SFS no. 2004:297

Ministry/Agency: Ministry of Finance

The Banking and Finance Business Act (2004:297)

Promulgated on 19 May 2004

Chapter 1. Introductory provisions

Area of application of the Act

Section 1. This Act contains provisions on banking and financing business. The Act does not apply to activity engaged in by the Riksbank or the Swedish National Debt Office.

Section 2. Where appropriate, the provisions of this Act apply to foreign undertakings' activity in Sweden. In other respects, the Foreign Branch Offices Act (SFS 1992:160) is applicable.

Definition of Banking Business

Section 3. In the Act, banking business means a business which includes

1. the processing of payment through general payment systems, and

2. the acceptance of deposits from the public which are available to the depositor within at most thirty days.

General payment systems mean systems for processing payments from a large number of mutually independent payers intended to reach a large number of mutually independent final recipients of payments.

Definition of Financing Business

Section 4. In this Act, financing business means business including commercial activity intended to

1. receive repayable funds from the public, directly or indirectly via a closely linked undertaking, and

2. provide credit, lodge surety for credit or, with a view to financing, acquiring receivables or leasing movable property.

Close links are considered to exist between undertakings that belong to the same group or which are so closely linked in another way, by common ownership, by agreement or such like, that the financial development for the owner of one or more of the undertakings is significantly influenced by the development in one or more of the other undertakings.

Other definitions

Section 5. In this Act,

1. *Associated undertaking:* a Swedish or foreign undertaking whose main activity consists of owning or managing real estate, providing computer services, or engaging in other similar activity associated with the principal activity of one or more credit institutions, securities companies, electronic money institutions or corresponding foreign undertakings,

2. *Bank:* means a banking company, savings bank and members bank,

3. *Banking company:* a limited company that has been granted authorisation to conduct banking business,

4. *Competent authority:* a foreign authority authorised to exercise supervision over foreign credit institutions,

5. *EEA:* European Economic Area,

6. *Branch:* a branch office with a separate management, whereupon a foreign credit institution's establishments of a number of places of activity, shall be considered as a single branch,

7. *Financial institution:* an undertaking that is not a credit institution, securities business, electronic money institution or corresponding foreign undertaking, and whose main activity is to

a. acquire shares and participations,

b. engage in securities trading without being subject to licence pursuant to Chapter 1, section 3 of the Securities Business Act (SFS 1991:981), or

c. conduct one or more of the activity listed in Chapter 7, section 1, second paragraph, sub-sections 2-10 and 12, without being subject to licence pursuant to Chapter 2, section 1,

8. *Home country*: the country in which an undertaking has been granted a licence for activity referred to in this Act,

9. *Capital base:* the same as in Chapter 2, sections 6-8, of the Capital Adequacy and Large Exposures (Credit Institutions and Securities Companies) Act (SFS 1994:2004),

10. C*redit institutions:* banks and credit market undertakings,

11. *Credit market company:* a limited company that has been granted a licence to conduct financing business,

12. *Credit market association:* an economic association that has been granted a licence to conduct financing business,

13. *Credit market undertaking:* a credit market company and credit market association,

14. *Qualified holding:* direct or indirect ownership of a company, if the holding represent 10 per cent of more of the equity or of all votes or otherwise makes possible a significant influence on the management of the company,

15. *Members bank:* an economic association as referred to in the Members Banks Act (SFS 1995:1570),

16. *Savings banks:* a company referred to in the Savings Bank Act (SFS 1987:619),

17. *Initial capital*: the capital as defined in Articles 34.2.1 and 34.2.2 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions,

18. *Foreign banking undertaking:* a foreign undertaking which has a licence to engage in banking business in its home country,

19. *Foreign credit undertaking:* a foreign undertaking which has a licence to engage in financing business in its home country, and

20. *Foreign credit institution:* a foreign banking undertaking and a foreign credit undertaking.

Section 6. A credit institution and another undertaking shall be deemed to have *close links* if

1. one of the undertakings directly or indirectly through subsidiaries owns at least 20 per cent of the equity and has at its disposal at least 20 per cent of the total number of votes in the other undertaking,

2. one undertaking directly or indirectly constitutes the parent company of the other or where there is a similar connection between the undertakings, or

3. both undertakings are subsidiaries to or have a similar link with one and the same legal person or are in an equivalent relation to one and the same natural person.

A natural person and a credit institution are also closely linked if

1. the natural person

a) owns at least 20 per cent of the capital of the credit institution,

b. has at its disposal at least 20 per cent of the total number of votes in a credit institution, or

c) in some other way has such influence over the credit institution that the person’s position corresponds to that a parent company has in relation to a subsidiary, or

2. there is another similar link between this person and the credit institution.

Receipt of repayable funds

Section 7. Only a Swedish or foreign credit institution may engage in business activity intended to receive repayable funds from the public, unless otherwise specially provided for.

The first paragraph does not apply to activity for which a prospectus is to be drawn up pursuant to the Companies Act (SFS 1975:1385), the Insurance Business Act (SFS 1982:713), the Financial Instruments Trading Act (SFS 1991:980), the Securities and Clearing Activities Act (SFS 1992:543) or corresponding foreign provisions. Act (SFS 2004:444).

The application of the rules to other undertakings than credit institutions

Section 8. Where a credit institution is part of a financial group of undertakings pursuant to Chapter 6, section 1, of the Capital Adequacy and Large Exposures (Credit Institutions and Securities Companies) Act (SFS 1994:2004), the provisions in Chapters 6-9, 13 and 15 of this Act and the provisions of the Capital Adequacy and Large Exposures (Credit Institutions and Securities Companies) Act on an institution's business and supervision over institutions, shall apply as appropriate for other undertakings in the group of undertakings. Restrictions relating to an undertaking's business shall apply to undertakings in the group jointly.

If there are special reasons, an undertaking may be granted an exemption from the provisions in the first paragraph. Matters relating to exemptions of this kind are to be considered by the Swedish financial supervisory authority, Finansinspektionen. Matters which involve matters of principle or which are of exceptional importance are to be considered by the Government.

Bank in company names, etc.

Section 9. Nobody other than a bank, the Riksbank, the General Mortgage Bank of Sweden and such foreign credit undertakings may use the word "bank" in its name or otherwise in conjunction with a description of its business. A foreign credit undertaking may, however, use the name used by the institution in the country where its head office is located when conducting business activities in Sweden.

An association or other legal entity with close links to a party as referred to in the first paragraph may use the word bank in its name after obtaining permission from Finansinspektionen.

Notwithstanding the provisions of this section, an undertaking subject to the Pawnbrokers' Act (SFS 1995:1000) may use the word "pantbank" [*translator's note: Swedish for "pawnbroker"*] in its name or otherwise in its business.

Duty of confidentiality

Section 10. An individual's relationship to a credit institution may not be unduly disclosed.

The provisions of the Secrecy Act (SFS 1980:100) shall apply instead in the activities of the public sector.

A person who contravenes the prohibition set forth in the first paragraph shall not be subject to criminal liability under Chapter 20, section 3, of the Swedish Penal Code.

Section 5a of the Credit Information Act (SFS 1973:1173) contains provisions whereby the duty of confidentiality in accordance with the first paragraph does not prevent the exchange of information in certain cases for the purpose of obtaining credit information.

Duty to provide information

Section 11. A credit institution is obliged to provide information on the individual's relations with the institution if, in the course of an investigation according to the provisions on preliminary investigation in criminal cases, this is requested by the investigating authority or if it is requested by a prosecutor in a matter concerning legal assistance in criminal cases at the request of another state or an international court.

Chapter 2. Banking and financing business subject to licence

The obligation to obtain a licence

Section 1. Banking or financing business may only be conducted after obtaining a licence, unless otherwise stated in this Act.

Exemptions from the obligation to obtain a licence for banking business

Section 2. A licence to conduct banking business is not required for issue of electronic money pursuant to the Electronic Money Issue Act (SFS 2002:149).

Exemptions from the obligation to obtain a licence for financing business

Section 3. A licence is not required for financing activity conducted by

1. a bank,

2. a foreign banking undertaking, which has a licence to conduct banking business in Sweden pursuant to Chapter 4, section 4,

3. an insurance undertaking, a securities business, the Swedish Ships' Mortgage Bank or pawnbrokers pursuant to the Pawnbrokers' Act (SFS 1995:1000) to the extent that it is permitted in accordance with the legislation applicable to them,

4. an undertaking that provides financing in connection with the sales of services which are offered or goods produced or sold by the undertaking,

5. a limited company or an economic association if

a. the activity consists of acquiring claims on a few occasions, and

b. funds for activity are not currently acquired from the public,

6. an undertaking which meets the financing requirements solely of other undertakings which are part of the same group or corresponding foreign group of companies, provided that the group or group of undertakings does not have the main aim of engaging in financial business,

7. an economic association which

a. has at most 1,000 natural persons as members at any time,

b. only accepts persons as members who belong to a clearly defined limited sphere and this sphere is specified in the rules of the association,

c. only receives refundable funds from its members or from financial undertakings, and

d. has as the sole objective of using such funds as referred to in c. to meet the financing requirements of members.

Exceptions pursuant to the first paragraph, sub-section 5 or 7, for activity conducted by limited companies or economic associations apply also to equivalent business conducted by the equivalent foreign undertakings.

