition covers 37 countries and territories in addition to our usual chapters on international initiatives and the European Union. Very special thanks are due to all of the authors who have devoted time to the book this year despite, in many countries, working from home, often in difficult and unexpected conditions amid 'lockdown' arrangements on account of covid-19, without any reliable indication of when those arrangements will come to an end.

Thank you also to the partners and staff of Slaughter and May in London and Hong Kong for continuing to support and contribute to this book, and in particular to Nick Bonsall,

Ben Kingsley, Peter Lake, Emily Bradley, Selmin Hakki, Jiayi Li, Jennyfer Moreau, Loye Oyedotun, Tolek Petch, Tamara Raoufi and David Shone.

Finally, the team at Law Business Research, in many cases also working in difficult circumstances, deserve great thanks for their understanding, flexibility and true professionalism in seeing this edition through to publication in the midst of so much disruption and inconvenience. This has been a truly heroic effort on their part. Thank you in particular to Tommy Lawson and Katie Hodgetts.

I wondered in the Preface to the 10th edition whether by the time of the 11th edition the position on Brexit would be clearer. That is, of course, only partially true, but no one imagined a year ago that Brexit would be comprehensively overshadowed by a crisis such as that caused by covid-19.

It is to be hoped that the crisis will be under control by the time of the next edition, and that banks and their regulators will have played a leading and positive role in helping economies begin to recover from the shock they are now experiencing.

Jan Putnis
Slaughter and May
London
April 2020

Chapter 34

SWEDEN

Fredrik Wilkens and Henrik Schön[1]

I INTRODUCTION

Swedish banks, which represent the larger part of the Swedish financial market and can provide all types of financial services, are usually categorised as universal banks. These consist of SEB, Swedbank and Handelsbanken, with Nordea as the largest foreign lender in Sweden (Big Four).[2] Nordea was previously headquartered in Stockholm but has been based in Helsinki, Finland since 1 October 2018.

	Number of employees	Lending to the public	Balance sheet total
Nordea	28,990	€308 billion	€551 billion
SEB	15,562	1,645 billion Swedish kronor	2,568 billion Swedish kronor
Handelsbanken	12,307	2,189 billion Swedish kronor	2,978 billion Swedish kronor
Swedbank	14,865	1,627 billion Swedish kronor	2,246 billion Swedish kronor

Sweden has witnessed exuberant activity within the payments and fintech sectors in recent years, with a number of new companies and business models entering the market (e.g., Klarna, iZettle and Trustly), creating a new competitive landscape on the Swedish market, a trend that is very much ongoing and strengthening. There is also a strong focus on financial regulation, with anti-money laundering issues currently being a top priority (see below).

II THE REGULATORY REGIME APPLICABLE TO BANKS

i The Swedish Banking and Financing Business Act

Entities wishing to conduct business that is regulated under the Swedish Banking and Financing Business Act (BFBA) (namely, a combination of accepting repayable funds from the public and lending) can choose to apply for either a banking business licence or a credit market company licence, depending on the types of activities contemplated. Both types of licence are granted by the Swedish Financial Supervisory Authority (SFSA), and are passportable into other European Economic Area (EEA) jurisdictions in accordance with the Capital Requirements Directive (CRD) as implemented through the BFBA. Upon obtaining a banking or credit market company licence, the relevant entity would qualify as a Swedish credit institution pursuant to the CRD and the Capital Requirements Regulation (CRR).

1 Fredrik Wilkens is a partner and Henrik Schön is a senior associate at Advokatfirman Vinge.

2 The annual report for 2018 of each bank.

ii Forms of banks

Most Swedish credit institutions are formed as limited liability companies. However, the Swedish banking market also consists of cooperative banks, which are economic associations that have as their purpose the provision of banking services to their members. There are also savings banks, which do not have any actual owners. Instead, their business is conducted under the supervision of several principals who appoint the bank's board of directors, and dividends may only be distributed in accordance with instructions provided by the original founders or reinvested in the bank's business.

iii Branches of foreign credit institutions

Foreign non-EEA credit institutions must establish a Swedish subsidiary or branch and obtain a Swedish banking licence from the SFSA to provide their services in Sweden. However, such activities will only be licensable if considered to be carried out in Sweden and outside the *de minimis* exemption. It is not clear at which point a certain activity would be considered to be carried out in Sweden, as an assessment would be made by the SFSA for each case. It is clear, however, that a number of factors are taken into account, and that the SFSA will judge each case on its own merits. The SFSA would consider, inter alia:

a whether the foreign bank had taken the initiative in contacting a prospective client;
b whether the foreign bank operated from fixed (or frequently used) facilities in Sweden;
c the number of contacts in Sweden;
d the type and number of Swedish clients; and
e whether the foreign bank acted through a permanent representative in Sweden (such as an agent).