Chapter 3 Licences for Swedish undertakings

Prerequisites for licences

Section 1. A licence to conduct banking business may be granted to Swedish limited companies, savings banks and members banks.

A licence to conduct financing business may be given to Swedish limited companies and economic associations.

The provisions on prerequisites for foreign undertakings to conduct banking or financing business in Sweden are contained in Chapter 4.

Section 2. A Swedish undertaking shall be granted a licence to conduct banking or financing business, if

1. the articles of association, statutes or by-laws comply with this Act and other legislation and otherwise include the special provisions required with respect to the extent and nature of the planned activity,

2. it may be assumed that the planned business will be conducted in accordance with the provisions of this Act and other statutory provisions that regulate the activity of the undertaking,

3. it may be assumed that the persons who possess or may be expected to possess a qualified holding in the undertaking

a. will not impede the business being run in such a way as to be compatible with this Act and other statutory provisions that regulate the undertaking’s activity, and

b. that such persons are otherwise suitable to exercise a significant influence on the management of a credit institution, and

4. that the person who will serve on the undertaking’s board of directors or serve as the managing director, or any person deputising for any of these persons, possesses sufficient insight and experience in order to participate in the management of a credit institution and is otherwise suitable for such a task.

A licence may not be granted if a person who has materially neglected his responsibilities in business activities or in other financial affairs, or is guilty of serious criminal acts, has or can be expected to obtain a qualified holding in the undertaking.

If the undertaking has or can be expected to have close links with another party, a licence may only be granted if the links do not impede an effective supervision of the undertaking.

Approval of the articles of association and related matters

Section 3. The articles of association, statutes or by-laws of an undertaking must be approved in conjunction with the granting of a licence to the institution to conduct banking or financing business.

Section 4. A credit undertaking that has decided to amend its articles of association, its statutes or by-laws, shall apply for approval of the amendment. The amendment is to be approved if the articles of association, statutes or by-laws comply with this Act and other statutory provisions and otherwise contain the special provisions required taking into consideration the scope and nature of the activity of the institution.

A decision on amendment of the articles of association, statutes or by-laws may not be registered before it has been approved.

Initial capital and related matters

Section 5. When starting activity, a banking company is to have an initial capital equivalent to at least EUR 5 million at the time of the decision to grant a licence.

Section 6. When starting activity, a savings bank shall have an initial capital equivalent to at least EUR 1 million at the time of the decision to grant a licence.

Section 7. A members bank and a credit market undertaking are to have an initial capital equivalent to at least EUR 5 million at the time of the decision to grant a licence.

If the total assets of the planned business can be estimated to total at most SEK 100 million, or, if the institution is intending to report its accounts in euro, EUR 12 million, a lower initial capital may be granted in connection with consideration of an application for a licence than specified in the first paragraph, although equivalent to a minimum to EUR 1 million.

Chapter 9, section 2, contains provisions on the size of the institution’s capital base in the event of the total assets exceeding SEK 100 million or, if the credit institution reports its accounts in euro, EUR 12 million, in the course of business. Act (SFS 2004:444).

Consideration of the application

Section 8. An application for a licence to conduct banking or financing business, as well as matters relating to approval of articles of association, statutes or by-laws, pursuant to section 3 or 4 and on the granting of a licence pursuant to section 7, second paragraph, will be considered by Finansinspektionen. The following matters are to be considered by the Government, however, if they involve a matter of principle or of special importance.

1. matters concerning licences to conduct banking business, as well as issues pursuant to sections 3 and 7, second paragraph, in the same matters, and

2. matters concerning approval of an amendment to the articles of association, statutes or by-laws of a bank pursuant to section 4.

Applications for licences

Section 9. A limited company and an economic association may apply for a licence before the undertaking has been registered in the register of limited companies, the register of European companies or the register of associations.

If an application for a licence has been made within six months from the signature of the memorandum of association, the time runs from the date of the licence decision as provided for in Chapter 2, section 9, first paragraph, of the Companies Act (SFS 1975:1385). If an economic association has applied for a licence within six months of the decision to form the association, the time will run as provided for in Chapter 2, section 3, first paragraph, of the Co-operative Economic Associations Act (SFS 1987:667). Act (SFS 2004:591).

Chapter 4. Conditions for the activity of foreign undertakings in Sweden

Credit institutions with their registered office within the EEA

Section 1. A foreign credit institution, which has its registered office within the EEA and conducts financial business there, may start to conduct such business activities referred to in Chapter 7, section 1, second paragraph, through a branch office in Sweden, two months after Finansinspektionen has received notification from a competent authority in the institution’s home country containing

1. a plan for the intended activity in Sweden, with information, inter alia, on the organisation of the branch office,

2. information on the address and responsible management of the branch office, and

3. information on the size and capital base of the credit institution and capital adequacy ratio.

Finansinspektionen may consent to activity starting earlier than has been stated in the first paragraph. If necessary, Finansinspektionen shall inform the institution on the regulations that apply for activity in Sweden before the foreign credit institution starts activity from the branch office.

Section 2. A foreign credit institution, as referred to in section 1, may offer and provide services as referred to in Chapter 7, section 1, second paragraph, in Sweden without establishing a branch office here, as soon as Finansinspektionen has received notification from a competent authority in the home country of the institution specifying the services the institution intends to provide in Sweden.

Section 3. The provisions made in sections 1 and 2 on a foreign credit institution also apply to a financial institution, which has its registered office within the EEA and its subsidiaries, if the financial institution is a subsidiary of foreign credit institution as referred to in section 1 or is owned jointly by two or more foreign credit institutions and complies with all of the following conditions.

1. the foreign credit institution or institutions that own the financial institution (the owning credit institution) shall be authorised as a credit institution in the EEA country whose law governs the financial institution,

2. the activity in question is to be conducted in an EEA country whose law applies for the financial institution,

3. the owning credit institution shall hold at least 90 per cent of all votes in the financial institution,

4. the owning credit institution shall comply with the requirements of the competent authorities for sound management of the financial institution and shall have undertaken, with the consent of the competent authorities in the home country, jointly and severally to take responsibility for the undertakings made by the financial institution, and

5. the financial institution shall be covered, in particular with respect to the activity in question, by the group-based supervision that the owning credit institution is subject to.

It shall be clear from the notifications referred to in sections 1 and 2 that the conditions in the first paragraph are complied with.

Such notification as referred to in section 1 shall, with respect to such undertakings referred to in the first paragraph, also contain information about the consolidated capital adequacy ratio for the owning credit institution or its parent company.

Other foreign credit institutions

Section 4. A foreign credit institution other than an institution referred to in section 1 may be granted a licence to conduct banking or financing business from a branch office in Sweden. This licence is to be granted if

1. the institution is adequately supervised by a competent authority in the home country of the institution and the authority has consented to the undertaking being established in Sweden,

2. there is reason to believe that the planned activity will be carried out in a sound way, compatible with Chapter 3, sections 2-7, and

3. deposits at the branch are covered by the guarantee pursuant to the Act (SFS 1995:1571) on Deposit Guarantee Scheme or by a foreign guarantee that

a. covers the deposits specified in section 2 of the Act on Deposit Guarantee Scheme, and

b. has a maximum compensation level not less than an amount equivalent to EUR 20,000 before a deduction has been made for an excess when appropriate of at most 10 per cent of the amount deposited by an individual depositor.

Section 5. An application for a licence to establish a branch office pursuant to section 4 shall be considered by Finansinspektionen. In the matter of a banking undertaking, however, cases which raise matters of principle or are of special importance are to be considered by the Government.

Section 6. A credit institution with its registered office outside the EEA may after notification to Finansinspektionen conduct activity which mainly concerns representation and acting as intermediary for banking and financing services, from a branch or other permanent location of activity (representation office) in Sweden.

Permitted activity

Section 7. A foreign credit institution which conducts business, pursuant to sections 1, 2 or 4, may only pursue activity here which is covered by the institution’s licence for activity in its home country.

A foreign undertaking as referred to in section 3 may only conduct activity here which is permissible in accordance with the articles of association or statutes of the undertaking and only to the extent that the foreign credit institution or institutions that own the company or its parent company would have been entitled under the first paragraph to conduct such activity.

Chapter 1, sections 3d and 3e, the Securities Business Act (SFS 1991:981) includes provisions that the activity referred to in Chapter 1, section 3, of the same Act may under certain conditions be conducted by foreign credit institutions which conduct activity pursuant to sections 1 and 2, and by financial institutions and subsidiaries which engage in activity pursuant to section 3.

Chapter 5. The activity of Swedish undertakings abroad

Branch office activity in a country within the EEA

Section 1. If a credit institution, which engages in activity with the intent of receiving repayable funds from the public and of providing loans, lodging surety for credit or, with a view to financing, acquiring receivables or leasing movable property, wishes to establish a branch office within the EEA for activity referred to in Chapter 7, section 1, second paragraph, the institution shall notify Finansinspektionen before commencing activity. This notification shall include

1. information about the institution’s plan for the branch office activity in Sweden, with information on the organisation of the branch office, and

2. information on the country in which the branch office is to be established and details of the address and responsible management of the branch office.

Section 2. If Finansinspektionen finds in cases referred to in section 1 that there is no reason to call into question the institution’s administrative structure or financial situation, Finansinspektionen shall within three months of receiving the notification, pass it on to the competent authority in the country where the branch office is to be established. Finansinspektionen shall at the same time attach information on the size of the institution’s capital base and the capital adequacy ratio to this notification.

Finansinspektionen shall inform the credit institution when it passes on the notification.

If Finansinspektionen finds the prerequisites are not met to pass on the notification as referred to in the first paragraph, Finansinspektionen shall notify a decision on this within three months of it being received.

Section 3. If a credit institution, as referred to in section 1, changes any of the circumstances stated in the credit institution’s notification to Finansinspektionen after the branch office has been established, the institution shall immediately notify Finansinspektionen at least a month before the change is implemented.

If Finansinspektionen finds that the change may not be made, Finansinspektionen shall notify its decision and within a month of it having received notification. The competent authority in the other country shall be immediately notified of the decision.

Cross-border operations within the EEA

Section 4. If a credit institution, as referred to in section 1, wishes to offer and provide such services as referred to in Chapter 7, section 1, second paragraph, within the EEA without establishing a branch office there, the institution shall notify Finansinspektionen prior to commencing such activity. This notification shall contain information on the country in which the activity will be conducted and the services to be offered.

Finansinspektionen shall within a month of the notification being received, pass it on to the competent authority in the country where the activity is to be conducted.

Other cases of branch operations abroad

Section 5. In other cases than those referred to in section 1, a credit institution which plans to establish a branch office abroad shall apply for a licence to Finansinspektionen. Such a licence shall be granted if it may be assumed that the planned activity will be conducted in accordance with this Act and other legislation that regulates the activity of the institution.

Chapter 6 General regulations on a credit institution’s activity

Solvency and liquidity

Section 1. A credit institution’s business shall be conducted so as not to imperil the institution’s ability to comply with its undertakings.

Risk management

Section 2. A credit institution shall identify, measure and have control over the risks associated with its business.

An institution shall in particular ensure that its credit risks, market risks, operating risks and other risks in combination do not entail that the ability of the institution to comply with its undertakings is jeopardised.

Transparency

Section 3. The business of a credit institution is to be organised and conducted in such a way that it is possible to overview the position of the institution.

Soundness

Section 4. The business of a credit institution is to be operated in a sound way in other respects than those stipulated in sections 1-3.

Guidelines and instructions

Section 5. The board of a credit institution shall issue written internal instructions to the extent required to control its business.

Head office in Sweden

Section 6. Every credit institution shall have a head office in Sweden.

Commission agreements

Section 7. If a credit institution wishes to commission another entity to carry out any of the services referred to in Chapter 7, section 1, the institution shall notify this to Finansinspektionen and submit the commission agreement.
A commission of this kind may be given if

1. The institution is responsible in relation to the client for the commissioned activity,

2. The activity is run by the contractor in controlled forms with adequate security, and

3. The commission is not of such an extent that the institution cannot comply with the obligations ensuring from this Act or other statutory provisions that regulate the institution’s activity.

Chapter 7. Activity and possession of property and related matters

Financial activity

Section 1. A credit institution may only engage in financial activity and activity that is naturally associated with this activity.

A credit institution may in its activity, inter alia

1. borrow funds, for instance, by accepting deposits from the public or issuing bonds or similar debt instruments,

2. grant and broker loans, for instance, in the form of consumer loans and loans secured by mortgages in real estate or instruments of indebtedness,

3. participate in conjunction with financing, for instance, by acquiring claims and leasing movable property,

4. negotiate payments,

5. provide means of payment,

6. issue guarantees and assume similar obligations,

7. participate in issues of securities,

8. provide financial advice,

9. hold securities in safekeeping,

10. conduct documentary credit activity,

11. provide bank safe deposit services,

12. engage in currency trading,

13. engage in securities trading on the conditions provided for in the Securities Business Act (SFS 1991: 981), and

14. provide credit information subject to the conditions prescribed in the Credit Information Act (SFS 1973:1173).

Possession of property in general

Section 2. A credit institution may only possess

1. property that is required for its own activity as referred to in section 1,

2. property which is acquired to protect a claim pursuant to sections 3-8,
and

3. shares and participations with the restrictions stipulated in sections 9-11.

Possession of property to protect a claim

Section 3. To protect a claim, a credit institution may

1. purchase property which has been subject to distraint or constitutes security for a claim at a public auction, a Swedish or foreign stock exchange or an authorised market place or any other regulated market or at a compulsory sale, and

2. take over property which is security for the claim or other property as payment for a claim,
if there is reason to believe that the institution would otherwise suffer a considerable loss,

Section 4. The provisions made in section 3 do not apply to the institution’s own shares or shares in the parent company. Acquisition of such shares is subject to provisions in Chapter 7 of the Companies Act (SFS 1975:1385). The stipulations made in section 3 do not either apply to certificates of participation or contributions to members banks or credit market associations. With respect to the matter of a saving bank’s acquisition of certificates of contribution to guarantee fund or basic fund of the savings bank, the provisions of Chapter 5, section 7, first paragraph of the Saving Bank Act (SFS 1987:619) apply.

Section 5. In exchange for property that has been purchased or taken over pursuant to section 3, a credit institution may acquire shares or participations in an undertaking that has been established to manage property or to continue activity that has been conducted with this.

If shares or participations have been acquired pursuant to section 3 or pursuant to the first paragraph, the credit institution may, if there is a manifest risk of otherwise incurring a loss, acquire additional shares or participations in the same undertaking.

If shares or participations in an undertaking acquired pursuant to section 3 or pursuant to the first or second paragraph, the credit institution may if the undertaking transfers its assets to another undertaking exchange these shares or participations for shares or participations in the other undertaking.

Section 6. The property that a credit institution acquired, pursuant to section 3 or 5, shall be divested when appropriate taking into consideration market conditions. However, the property shall be divested at the latest when it can take place without loss for the institution. If the property has not been divested within three years of the acquisition, the institution may continue to possess the property only if Finansinspektionen gives its consent.

Section 7. Acquisition of property to protect the claim shall be notified to Finansinspektionen.

Section 8. A credit institution shall provide a special report to Finansinspektionen each year on property acquired to protect a claim.

Holdings of shares and participations

Section 9. A credit institution's qualified holdings of shares or participations in other undertakings than credit institutions, foreign credit institutions, electronic money institutions, securities businesses, financial institutions, associated undertakings and insurance undertakings may not total more than 60 per cent of the capital base of the credit institution. Such a holding in an individual undertaking may amount to at most 15 per cent of the capital base of the credit institution.

Shares or participations acquired in conflict with the first paragraph shall be disposed of without delay.

If shares or participations have been acquired within the framework of the limits referred to in the first paragraph and the relationship between the qualified holdings and the capital base subsequently changes so that the limits are exceeded, the institution shall at the first appropriate opportunity dispose of the excess shares and participations.

Section 10. The following shall not be taken into account when calculating the limits referred to in section 9, first paragraph

1. shares or participations that a bank holds temporarily in participation in a temporary reconstruction or as a step in protection of a claim according to sections 3-8, or

2. shares or participations which a credit institution temporarily holds as a normal component of issue activity or in its own name on account of another.

Section 11. The limits stated in section 9, first paragraph, may be exceeded if

1. the amount by which the qualified holding is exceeded is covered by the capital base of the institution, and

2. deductions are made for the corresponding part of the capital base when calculating the capital adequacy ratio pursuant to the Capital Adequacy and Large Exposures (Credit Institutions and Securities Companies) Act (SFS 1994:2004) for credit institutions and securities businesses.

If both the limits referred to in section 9, first paragraph, are exceeded, the largest amount by which any limit is exceeded shall be covered in the way described in the first paragraph.

Consent for acquisition of property in certain cases

Section 12. A credit institution may only acquire property, after consent by Finansinspektionen, if the institution's counter performance corresponds to over 25 per cent of its capital base. Consent shall be obtained prior to the acquisition.

Consent is to be given if it cannot be assumed that the acquisition will lead to breach of this Act or other statutory provisions.

Chapter 8 Credit management and management of other commitments

Creditworthiness

Section 1. Before a credit institution decides to grant a loan it shall make an assessment of the risk for the undertakings ensuing from the loan agreement not being complied with. The institution may grant a loan only if there are good grounds for assuming that the undertakings will be complied with.

An assessment of creditworthiness need not be made in the situations referred to in section 5a, second and third paragraphs, of the Consumer Credit Act (SFS 1992:830).

Basis for decision-making

Section 2. A credit institution’s assessment of creditworthiness shall be organised in such a way that those who make decisions in a case have a sufficient basis for decision-making to assess the risk of granting the credit.

Documentation

Section 3. A credit institution’s loan decision shall be documented in such a way as to show the basis for the decision and the processing of the loan application otherwise.

Commitments resembling loans

Section 4. The provisions made in sections 1-3 on the assessment of creditworthiness, the basis for decision-making and documentation are also to be applied to commitments resembling loans.

Provisions of services to a disqualified group

Section 5. A credit institution may not agree on services on other conditions than those normally applied by the institution or enter into other agreements on conditions that are not commercially justified with or to the benefit of

1. a member of the board of directors,

2. a delegate in a leading position who alone or in conjunction with another, may decide loan applications that are at the discretion of the board,

3. an employee who holds a leading position at the institution,

4. another shareholder or participation holder than the state with a holding corresponding to at least three per cent of the whole capital,

5. the spouse or partner of a person referred to in 1-4 , or

6. a legal entity in which such person as referred to in 1-5 has an important financial interest in the capacity of a partner or member.