EEA credit institutions may provide their services in Sweden on a cross-border basis after having obtained a Swedish cross-border passport pursuant to the CRD. Should they wish to provide their services from inside Sweden, they will be required to set up a Swedish branch and apply for a Swedish branch passport pursuant to the CRD.

iv Supervisory architecture

The SFSA and the Swedish Central Bank (SCB) have the main responsibility for monitoring Swedish credit institutions' compliance with the applicable laws and regulations. The SFSA has a direct responsibility to supervise Swedish credit institutions, whereas the SCB has overall responsibility to promote the stable functioning of the Swedish financial system.

III PRUDENTIAL REGULATION

i Relationship with the prudential regulator

Types of supervision and supervisory approach

The SFSA mainly applies three types of supervision: ongoing supervision, investigations and event-driven supervision.

Ongoing supervision is conducted regularly and, to a certain extent, routinely, and consists of monitoring risk development and verifying that firms and market transactions meet set rules and requirements. The basis consists of both the regular reporting of financial and other data that participants are legally obliged to submit to the SFSA, and of the analysis performed by the SFSA based on that material. More thorough supervision comes in the form

of investigations, which are used by the SFSA to dig deeper into a firm, area or certain activity, and to find information that does not usually emerge in ongoing supervision or reporting. This can be a case of assessing, for instance, the quality of a firm's internal governance, its control or risk management, or its compliance with and procedures relating to anti-money laundering. Event-driven supervision relates to risks that have already manifested themselves in different ways (i.e., reactive supervision); for example, a firm facing acute difficulty, consumers being affected by dubious advice, or the detection of some sort of market abuse.

On a more general level, the SFSA applies risk-based supervision, which stands on two pillars: a risk assessment process and a risk classification process. The risk assessment process identifies and ranks the biggest risks, while the risk classification process ranks firms based on where the problems are considered to have the greatest potential to produce negative consequences for consumers or the national economy. However, despite this risk-based approach, the SFSA's goal is that each firm operating on the basis of an authorisation from the SFSA shall, over a period of three years, be subject to at least one supervisory activity. The reasoning behind this goal is that rules for a certain type of financial operation must apply equally to all and must be respected by all, and that equal conditions for competition must apply between different participants. Prioritising according to risk thus does not mean that supervisory resources shall be exclusively allocated to firms or factors that in each situation are deemed to pose the greatest risks.

Supervision of the banking industry

The SFSA's supervision within the banking industry has a clear emphasis on financial stability in general and the stability of the system in particular. The Big Four are, according to the SFSA, systemically important owing to their predominant position in the Swedish market, their complex business models and their extensive cross-border operations (following Nordea's relocation to Finland, Nordea is no longer subject to the primary supervision of the SFSA, but Nordea Hypotek AB, a company within the Nordea group, has been classified as systematically important by the SFSA). They are, therefore, thoroughly supervised and constitute Category 1 firms. The SFSA is in close dialogue with each Category 1 firm's board and management. A specific supervision plan is usually prepared for these firms, engaging a high number of employees in different types of activities, and a contact person for the firm bears responsibility for the cohesion and coordination of the work of the team of risk specialists participating in supervising the firm.[3] In this respect, the SFSA has stated that it will continue to maintain its view of Nordea as a systemically important institution after its relocation to Helsinki.

ii Management of banks

Board of directors

The board of directors of a Swedish credit institution must consist of at least three members, and the majority of the board members may not be employed by the institution or an undertaking that is included in a group of which the institution is the parent company. The board must in turn appoint a managing director, who may not be the chair of the board of directors. Authorisation to represent a Swedish credit institution and to sign on its behalf may

3 See www.finansinspektionen.se/contentassets/ea1ec81d9a9d4b5589eb72a2ddc77faa/tillsynsstrategi-eng.pdf.

only be granted to two or more persons acting jointly, and no other restrictions on the signing authority may be registered towards third parties with the Swedish Companies Registration Office (SCRO).