A members bank may not either enter into such agreements as referred to in the first paragraph or to the benefit of the lay auditor at the bank.

Finansinspektionen considers whether a delegate or employee has such a leading position as is referred to in the first paragraph, sub-section 2 and 3.

Section 6. The board of the institution shall consider items of business as referred to in section 5. It shall furthermore include information in a list on the agreements that have been entered into.

Chapter 9 The size of the capital base, the passbook and the funds of minors or legally incompetent persons

Section 1. The provisions on capital adequacy and major exposures are contained in the Act (SFS 1994:2004) on Capital Adequacy and Major Exposures for Credit Institutions and Securities Companies.

Section 2. A members bank or credit market undertaking as referred to in Chapter 3, section 7, second paragraph, permitted to start its business with a lower initial capital than corresponding to EUR 5 million, may in the course of activity, have a capital base which is less than that amount but which is equivalent to at least

a. EUR 2 million if the total assets exceed SEK 100 million but not SEK 200 million or, if the institution has its accounts in euro, EUR 12 million but not more than EUR 24 million,

b. EUR 3 million if the total assets exceed SEK 200 million but not SEK 300 million or if the institution has its accounts in euro, EUR 24 million but not EUR 36 million,

c. EUR 4 million if the total assets exceed SEK 300 million but not SEK 400 million or if the institution has its accounts in euro, EUR 36 million but not EUR 48 million.

If the total assets exceed SEK 400 million or, the institution has its accounts in euro, EUR 60 million, the institution shall have a capital base corresponding to at least EUR 5 million.

The size of the capital base according to the first and second paragraphs is to be calculated according to the exchange rate applicable at the time of decision pursuant to Chapter 3.

Section 3. The capital base of a credit institution may not exceed the amount that was required, under Chapter 3, sections 5-7, when the business was started.

If a members bank or a credit market undertaking pursuant to section 2, first paragraph, has been granted consent to have a lower capital base than the equivalent of EUR 5 million, the capital base must not be less than the highest of the amounts required for the institution pursuant to the aforesaid paragraph.

Passbook

Section 4. A passbook or other certificate issued by a bank on behalf of the depositor shall be made out to a particular person and stipulate that transfer may only take place to a particular person and that transfer should be notified to the bank.

The bank may not enter a qualification on the right for the bank to claim payment for other than the owner of the passbook.

Special provisions exist for notation as missing and extinction of lost passbooks. Act (SFS 2004:444).

Funds belonging to under age persons and the legally incapacitated

Section 5. An under age person or person lacking legal capacity may, without the consent of the guardian, dispose of funds which the under age person or person lacking legal capacity has himself deposited with the bank from such time that he attains the age of 16. The bank may not disburse such funds to the guardian without the consent of the under age person or person lacking legal capacity. The under age person or person lacking legal capacity may no longer dispose of such funds where the guardian has obtained the consent of the chief guardian to take charge of the funds and has produced evidence of such consent. Such restriction on the entitlement of an under age person or person lacking legal capacity must be recorded in the deposit receipt or in the passbook upon production of receipt or passbook at the bank, or in another way that makes the restriction known at the bank.

Funds managed by a guardian, trustee or administrator pursuant to the Parental Code may only be withdrawn without the consent of the chief guardian where a reservation has been made pursuant to Chapter 14, section 8, of the Parental Code or interest is withdrawn. Under Chapter 14, section 21 of the Parental Code, the chief guardian may order that such a reservation shall not apply. The order shall be recorded on the receipt or in the passbook issued in relation to the deposit or in another way that makes the decision known at the bank. The bank is obliged upon request of a chief guardian, guardian, trustee or administrator to issue a receipt for the amount of the funds which are deposited or represent the balance and, where applicable, shall certify that the notified consent has not been utilised.

Where parents are a guardian, they may withdraw funds managed by them pursuant to the Parental Code without the consent of the chief guardian provided the funds have not been stated as having been deposited subject to the reservation that they may not be withdrawn without such consent or that they are subject to specific chief guardian control pursuant to Chapter 16. section 11, of the Parental Code. The chief guardian may, pursuant to Chapter 13, section 19, of the Parental Code, order other restrictions on the parents’ entitlement to withdraw funds. The limitations on the entitlement to withdraw funds as referred to in this paragraph shall be recorded on the receipt or passbook issued in relation to the deposit, or in another way that makes the restriction known at the bank.

Chapter 10 Special provisions for banking companies in the law of associations

Section 1. The provision made for limited companies in general applies to banking companies unless otherwise provided for in this Act or special provisions. If there are references in the Companies Act (SFS 1975:1385) to provisions in the same Act and these provisions apply instead of or alongside of the provisions of the Companies Act, references on application relating to banking companies shall instead respectively also refer to provisions in this Act.

Share capital

Section 2. The share capital of a banking company is to be determined taking into consideration the extent and nature of the planned business.

Subscription to shares

Section 3. If subscription of shares means that a party which has not been considered pursuant to Chapter 3, section 2, first paragraph, sub-section 3, or second paragraph, will have a qualified holding in the banking company, the company may not be established without consideration having taken place. If the person is not considered suitable, the company may not be established.

Reduction of the share capital

Section 4. Finansinspektionen may consent to a reduction of the share capital taking place without the consent of the court pursuant to Chapter 6, section 6, first paragraph, of the Companies Act (SFS 1975:1385) if the banking company at the same time as the reduction undertakes measures that entail that neither the company's restricted equity nor its share capital is reduced as a result of the decision on reduction.

Section 5. The provisions of this section shall be applied instead of the provisions in Chapter 6, section 6, second-fourth paragraphs of the Companies Act (SFS 1975:1385).

The consent of the court is to be applied for at the latest two months after the reduction decision has been registered. A registration certificate is to be attached to the application.

The court shall obtain Finansinspektionen's statement without delay if and, in this case, to what extent the reduction can affect the right of depositors. If the court finds taking into consideration the content of the statement that the reduction should not be implemented, the application shall be immediately dismissed. Otherwise, the court should notify the company's creditors, instructing those who wish to contest the application to notify the court of this at the latest by a stated date. The order shall state that the person who does not make such notification will be considered as having consented to the application. The notice shall contain a brief summary of Finansinspektionen's statement. The court shall ensure that the notice is published in Post- och Inrikestidningar (the Swedish Official Gazette) without delay.

Consent shall be notified, if the application has not been contested or if the creditors who contest it receive full payment or satisfactory security for their claims. However, the fact that a depositor opposes the application is not a hindrance, if Finansinspektionen's statement provides grounds for notifying consent.

The company's own shares as security.

Section 6. A banking company may accept its own shares or shares in its parent company as a pledge if these shares are a smaller portion of the shares that have been provided a security for a loan.

The bank's management

Section 7. The board of directors of a banking company shall consist of no less than three members. The majority of the members must be persons who are not employed by the bank or an undertaking which is part of the group of which the bank is the parent company.

Section 8. The managing director of a banking company shall be appointed by the board of directors. The company's managing director may not be the chairman of the board of directors.

Section 9. The right to sign the company name on behalf of a banking company may only be exercised by two or more persons acting jointly unless otherwise prescribed in Chapter 8, section 30, of the Companies Act (SFS 1975:1385) regarding the managing director's right to sign on behalf of the company. No other restrictions may be registered.

Section 10. Prior to elections of members of the board of directors of a banking company, the chairman of the general meeting must provide information to the general meeting regarding positions held by those persons to be elected in other undertakings.

General Meetings

Section 11. In addition to the provisions made regarding the duty to provide information and supervision in Chapter 9, sections 22 and 24 of the Companies Act (SFS 1975:1385), information may only be disclosed where such can occur without significant prejudice to the individual.

The provisions of Chapter 9, section 23, of the Companies Act shall also apply where the board of directors finds that information requested pursuant to Chapter 9, section 22, of the Companies Act, cannot be provided to the shareholders without significant prejudice to the individual.

Auditing

Section 12. At least one of the auditors elected by the general meeting of a banking company must be an authorised public accountant or approved public accountant who has passed the auditors examination.

Where an authorised public accountant or an approved public accountant who has passed the auditors examination, has not been appointed at the annual general meeting, the provisions regarding the appointment of an auditor by the County Administrative Board in Chapter 10, sections 24 and 26 of the Companies Act (SFS 1975:1385) shall apply.

Section 13. In addition to what is prescribed regarding the duty to provide information pursuant to Chapter 10, section 41, Chapter 11, sections 18 and 21 of the Companies Act (SFS 1975:1385), information may only be disclosed where such may occur without considerable prejudice to the individual.

Section 14. Chapter 13, section 10, contains provisions on the special obligation to render report of the auditor and special examiner to Finansinspektionen.

Loan prohibition

Section 15. The provisions of this section and Chapter 8, section 5, shall apply in lieu of the provisions of Chapter 12, sections 7-9 of the Companies Act (SFS 1975:1385).

A banking company may not grant a loan for debtors to acquire shares in the company where the total amount of such loans would thereafter exceed the company's non-restricted equity.

Liquidation

Section 16. With the exception of those cases set forth in Chapter 13, sections 11, 16, 20, 49 and 50 of the Companies Act, (SFS 1975:1385), the court shall order that a banking company be placed in liquidation where its licence has been revoked.

Section 17. On application of Chapter 13, section 10, of the Companies Act (SFS 1975:1385), the provision made there in the first paragraph, sub-section 2, on Chapter 8, section 3, first paragraph, and section 16 of the Annual Accounts Act (SFS 1995:1554) shall instead refer to Chapter 8, sections 5 and 8, of the Act (SFS 1995:1559) on Annual Accounts in Credit Institutions and Securities Companies.

Section 18. A petition for liquidation of a banking company in accordance with section 16 of this Chapter or Chapter 13, section 10 or 16 of the Companies Act (SFS 1975:1385), may also be lodged by Finansinspektionen.

Section 19. In addition to the provisions made in Chapter 13, section 44, of the Companies Act, a decision on the cessation of liquidation and the resumption of the activity of the banking company may not be made if the company's licence to conduct banking business has been revoked.

Merger

Section 20. Only a banking company may acquire another banking company's total assets and liabilities by merger.

Section 21. The provisions of Chapter 14, section 13-18 of the Companies Act (SFS 1975:1385) shall not apply in conjunction with a merger with another banking company. The provisions of sections 22-24 of this chapter shall apply in lieu thereof.

Section 22. Following approval of the merger plan by the companies, the transferor company and the transferee company shall apply for consent to execute the plan. Issues regarding such consent shall be determined by Finansinspektionen. However, cases involving matters of principle or of special importance shall be determined by the Government. Furthermore, in conjunction with a merger by consolidation, the companies shall apply for a licence pursuant to Chapter 3, section 2, and approval of the articles of association for the transferee company pursuant to Chapter 3, section 3.

The application must be submitted within one month from the date that the merger plan was approved in both companies and not later than two years after the public notice of the merger plan pursuant to Chapter 18, section 2, of the Companies Act (SFS 1975:1385).

Finansinspektionen is to notify the registration authority on applications according to the first paragraph and on decision that have attained legal force that are notified arising from such applications.

Section 23. In conjunction with the determination of an application for consent to execute a merger plan, consideration shall be given to whether the companies' creditors will be afforded satisfactory security where such security is required taking into account the merging companies' financial circumstances and whether the creditors have not already received such security.

Section 24. An application in accordance with section 22 shall be denied, where

1. the merger has been prohibited in accordance with the Competition Act (SFS 1993:20) or by legislation, agreements or other decisions which result from Sweden's accession to the European Union or where such a determination of the merger is in process,

2. in conjunction with consolidation, it is not apparent from the merger plan that the transferor company's total actual value to the transferee company amounts to at least the share capital in this, or

3. the company's creditors are not assured such a satisfactory security as referred to in section 23 or the merging companies' financial circumstances otherwise are not such that the merger may not be deemed to be compatible with depositors' or other claimants' interests.

Where the application cannot be granted due to the fact that a determination is taking place in accordance with the first paragraph, sub-section 1, and the consideration may be assumed to require a short time, the question of consent may, however, be suspended for a period of not more than six months.

Section 25. An application pursuant to Chapter 14, section 19 of the Companies Act (SFS 1975:1385) must be submitted within two months from such time that the consent has been granted.

Section 26. A merger through the merger of a wholly-owned owned subsidiary into its parent may take place notwithstanding that there is property in the subsidiary which the banking company may not acquire in accordance with this Act. Such property must be divested not later than one year following registration. Where special cause exists, Finansinspektionen may extend this period.

Section 27. The provisions of Chapter 14, sections 26 and 27 of the Companies Act (SFS 1975:1385) shall not apply in conjunction with the merger of a wholly-owned subsidiary into its parent. The provisions of this section shall apply in lieu thereof.

The parent company shall apply for consent to execute the merger plan not less than one month and not more than two months following public notice of registration of the merger plan. Issues regarding such consent shall be determined by Finansinspektionen. However, cases involving matters of principle or of special importance shall be determined by the Government.

The provisions of sections 23 and 24 shall apply, where applicable, in relation to such matters. References to the transferor company shall be deemed to refer to subsidiary companies and reference to the transferee company shall be deemed to refer to parent companies.

Damages

Section 28. The provisions made in Chapter 15, sections 1-3, of the Companies Act (SFS 1975:1385) on liability in breach of the Act, of the applicable Annual Accounts Act and of the Articles of Association, also apply for banking company in the event of breach of this Act and the Capital Adequacy and Large Exposures (Credit Institutions and Securities Companies) Act (SFS 1994:2004).

Company names

Section 29. A banking company's name must include the word "bank".

Section 30. A banking company, which acquired the business of a savings bank in conjunction with conversion pursuant to Chapter 8 of the Savings Bank Act (SFS 1987:619), may, following the consent of Finansinspektionen, use the words "savings bank" in its name. The above-stated shall apply to a banking company which has subsequently acquired such a business.

Special provisions for European companies

Section 31. The Swedish Companies Registration Office shall issue a certificate as referred to in Article 25.2 of the Council Regulation (EC) no. 2157/2001 of 8 October 2001 on the Statute for a European Company (SE regulation), when a decision has been notified under Chapter 10, sections 22-24, and the decision has attained legal force. Act (SFS 2004:591).

Section 32. Sections 10-15 of the European Companies Act (SFS 2004:575) are not applicable when a European company which has a licence to conduct banking activity intends to move its registered office from Sweden to another state. Sections 33-35 of this Act are applicable instead. Act (SFS 2004:591).

Section 33. If a general meeting of shareholders pursuant to Article 8 of the SE regulation has decided that the registered office of the company is to be moved to another state, the company shall apply for consent to the move. Matters concerning such consent are to be considered by Finansinspektionen. However, cases involving matters of principle or of special importance shall be determined by the Government.

Applications are to be submitted within a month of the decision of the general meeting of shareholders on the move.

The following are to be attached to the application

1. a copy of the minutes of the general meeting of shareholders at which the decision on a move was made,

2. a copy of the proposal for a move,

3. a copy of the report made pursuant to Article 8.3 of the SE regulation.

If the company has not included the documents referred to in the third paragraph with the application or if there is any other impediment to taking up the application for consideration, the company shall be instructed to rectify the deficiency within a specified period. If the company does not do this, the application shall be rejected.

Finansinspektionen is to notify the registration authorities of applications pursuant to the first paragraph and of decisions that have obtained legal force notified ensuing from such applications. Act (SFS 2004:591).

Section 34. Consent to the move of a registered office shall be notified if

1. the company’s creditors are assured adequate security, if such protection is required taking into consideration the company’s financial circumstances and the creditors do not already have such security,

2. the company’s financial circumstances otherwise are such that the move can be considered as being compatible with the depositor’s or other claimants’ interests, and

3. there is no impediment to the move under Article 8.15 of the SE regulation. Act (SFS 2004:591).

Section 35. The Swedish Companies Registration Office shall issue such a certificate referred to in Article 8.8 of the SE regulation when the decision has been notified in accordance with section 34 and the decision has attained legal force. Act (SFS 2004:591).

Section 36. With respect to European companies with a management system as referred to in Articles 39-42 of the SE regulation (European companies with a two-tier organisation), the following provisions of this Act on the board of directors of a banking company or its members shall be applied to the supervisory body or its members:

Chapter 3, section 2, first paragraph, subsection 4 on management assessment,

Chapter 8, section 5, first paragraph, subsection 1, on agreement on services or in favour of board members,

Chapter 10, section 7, second sentence, on the composition of the board,

Chapter 10, section 10, on commissions in other undertakings,

Chapter 10, section 11, second paragraph, on the duty to make notification to the general meeting of shareholders,

Chapter 13, section 12, on the right of Finansinspektionen to call a board meeting and to be present at such a meeting and participate in the deliberations, and

Chapter 15, section 2, of revocation of licences.

It is evident from section 16, second paragraph, and section 22 of the European Companies Act (SFS 2004:575) that the provisions stipulated in the first paragraph on the board of directors or its members are also to be applied to the management or administrative body and its members of a European company. Act (SFS 2004:591).

Chapter 11 Special rules in association law for credit market companies

Section 1. The provisions made in Chapter 10 that apply to a banking company shall also apply to credit market companies except the provisions on liquidation in sections 16-19, on merger in section 20, and on the name in sections 29 and 30.

The provisions made on merger in Chapter 10, sections 21-27, apply only in the event of a merger between a credit market company and another company and only if a bank is not the company taking over. Matters concerning consent pursuant to sections 22, 27 or 33 are always considered by Finansinspektionen. Act (SFS 2004:591).

Section 2. Application for liquidation of a credit market company, pursuant to Chapter 13, sections 10 and 16 of the Companies Act (SFS 1975:1385), may also be made by Finansinspektionen.

Chapter 12 Specific rules in association law for credit market associations

Section 1. The provisions for economic associations in general apply to credit market associations unless it otherwise follows from this Act or is specially provided for.

Contributed capital

Section 2. The contributions in a credit market association shall always be made in money.

The management of the association

Section 3. The majority of the members of the board of a credit market association shall be persons who are not employees of the association or in undertakings included in a group where the association is the parent undertaking.

Section 4. In a credit market association, the board of directors shall appoint a managing director. The managing director of the association may not be chairman of the board.