Persons who are board members of Swedish credit institutions that are deemed significant owing to the nature, scale and complexity of their operations are permitted to sit on the boards of no more than three additional companies. When calculating the number of permitted directorships, board assignments within the same group will count as one directorship, and the same will apply in relation to assignments in a company in which the significant financial institution has a qualifying holding (i.e., 10 per cent or more of the shares or voting rights, or both). However, directorships in non-commercial companies are not taken into account. In addition, the managing director of a significant financial institution may not have more than two additional directorships, although it is possible for the SFSA to grant exemptions for an additional directorship.

In connection with assessing an application for a Swedish credit institution licence, the members of the board of directors, as well as the board as a whole, of the company and the managing director are assessed by the SFSA as to their management suitability. If, during its supervision of a Swedish credit institution, the SFSA finds that a member of the board of directors or the managing director is unsuitable for such assignment, it shall, following discussions with the institution, inform the institution that it finds the board member or managing director to be unsuitable. If the credit institution has not dismissed the relevant board member or managing director within three months of receiving such notification, the SFSA may revoke the credit institution's licence, or order the dismissal of the board member and appoint a replacement, who will sit on the board of directors or be the managing director until the credit institution has appointed a new board member or managing director.

Remuneration

When employees of a credit institution are entitled to variable remuneration, the credit institution must ensure that the fixed and variable components are balanced. The SFSA Regulations FFFS 2011:1 stipulate that an appropriate balance may depend on the relevant employee's position as well as the institution's business activities.

Deferred payment

The SFSA Regulations provide that at least 40 per cent of the variable remuneration of staff whose actions can have a material impact on risk exposure, and that amounts to 100,000 Swedish kronor or more per year, must be deferred for three to five years. Furthermore, where the variable remuneration is particularly high, at least 60 per cent of the variable remuneration to the managing director, the deputy managing director, other members of the management group or a similar body that report directly to the board of directors or the managing director (senior management), and staff whose work duties have a material impact on the credit institution's risk profile must be deferred. Deferred remuneration may be distributed once per year, and evenly distributed over the period of time by which the distribution was deferred (pro rata).

Composition of variable remuneration

An undertaking that is significant with respect to size, internal organisation and the nature, scope and complexity of its activities shall ensure that at least 50 per cent of the variable remuneration to an employee who is a member of senior management consists of:

a shares, participations or other instruments in the undertaking that are linked to the undertaking's shares or participations, or other equivalent instruments for undertakings whose shares or participations are not admitted to trading on a regulated market; or

b other instruments in accordance with Article 52 or 63 of the CRR or in accordance with Commission Delegated Regulation (EU) No. 527/2014 of 12 March 2014 supplementing the CRD with regard to regulatory technical standards specifying the classes of instrument that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration.

Where possible, the undertaking shall allow the variable remuneration components described above to consist of a balance of the instruments under points (a) and (b).

Loss of remuneration

A credit undertaking must ensure that variable remuneration to employees whose work duties have a material impact on the undertaking's risk profile, including deferred remuneration, is only paid or passed to those employees to the extent that is justifiable by the undertaking's financial situation and the performance of the undertaking, the business unit in question and those employee. The variable remuneration can also be cancelled in full for the same reasons.

iii Regulatory capital and liquidity

An institution's Tier 1 capital shall at all times amount to at least 6 per cent of risk-weighted assets, of which 4.5 per cent must consist of Common Equity Tier 1 capital (CET1 capital). The total capital relation – that is, the institution's capital base as a percentage of the institution's risk-weighted exposure amount – shall amount to at least 8 per cent of risk-weighted assets. Thus, 2 per cent of that 8 per cent may constitute Tier 2 capital.

Furthermore, there is a capital conservation buffer of 2.5 per cent of risk-weighted assets, a countercyclical capital buffer of (currently) 2.5 per cent of risk-weighted assets (assessed annually, and reaffirmed by the SFSA on 30 January 2020), and, in relation to SEB, Swedbank and Handelsbanken, a systemic risk buffer of 3 per cent of risk-weighted assets at the group level. All risk buffers must consist of CET1 capital. Within the scope of Pillar 2, SEB, Swedbank and Handelsbanken are also subject to a CET1 capital systemic risk buffer requirement of 2 per cent of risk-weighted assets at the group level.