Section 5. The right to sign for a credit market association may only be exercised by two or more persons jointly unless it follows otherwise from the provisions in Chapter 6, section 12 (SFS 1987:667) of the Co-operative Economic Associations Act. No other restriction may be registered.

Section 6. The chairman of the associations annual general meeting shall before the election of the board takes place provide information to the meeting on the positions that the candidates for election hold in other companies.

General Meeting

Section 7. In addition to that which is prescribed regarding the duty to provide information in Chapter 7, section 11, first paragraph, of the Co-operative Economic Associations Act (SFS 1987:667), information may only be disclosed where such can occur without significant prejudice to the individual.

The provisions of Chapter 7, section 11, third paragraph, of the Co-operative Economic Associations Act (SFS 1987:667) shall also be applied when the board has found that information requested in accordance with Chapter 7, section 11, first and second paragraphs, of the same act cannot be provided to a member without significant prejudice to the individual. Act (SFS 2004:444).

Auditing

Section 8. At least one auditor of a credit market association must be appointed by the annual general meeting.

Section 9. Only a person who is an authorised or approved public accountant may be an auditor in a credit market association.

At least one auditor that the annual general meeting has appointed shall be an authorised public accountant or approved public accountant who has passed the auditors examination.

Section 10. In addition to the provisions made on the duty to provide information in Chapter 8, section 16, of the Co-operative Economic Associations Act (SFS 1987:667), information may only be disclosed where such can occur without significant prejudice to the individual.

Section 11. Provisions on the duty to report of the auditors and the special examiner to Finansinspektionen are contained in Chapter 13, section 10.

Liquidation

Section 12. A petition for liquidation of a credit market association pursuant to Chapter 11, sections 3 and 4 of the Co-operative Economic Associations Act (SFS 1987:667) may also be lodged by Finansinspektionen.

Merger

Section 13. In the event of a merger with a credit market association, Chapter 12, section 6, of the Co-operative Economic Associations Act (SFS 1987:667) is not applicable. Instead sections 14-16 are applicable.

Section 14. At the latest two months after the agreement on a merger has been registered, both the transferor association and the transferee association shall apply to Finansinspektionen for consent to implement the agreement. In addition, in conjunction with a merger through combination the associations shall moreover apply for consent pursuant to Chapter 3, section 2, and approval of the statutes pursuant to Chapter 3, section 3 for the transferee association.

Finansinspektionen shall notify the registration authority on the applications according to the first paragraph and on the decisions that have attained legal force that have been notified arising from such applications.

Section 15. In the consideration of an application for consent to implement a merger agreement, consideration shall be given to whether the association’s creditors are assured satisfactory security if such protection is required taking into consideration the merged associations’ financial circumstances and whether the creditors do not already have such security.

Section 16. An application pursuant to section 14 shall be rejected if the associations’ creditors have not been assured such satisfactory security as referred to in section 15 or if the financial circumstances of the merged associations otherwise are not such that the merger can be considered as being compatible with the interest of the depositors and other claimants.

Section 17. The provisions made on the consent of the court in Chapter 12, section 7 of the Co-operative Economic Associations Act (SFS 1987:667) shall instead apply to consent by Finansinspektionen.

Section 18. In the event of merger of a wholly-owned subsidiary, Chapter 12, section 8, of the Co-operative Economic Associations Act (SFS 1987:667) shall not apply. Instead the provisions of this section shall apply.

Where a credit market association owns all shares of a subsidiary limited company, the boards of the association and the company may enter into a merger agreement which entails merger of the limited company into the association. The boards of directors shall notify the agreement for registration at the registration authority. Applicable parts of sections 14-16 apply to the continuation of this procedure. What is prescribed there on a transferring association shall instead apply to the company.

A merger may only take place if the association and the company have the same accounting currency.

The subsidiary is dissolved when Finansinspektionen’s decision on consent pursuant to section 16 has been registered. The registration authority shall also register the consent in the register of limited companies.

The registration authority shall declare that the issue of merger has lapsed if the application for consent by Finansinspektionen has not been made within the prescribed time or if the authority has rejected the application by a decision that has attained legal force.

Section 19. Merger pursuant to section 18 may take place even if there is property in the subsidiary that the credit market association may not acquire under this Act. Such property must be disposed of at the latest a year after registration. If special reasons exist, Finansinspektionen may extend the period.

Damages

Section 20. The provisions made in Chapter 13, sections 1-3, of the Co-operative Economic Associations Act (SFS 1987:667) on liability in breach of the Act, of the applicable Annual Accounts Act and of statutes also apply for credit market associations in the event of breach of this Act and the Capital Adequacy and Large Exposures (Credit Institutions and Securities Companies) Act (SFS 1994:2004).

Chapter 13 Supervision

Registration authority

Section 1. The registration authority for banks and branch offices of foreign banking undertakings is the Swedish Companies Registration Office. A register of banks is kept at the registration authority. In this register, the information is recorded which according to this Act, the Companies Act (SFS 1975:1385), the Savings Bank Act (SFS 1987:619), the Members Banks Act (SFS 1995:1570), the Foreign Branch Offices and related matters Act (SFS 1992:160) or other statutory provisions, is to be notified for registration or otherwise included in the register.

The provisions of the Companies Act and the Co-operative Economic Associations Act (1998:667) apply to registration of credit market companies and credit market associations. The Foreign Branch Offices and related matters Act applies to registration of branch offices of foreign credit undertakings.

Supervision and its extent

Section 2. Finansinspektionen is responsible for supervision of credit institutions and foreign credit institutions that have established branch offices pursuant to Chapter 4, section 4.

The supervision of a credit institution entails that the business is operated in accordance with

1. this Act,

2. other statutory provisions regulating the activity of the institution,

3. the articles of association of the institution, its statutes or by-laws, and

4. internal instructions which are based on statutory provisions regulating the activity of the institution.

Finansinspektionen also has supervision over the compliance of the owner and executive management of the credit institution with the suitability requirements in this Act.

With respect to a foreign credit institution as referred to in Chapter 4, section 4, Finansinspektionen shall ensure that the institution complies with the laws and other statutory provisions that apply to the institution's activity in Sweden.

Information on and investigations at a credit institution

Section 3. A credit institution and such foreign credit institutions that have established branch offices under Chapter 4, section 4, shall provide Finansinspektionen with the information about their activity and related circumstances required by Finansinspektionen.

Section 4. Finansinspektionen may carry out an investigation at a credit institution and at such foreign credit institutions that have established branch offices under Chapter 4, section 4, when Finansinspektionen deems it necessary.

Information from and investigations at other undertakings

Section 5. If a credit investigation is part of a group, the other undertakings in the group shall at a time and in a way determined by Finansinspektionen provide information about their activity and related circumstances to Finansinspektionen as required by Finansinpektionen for its supervision of the institution.

Section 6. If an undertaking has been instructed by a credit institution to operate any part of the institution's business, Finansinspektionen may carry out the investigation at the undertaking, if required for supervision of the institution. Such an undertaking shall also provide Finansinspektionen with the information on its activity and related circumstances that Finansinspektionen needs for its supervision of the institution.

Collaboration with competent authorities

Section 7. Finansinspektionen shall in collaboration with the competent authority in the home country exercise supervision that liquidity is satisfactory at a branch office of a foreign credit institution in Sweden as referred to in Chapter 4, section 1.

After notification to Finansinspektionen, a competent authority in another country within the EEA may carry out an investigation at the branch office and at a branch office of an undertaking such as is referred to in Chapter 4, section 3.

Section 8. Finansinspektionen shall provide the information that a competent authority in another country within the EEA requires for its supervision of a foreign credit institution, a foreign financial institution or subsidiary, which conducts activity here pursuant to Chapter 4, sections 1, 2 or 3.

Audit

Section 9. Finansinspektionen has the right to appoint one or more auditors to participate in the audit of a credit institution together with other auditors. Finansinspektionen may recall such an appointment at any time and appoint a new auditor.

The auditor has the right to an equitable fee from the institution for his work. The size of the fee is determined by Finansinspektionen.

Finansinspektionen shall issue instructions for an auditor appointed by Finansinspektionen. An auditor appointed by Finansinspektionen shall comply with the instructions issued by Finansinspektionen regardless of the instructions of the Annual General Meeting.

Section 10. An auditor or a special examiner shall immediately report to Finansinspektionen if in the course of complying with his assignment in a credit institution, he becomes aware of circumstances which

1. can constitute an important breach of the statutory provisions that regulate an institution's activity,

2. can affect the continued operation of the institution negatively, or

3. can lead to the auditor recommending that the balance sheet or income statement not be adopted or to an observation pursuant to Chapter 10, section 30 or 31 of the Companies Act (SFS 1975:1385), Chapter 8, section 13 of the Co-operative Economic Associations Act (SFS 1987:667), Chapter 4a, sections 14 and 15 of the Savings Bank Act (SFS 1987:619) or Chapter 7a, sections 14 and 15, of the Members Banks Act (SFS 1995:1570),

The auditor and the special examiner have a corresponding reporting obligation where he or she becomes aware of circumstances as referred to in the first paragraph in conjunction with the performance of duties in the credit institution's parent undertaking or subsidiaries or in an undertaking which has a similar relation to the institution.

Preparation of a special balance sheet

Section 11. The board of a savings bank, a members bank or of a credit market association is responsible for immediately drawing up a special balance sheet if there is reason to believe that the institution cannot comply with the requirement for capital adequacy pursuant to the Act (SFS 1994:204) on Capital Adequacy and Major Exposures for Credit Institutions and Securities Companies.

The balance sheet is to be inspected by the institution's auditors. If the inspection shows that the requirement is not complied with, the board of directors of the institution shall immediately notify Finansinspektionen.

Convening of the board of directors or general meeting

Section 12. Finansinspektionen may convene the board of directors of a credit institution. If the board of directors has not complied with a request from the authority on the calling of an extraordinary general meeting of shareholders, Finansinspektionen may publish such notification.

Representatives of Finansinspektionen may attend the general meeting and at a board meeting which the authority has convened and participate in deliberations.

Public representative in the event of bankruptcy

Section 13. When a credit institution has been declared bankrupt, Finansinspektionen shall appoint a public representative. The public representative shall take part in administration of the bankruptcy estate as administrator of the estate together with the administrator or administrator appointed by the Bankruptcy Act (SFS 1987:672).

The public representative can with regard to co-administrators make a presentation of the kind referred to in Chapter 7, section 5, of the Bankruptcy Act.

Even if a decision on division of the administration of the bankruptcy estate has been made, the public representative may take part in the administration in its entirety.

The provisions of the Bankruptcy Act on fees to administrators also apply to the public representative.

The powers of Finansinspektionen in the event of the liquidation of a credit institution

Section 14. During the liquidation of a credit institution, Finansinspektionen has the same powers with regard to the liquidators that would otherwise devolve on Finansinspektionen with respect to the board of directors and the general meeting of shareholders.

Pension or staff trusts

Section 15. If a pension or staff trust belongs to a credit institution, and the assets of the trust mainly derive from funds provided by the credit institution, Finansinspektionen shall ensure that all of the assets of the trust are invested in a way that provides sufficient security. In this connection, the purpose of the trust is to be taken into consideration and consideration taken to the provisions of this Act on investment of an institution's funds. If the trust's assets have not been invested in a satisfactory way, Finansinspektionen may instruct the trust to rectify the matter.

The person representing the trust shall at Finansinspektionen's request, make the cash balance of the trust and other assets and books, accounts and other documents available for inspection. He or she shall also provide the authority with all the information about the board that Finansinspektionen requests.

Fees to Finansinspektionen

Section 16. Credit institutions and foreign credit institutions with branch offices in Sweden shall meet the cost of Finansinspektionen's activity with annual fees. The provisions now made also apply to such undertakings referred to in Chapter 4, section 3, and which have branch offices in Sweden.

Chapter 14 Special provisions on the assessment of the suitability of an owner

Section 1. A direct or indirect acquisition of shares or participations in a credit institution, that entails that the acquirer's total holding constitutes a qualified holding, may only take place after consent has been obtained from Finansinspektionen. The same applies to acquisitions which entail that a qualified holding increases

1. so that it amounts to or exceeds 20, 33 or 50 percent of the equity or voting rights for all shares or participations or

2. so that the institution becomes a subsidiary.

Consent according to the first paragraph is to be obtained before acquisition. If the acquisition has been made by division of an estate, inheritance, will, company distribution, or in another similar way, consent is required instead for the acquirer to retain the shares or participations. The acquirer is then to apply for consent within six months after such acquisition.

Section 2. Consent is to be given to acquisitions referred to in section 1 if there is reason to believe that the acquirer,

1. will not impede the business being operated in a way compatible with this Act and other statutory provisions that regulate the activity of the institution, and

2. that such persons are otherwise suitable to exercise a significant influence on the management of a credit institution.

A licence may not be granted if the acquirer has materially neglected his responsibilities in business activity or in other financial affairs, or is guilty of serious criminal acts.

If the acquisition would lead to close links between the credit institution and some other entity, a licence may only be granted if the links do not impede an effective supervision of the institution.

Finansinspektionen may prescribe a certain period of time within which an acquisition may take place.

Finansinspektionen shall notify decision in a proceeding according to this paragraph within three months of the application for consent being made.

Section 3. Those intending to dispose of a qualified holding of shares or participations in a credit institution or such a large part of a qualified holding that the holding will thereby be less than one of the limits specified in section 1, first paragraph, shall notify Finansinspektionen of this.

Section 4 When it comes to the knowledge of a credit institution that shares or participations in the institution have become the object of an acquisition such as described in section 1 or for such a divestment as referred to in section 3, the institution shall immediately notify the acquisition or divestment to Finansinspektionen.

When a credit institution in another case is informed that it is closely linked with another institution, the institution shall notify this to Finansinspektionen without delay.

Another credit institution than a savings bank shall annually notify the name of the owners to Finansinspektionen who have a qualified holding of shares or participations in an institution and the size of the holdings.

Section 5. If a legal person has a qualified holding of shares or participations in a credit institution, the legal person should without delay notify the changes of the members of its executive management to Finansinspektionen.

Section 6. If the person who has a qualified holding of shares or participations works against or there is reason to believe that the holder will work against the business of the credit institution being operated in a way compatible with this Act or other statutory provisions that regulate the activity of the institution, Finansinspektionen may decide that this person may not represent more shares or participations than corresponds to a holding that is not qualified.
The same applies if a person with such a holding has materially neglected his responsibilities in business activity or in other financial affairs, or is guilty of serious criminal acts.

If the person who has a qualified holding of shares or participations has neglected to apply for consent for an acquisition as referred to in section 1, Finansinspektionen may decide that this person may not represent the shares or participations to the extent that they are subject to a requirement for consent.

If any person in conflict with a decision by Finansinspektionen, has a qualified holding of shares or participations, the holder may not represent that portion of the holding of shares or participations at the general meeting that is in conflict with the decision.

Section 7. Finansinspektionen may instruct an owner as referred to in section 6, first paragraph, to divest a sufficient portion of the shares or participations so that the holding is subsequently not qualified. An owner as referred to in section 6, second or third paragraph, may be instructed to divest as sufficient portion of the shares or participations so that the holding is not in conflict with the decision of Finansinspektionen.

Section 8. Shares or participations that are subject to prohibition pursuant to section 6 or an order pursuant to section 7, shall not be taken into account when consent is required by the owners of a certain portion of the shares or participations in the credit institution for a decision to be valid or powers to be exercised. However, this does not apply if an administrator has been appointed pursuant to section 9.

Section 9. If special reasons exist, Finansinspektionen may request the district/city court to appoint as administrator a suitable person to represent such shares or participations which may not be represented by the owner pursuant to section 6. Such application is to be considered by the district/city court at the place where the owner has his domicile, or if the owner is not domiciled in Sweden, by Stockholm City Court.

An administrator has the right to equitable payment for work and expenses. Compensation is to be paid by the owner of the shares or participations and shall on request be paid in advance by the credit institution. If the party liable to pay does not approve the claim of the administrator, compensation will be set by the district/city court.

Section 10. If the credit institution is closely linked with any other entity and this prevents effective supervision of the credit institution, Finansinspektionen may instruct the holder of the share or participations which entails that the links are close to divest a sufficient portion of the shares or participations so that this is no longer the case.

Finansinspektionen may also decide that the person or persons who are subject to a decision according to the first paragraph may not represent the shares or participations at the general meeting. In this case, the provisions in section 9 are applicable.

Chapter 15 Interventions

Interventions against credit institutions

Section 1. Finansinspektionen shall intervene when a credit institution has set aside its obligations pursuant to this Act, other statutory provisions that regulate the institution's activity, the articles of association of the institution, statutes, by-laws or internal instructions based on statutory provisions that regulate the institution's activity.

Intervention takes place by issuing an order to take action within a specified period, a prohibition to carry out decisions or by an observation. If the breach is serious, the credit institution's licence shall be revoked, or, a warning shall be issued if it is deemed sufficient.

Finansinspektionen may refrain from intervention if a breach is petty or excusable, if the institution undertakes rectification, or if another agency has taken measures against the institution and these measures are considered to be sufficient.

Section 2. Where anyone belonging to the board of directors of a credit institution or their managing director does not comply with the requirements in Chapter 3, section 2, sub-section 4, Finansinspektionen shall revoke the institution's licence. However, this may take place first after Finansinspektionen has decided to issue an observation that the person is included in the board or who is managing director and that he or she, after a period of time determined by Finansinspektionen of at most three months has elapsed, is still on the board or serving as managing director.

Instead of revoking the licence, Finansinspektionen may decide that a member of the board of directors or the managing director may no longer serve in that position. Finansinspektionen may then appoint a replacement. The commission of the replacement applies until this institution appoints a new board member or managing director.

Section 3. A credit institution's licence shall be revoked if the institution

1. has not submitted its application for registration within the prescribed period or the application has been withdrawn or cancelled as a result of a decision that has attained legal force,

2. has not commenced activity within a year after the grant of the licence, or

3. has declared that it will not be utilising the licence,

4. has transferred its entire business, or

5. has not conducted activity such as those referred to by the licence during a continuous period of six months.

In the circumstances referred to in sections 2 and 5, a warning may be issued instead where such is deemed sufficient.

Section 4. If a licence is revoked, Finansinspektionen may decide how the business is to be wound up.

A decision on revocation may be combined with a prohibition to continue business activity.