The CRR requires a credit institution to have a liquidity buffer that enables it to meet cash flow needs during a period of 30 days in difficult stress scenarios.

Capital adequacy requirements, liquidity requirements and the SFSA's supervision apply on an individual credit institution basis as well as on a consolidated group basis.

iv Recovery and resolution

Implementation of the Bank Recovery and Resolution Directive

On 15 April 2014 and 6 May 2014, respectively, the European Parliament and the Council of Ministers adopted the Bank Recovery and Resolution Directive (BRRD). On 1 January 2015, the BRRD was implemented into Swedish law through the Swedish Credit Institutions Resolutions Act (the Resolutions Act), which came into effect on 1 February 2016.

The Swedish National Debt Office (NDO) has been designated as the resolution authority. In addition to resolution proceedings, the SFSA is responsible for write-downs and conversions of capital instruments. The government is responsible for the government stability tool.

Crisis prevention

The Resolutions Act contains requirements for the establishment of recovery plans and resolution plans. It also gives the NDO the right to require that a credit institution removes obstacles preventing resolution, such as requiring the credit institution to limit its largest or total exposures, dispose of certain assets and terminate certain business operations, or the development of certain services and products. The NDO, with the SFSA, also has the power to decide on the minimum amount of bail-in debt (i.e., the debt possible to write-down or convert into capital) that a credit institution must have in relation to its total debt and capital base. Furthermore, in relation to certain qualified debt constituting securities issued by a credit institution subject to foreign law, credit institutions are required to include bail-in clauses.

Resolution

The Resolutions Act allows the NDO to implement resolution measures in circumstances in which the NDO considers that the failure of a credit institution has become highly likely and poses a threat to the public interest. The resolution options available to the NDO (i.e., all of those stated below except (e), which is only available to the government) provide for:

a the sale of all or part of the business of the relevant entity to a purchaser that is not a bridge institution;
b the transfer of all or part of the business of the relevant entity to a bridge institution;
c the transfer to an asset management vehicle;
d the bail-in tool (write-down and conversion of debt); and
e the temporary public ownership (nationalisation) of the relevant entity.

Each of these stabilisation options is achieved through the exercise of one or more resolution powers, which include:

a the power to make share transfers, pursuant to which all or some of the securities issued by a credit institution may be transferred to a commercial purchaser, a bridge bank or the government;
b the resolution instrument power, which includes exercising the bail-in tool;
c the power to transfer all or some of the property, assets and liabilities of a Swedish credit institution to a commercial purchaser or the NDO; and
d the third-country instrument powers that recognise the effect of a similar special resolution action taken under the law of a country outside the European Union.

In addition, the Resolutions Act grants powers to modify contractual arrangements in certain circumstances, and powers to suspend enforcement or termination rights that might be invoked as a result of exercising the resolution powers.

Resolution financing

Swedish credit institutions are required to pay an annual resolution fee to be calculated in accordance with Commission Regulation 2015/63. Should the resolution reserve be equal to 3 per cent of guaranteed deposits, the resolution fee should be replaced with a risk fee that will be based on the risks of each respective credit institution. However, the government has proposed that the risk fee shall be scrapped and replaced with a transitionally higher resolution fee, while maintaining the goal of the reserve size, although it is unclear whether this proposal will enter into force. This fund may be used in connection with resolutions under certain exceptional circumstances (e.g., when there is a need for excluding conversions or a write-down of debt due for stability reasons).

Pursuant to the Swedish Preventive Support to Credit Institutions Act, the NDO may also provide support to credit institutions through the stability fund, which may only be used to prevent a serious disruption to the Swedish financial system. Support can be provided by way of guarantees or capital injections, or by way of guarantees to the SCB for liquidity support provided by the SCB to credit institutions.

There is also a deposit guarantee fund, which is a state-provided guarantee of deposits in all types of credit institutions through which customers can obtain compensation of up to 950,000 Swedish kronor per credit institution, or the equivalent of €100,000 in the case of a foreign branch of a Swedish credit institution. Credit institutions belonging to the deposit guarantee scheme must pay an annual fee to the NDO, which shall amount to 0.1 per cent of the value of the guaranteed deposits.