Section 5. Where Finansinspektionen is informed by a competent authority that a Swedish credit institution has violated the provisions that apply in the country for such institutions, Finansinspektionen shall undertake the measures stipulated in sections 1-4 against such an institution, if any circumstances corresponding to those listed there exists. Finansinspektionen shall then inform the competent authority of the measures taken.

Section 6. Measures concerning intervention pursuant to sections 1-5 against a bank are considered by the Government if it involves matters of principle or is of exceptional importance. The consideration of the Government takes place then after notification by Finansinspektionen.

Penalty fee

Section 7. If a credit institution has been notified a decision or an observation or warning pursuant to section 1, Finansinspektionen may decide that the institution is to pay a penalty fee. If the Government decides on an observation or warning, it may leave it to Finansinspektionen to decide on the penalty fee to be paid.

The fee goes to the state.

Section 8. The penalty fee is to be set at a minimum of SEK 5,000 and at most SEK 50,000,000.

The fee may not exceed ten per cent of the credit institution’s turnover for the previous financial year. If the breach took place during the first year of activity of the institution or if the information on the turnover is missing or deficient, the turnover may be estimated.

The fee may not be so large so that the institution thereafter does not fulfil the requirements imposed on it by Chapter 6, section 1.

Section 9. When the size of the penalty fee is set, special consideration shall be taken to how serious the breach is that has led to the warning or observation and how long the breach has continued.

Delay fee

Section 10. Finansinspektionen may impose a delay fee of at most SEK 100,000 on a credit institution that fails to submit the information prescribed by virtue of Chapter 16, section 1, first paragraph, sub-section 4 at the correct time.

The fee goes to the state.

Execution of decisions on penalty fees and delay fees

Section 11. The penalty fee or delay fee is to be paid to Finansinspektionen within thirty days of the decision attaining legal force or the longer period of time specified in the decision.

Section 12. Finansinspektionen’s decision to impose a penalty fee or delay fee may be executed without a preceding judgment or decision if the fee has not been paid within the period of time stated in section 11.

Section 13. If the penalty fee or delay fee is not paid within the period of time specified in section 11, Finansinspektionen shall hand over the unpaid fee for collection. The provisions on collection of state claims are contained in the Collection of Unpaid State Claims Act and Related Matters Act (SFS 1993:891).

Section 14. A penalty fee or delay fee imposed is no longer collectable to the extent that execution has not taken place within five years of the decision attaining legal force.

Intervention against credit institutions and other undertakings

Section 15. Finansinspektionen may direct an institution or an undertaking, which belongs to one of the following categories to make rectification if it does not operate its business in accordance with the provisions specified in section 1, namely

1. foreign credit institutions that conduct activity here pursuant to Chapter 4, section 1 or 2, and

2. such foreign institutions and subsidiaries that conduct activity here pursuant to Chapter 4, section 3.

If the institution or undertaking does not comply with the directive, Finansinspektionen shall notify the competent authority in the undertaking’s home country.

If rectification still does not take place, Finansinspektionen may prohibit the institution or undertaking from making new commitments in Sweden. Before the prohibition is notified, Finansinspektionen shall notify the competent authority in the home country of the undertaking. In urgent cases, Finansinspektionen may notify a prohibition without prior notification of the authority in the home country. Notification to the latter authority shall then be made as soon as possible.

Section 16. If a credit institution which conducts activity in Sweden pursuant to Chapter 4, sections 1 or 2, has had its licence to operate revoked in the home country, Finansinspektionen shall immediately prohibit the institution from making new undertakings in Sweden.

Finansinspektionen shall also prohibit such an undertaking that conduct activity in Sweden pursuant to Chapter 4, section 3, from making new undertakings in Sweden if a foreign credit institution which owns the undertaking or its parent company has had its licence to operate revoked. If it is evident from a notification from a competent authority that a company such as is referred to in Chapter 4, section 3, no longer complies with any condition referred to in the same section, the undertaking may no longer conduct activity in Sweden pursuant to this section. Swedish regulations shall apply to the activity instead.

Section 17. If a foreign credit institution conducts activity in Sweden pursuant to Chapter 4, section 4, section 1 shall be applied to the activity in Sweden.

Matters concerning interventions as referred to in section 1 are considered by Finansinspektionen. However, in the case of branch offices of banks, the matter is considered by the Government if it involves matters of principle or of exceptional importance. The Government’s consideration then takes place after notification by Finansinspektionen.

If deposits at the branch office are covered by the guarantee following on from a decision pursuant to section 3, second paragraph, of the Act on Deposit Guarantee Scheme (SFS 1995:1571) and the licence for the branch office establishment would not have been notified without such a decision, Finansinspektionen may, if the credit institution is not complying with its obligations pursuant to the Act on Deposit Guarantee Scheme, instruct the institution to undertake rectification notifying that the licence for the branch office would otherwise be revoked. If the institution has not rectified matters within a year from the order, the licence may be revoked. In the event of such consideration, the second paragraph applies in applicable parts.

If the licence for the branch office is revoked, section 4 applies as applicable.

Finansinspektionen shall notify the competent authority in the home country of the credit institution of the measures undertaken pursuant to this section.

Intervention against any entity without a licence

Section 18. Where any entity conducts business subject to this Act without being licensed to do so, Finansinspektionen shall order this entity to cease such activity. Finansinspektionen shall decide how the business is to be wound up. In a directive addressed to a Swedish limited company or Swedish economic association, Finansinspektionen shall notify that a court may, after application by Finansinspektionen, decide that the company or association is to be liquidated if it does not comply with the directive.

Where there is doubt as to whether the Act is applicable to a particular business, Finansinspektionen may order the person conducting the activity to furnish the information regarding the business required in order to determine whether this is the case. The person who serves as auditor in an undertaking is moreover obliged at the request of Finansinspektionen to provide such information about the business that he or she has received information in the course of carrying out their commission in the undertaking.

As regards foreign undertakings, an order pursuant to this section may be addressed to both the undertaking as well as any person in Sweden conducting activity on behalf of the undertaking.

Section 19. If a Swedish limited company or a Swedish economic association does not comply with an order pursuant to section 18, first paragraph, to terminate activity, the court shall, on application by Finansinspektionen, make an order that the undertaking should enter liquidation. In these cases, the appropriate parts of the provisions in Chapter 13, section 9, section 24, sections 27-43 and sections 45 and 46 of the Companies Act (SFS 1975:1385) and Chapter 11, section 5, sections 7-16 and section 17, fourth and fifth paragraphs of the Co-operative Economic Associations Act (SFS 1987:667) are applicable.

Decisions on liquidation shall not be notified if it can be shown during the proceedings that activity has ceased.

A decision on liquidation applies immediately.

Conditional fines

Section 20. If Finansinspektionen notifies an order or a prohibition according to this Act, the authority may impose a conditional fine.

Chapter 16 Authorisation

Section 1. The Government or the authority designated by the Government shall notify provisions on

1. the information that a credit institution shall provide to its clients or to those that the institution offers its services to,

2. the items that may be included in the initial capital pursuant to Chapter 3, sections 5-7,

3. the measures that a credit institution is to undertake to comply with the requirements for solvency and liquidity, risk management, transparency, soundness and guidelines and instructions referred to in Chapter 6, sections 1 to 5,

4. the limitations that apply when a banking company or a credit market company receives its own shares or shares in its parent company as a pledge pursuant to Chapter 10, section 6,

5. the information that a credit institution and such foreign credit institutions that have established branch offices in Sweden pursuant to Chapter 4, section 4, are to provide to Finansinspektionen for its supervisory activity, and

6. fees for supervision as specified in Chapter 13, section 16.

Chapter 17 Appeals

Section 1. Decisions by Finansinspektionen pursuant to Chapter 13, section 12 and Chapter 15, section 18, second paragraph, and decisions pursuant to section 20, first paragraph, subsection 5, of the Administrative Procedure Act may not be appealed against. The same applies to Finansinspektionen decision to hand over a matter to the Government for consideration.

Other decisions by Finansinspektionen in accordance with this Act may be appealed against to a public administrative court.

Leave to appeal is required for appeal to the Administrative Court of Appeal.

Finansinspektionen may decide that a prohibition, order or revocation shall apply immediately.

2. If a decision in a matter requiring a licence in accordance with Chapter 3, section 2, is not notified within six months of the application being submitted, the applicant shall be notified by the authority responsible for this consideration of the reasons for this. The applicant may thereafter request an explanation from the Administrative Court of Appeal if the matter is unnecessarily prolonged. If a decision has not been notified within six months from such explanation being given, it shall be considered that the application has been rejected.

If Finansinspektionen does not pass on a notification as referred to in Chapter 5, section 2, first paragraph, to the competent authority abroad within three months of the notification being received and does not either within the same period notify a decision pursuant to the third paragraph of the same section, Finansinspektionen shall notify the applicant of the reasons for this. The applicant may thereafter request a declaration from the Administrative Court of Appeal that the matter has been unduly prolonged. If notification has not been notified within six months of such declaration being made, a decision pursuant to Chapter 5, section 2, third paragraph, shall be considered as having been notified.

Provisions on coming into force of the Act and transitional provisions

SFS 2004:297

Provisions on the coming into force of this Act are notified in the Act (SFS 2004:298) on the Implementation of the Banking and Financing Business Act (SFS 2004:297).