IV CONDUCT OF BUSINESS

Swedish credit institutions' operations must be organised and operated in such a manner that their structure, connections to other undertakings and financial position may be assessed by the SFSA. The head office of a Swedish credit institution must be located in Sweden.

Pursuant to the SFSA Regulations FFFS 2014:1, a Swedish credit institution is required to have separate functions for internal audit, compliance and risk management, and each function must be regulated by internal regulations that shall set out the responsibilities, assignments and routines of each function (the compliance function may not be combined with employment in an institution's legal division). All the functions must regularly report directly to the board of directors and to the managing director.

A Swedish credit institution is required to have several internal regulations in place governing, inter alia:

a internal governance and control;
b internal audit;
c risk management;
d handling of complaints;
e anti-money laundering;
f ethics;
g handling of conflicts of interest; and
h authorisation and payment approval and outsourcing.

There must also be internal instructions regarding credit risk, operational risk, reporting of significant events and liquidity risk. With respect to credit risks in particular, during 2018 the SFSA adopted detailed regulations pertaining to the management of such risks in credit institutions including, inter alia, regulations regarding processes for credit assessment, and the monitoring and internal reporting of credit risks.

In the absence of authorisation or just cause, a customer's relations with a Swedish credit institution may not be disclosed, and this continues to apply after the customer relationship has ended. However, a Swedish credit institution is obliged to report information regarding an individual's relations with the institution where such information is requested by an investigating officer pursuant to the provisions regarding preliminary investigations in criminal cases, or where such information is requested by a prosecutor in a matter regarding legal assistance in a criminal case upon request by another state or an international court.

If a Swedish credit institution wishes to engage any third parties to perform any regulated services, the institution must inform the SFSA and file the relevant outsourcing agreement with the SFSA. Furthermore, outsourcing agreements may only be entered into when the institution remains responsible to the customer with respect to the entrusted operations: the operations are conducted by the service provider in a supervised and, from a bank secrecy perspective, satisfactory manner; and the services are not of such scope that the institution is unable to perform its obligations pursuant to the BFBA or other statutes governing the operations of the institution.

A Swedish credit institution must have at least one auditor, and at least one of the auditors elected must be an authorised public accountant or an approved public accountant holding a degree in public accountancy.

A Swedish credit institution must identify, measure, manage, internally report and have control over the risks associated with its operations. In this context, institutions must ensure that they possess satisfactory internal controls. An institution must specifically ensure that its credit risks, market risks, operational risks and other risks taken together do not entail that the institution's ability to fulfil its obligations is jeopardised. To fulfil this requirement, the institution must, as a minimum, have methods that enable it to regularly value and maintain a capital that, in terms of amount, class and allocation, is sufficient to cover the type and level of risks to which it is, or may become, exposed. Swedish credit institutions must evaluate these methods to ensure that they are comprehensive.

In addition to the black letter law and regulations published by the SFSA, a majority of Swedish banks (and certain Swedish branches of foreign credit institutions) are members of the Swedish Bankers' Association, which requires its members to comply with various guidelines, including, for example, a code for the responsible provision of credits to consumers seeking to strengthen public confidence in the credit market.

V FUNDING

Swedish credit institutions mainly finance themselves through deposit-taking and lending to the general public, lending to each other, holding interest-bearing securities, trading in derivatives and issuing interest-bearing securities (bonds and certificates). In this context, Swedish banking has a high proportion of market funding when seen in an international

context, with Swedish banks obtaining around 55 per cent of their funding via the markets.[4] In cases where there is a risk of serious disruption to the Swedish financial system, the government may provide support to credit institutions, as discussed in Section II.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

Legal or natural persons wishing to acquire interests in a Swedish credit institution will be obliged to undergo ownership and management assessments when they directly or indirectly acquire 10 per cent or more of the shares or voting rights of, or if the acquisition otherwise enables the acquirer to exercise a significant influence over the management of, an institution.

The assessments made by the SFSA are extensive, and the SFSA will grant a licence for acquisition if the acquirer is deemed to be suitable and the planned acquisition is considered financially sound. In conjunction with assessments, the SFSA will obtain information from, for example, the Swedish National Police Board, the SCRO, the Swedish Tax Agency and the Swedish Enforcement Authority and, in the case of foreign investors or foreign citizens that are part of the management of foreign investors, the SFSA will obtain information from corresponding authorities in the relevant jurisdictions. To the extent that the acquisition requires that the acquirer will obtain majority control over the shares or voting rights, or have the right to appoint or dismiss a majority of an institution's board members, the SFSA will require an extensive business plan containing, inter alia, a three-year financial forecast for the credit institution and the group to which it belongs.

Subject to receiving a complete application and the application fee of 26,400 Swedish kronor for each direct or indirect qualifying acquirer, the SFSA will, as a main rule, process the application within 60 business days.

In relation to the structuring of banking acquisitions, it should be noted that a Swedish credit institution is prohibited from providing financial assistance (whether in the form of loans, guarantees or other security) with respect to another entity's acquisition of shares in the relevant institution or a superior company within the same group. The prohibition applies to loans made and securities given prior to the acquisition, but could also apply to post-completion assistance (e.g., by way of a loan from the target to its new parent to repay any external acquisition financing). A cautious attitude is recommended in this respect. Generally, post-acquisition assistance should at the very least not be secured or agreed between the parties prior to the transaction, and some time should elapse after the acquisition (generally three to six months) before, inter alia, any transfers of funds are made.

With only one exception (regarding financial assistance in connection with share offerings to employees), there are no safe harbours or general exemptions to this prohibition. However, it is possible to apply for an exemption from the Swedish Tax Agency prior to completing a transaction that would otherwise be unlawful. Such an exemption may be granted under special circumstances, but is seldom favoured by the parties involved because of, inter alia, aspects of timing and publicity.

4 www.fi.se/contentassets/fe3afcf530f9413ebe0c13a6423d51cd/bankbarometern-oktober-2019.pdf.

ii Transfers of banking business

There is no established process under which a Swedish credit institution may transfer all or part of its business (deposits, loan arrangements and other assets or liabilities) to another entity without the consent of the customers concerned. Instead, customer consent from each relevant customer of the transferor bank must, as a main rule, be obtained. It would also be necessary to ensure that any financial regulatory implications associated with such transfer are dealt with.

VII THE YEAR IN REVIEW

The past year has been dominated by several revelations of suspected money laundering related to the operations of the Baltic branches of Swedish universal banks. This has led to a loud debate concerning the capability of the banks to comply with the applicable anti-money laundering regulations as well as the SFSA's supervisory and enforcement practices.

VIII OUTLOOK AND CONCLUSIONS

In summary, attention in 2019 has centred on the money laundering probes into the business operations of major Swedish banks in the Baltics, with conclusions by regulators to be published during 2020. We expect the focus to remain on this issue during 2020. Another point of interest has been a governmental investigation release on 9 December 2019 concerning the advantages and disadvantages of a potential future Swedish accession to the European Banking Union.

Appendix 1

ABOUT THE AUTHORS

FREDRIK WILKENS

Advokatfirman Vinge

Fredrik Wilkens is head of Advokatfirman Vinge's financial services group and has extensive experience in handling complex matters in the Swedish financial industry. He regularly advises clients in connection with all types of regulated activities, including banks, credit market companies, asset management companies, payment institutions, alternative investment fund managers and UCITS. He also has extensive experience within the banking and financing sector in general, and is on the board of several Swedish companies in the financial sector.

HENRIK SCHÖN

Advokatfirman Vinge

Henrik Schön is part of Advokatfirman Vinge's financial services group, with experience in the banking, investment services and funds sectors in particular. He has assisted clients with the establishment of financially regulated entities and branch offices in Sweden, and has advised on financial services licence matters, including AIFMD marketing licences, credit institution licences and consumer credit institution licences. He has also assisted clients with ownership and management assessments in connection with acquisitions of Swedish financial institutions.

ADVOKATFIRMAN VINGE

Smålandsgatan 20
111 87 Stockholm
Sweden
Tel: +46 10 614 3000
fredrik.wilkens@vinge.se
henrik.schon@vinge.se
www.vinge.com

an LBR business

ISBN 978-1-83862-437-8