The Banking Regulation Review

Ninth Edition

Editor
Jan Putnis

The Law Reviews

THE BANKING REGULATION REVIEW

NINTH EDITION

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PREFACE

Banking regulation is a never-ending quest to balance the three major policy objectives of financial stability, consumer protection and the needs of developed economies for reliable services involving the provision and intermediation of finance. It is safe to say that the relative importance of these factors to policymakers will never be constant. Driven by events – whether political, economic or financial – governments and regulators will move their centre of focus from one objective to another as circumstances require, while continuing to pay lip service to the need to balance all three. For their part, banks have to maintain the right quantity and quality of resources to react to policy shifts and, hopefully, to ensure that they can communicate their views clearly to the authorities before those shifts take place.

But what happens when there are developments that leave everyone – governments, regulators and banks alike – unsure of how to react, or even, in some cases, unsure of whether or not there are serious concerns to address? That is what we now face with the rise of technology in banking. Is technology simply an opportunity for banks to improve their service or does it present threats to customers and ultimately to financial stability? If there are threats, do these go beyond the much-publicised cyber risks?

Starting with the opportunity, the position is not quite what many new so-called fintech banks would have you believe. Their orthodox view of the world is that large, established banks will be supplanted by nimbler upstarts, particularly those new firms that are not actually banks and are relatively unburdened by regulation (or think they are). Particularly in the area of payments, those upstarts aim to appropriate banks' customer relationships, not by shutting banks out of payment transactions entirely, but by relegating them to mere infrastructure in payment clearing. I refer to this view as 'orthodox' because it ignores at least four important and fast-developing features of the way that technology is revolutionising many major, established banks:

a The ability of banks to fight back and the vast resources that large, established banks have to throw at this effort if they are minded to do so and have sufficient strategic focus to stick to the task.

b The capacity of technology to cut the costs and improve the efficiency of established banks.

c The strategy (and ability) of some banks to follow an inorganic approach to acquiring technology and new ideas; while cultural differences and other integration challenges often mean that banks do not realise the full benefits of acquiring newer technology-focused firms, if only a small proportion of these acquisitions succeed then much of the apparent hype around some start-up firms pursuing novel fintech strategies could evaporate as large, established banks become the principal means by which new ideas hatched by the founders of start-ups are put into practice.

d Legal and regulatory changes in some parts of the world to open up banking, and payment services, to increased competition and therefore innovation – particularly PSD2 in the European Union – are pushing banks to adopt new technologies and are starting to foster a more creative and entrepreneurial culture in some banks.

Commentators frequently write that banks that fail properly to capitalise on the opportunities that technologies present will fail. This has become a truism as technologies once thought to be novel – contactless payments, for example – have become commonplace in many parts of the world. In other words, new technology has become such a pervasive feature of both wholesale and retail banking in most of the world that to say that banks have to use it effectively to survive has become little different from saying that banks will fail if they don't run their businesses effectively. That said, a proportion of banks will fail on this simple ground, and may therefore fail in business terms as others with a better understanding of the power of technology to improve and expand services and increase efficiency forge ahead. Many banks have also, so far, failed to create the right sort of creative environment in which genuinely new business ideas originate. There are a number of reasons for this that exist to varying degrees in all large banks, including complex and bureaucratic management structures, which can stifle innovation; a necessary preoccupation with legacy issues and structural reform; an understandably risk-averse approach to business development; and the opportunities that exist for talented and creative staff outside the banking sector. It would be entirely wrong, however, to assume that these issues simply cannot be overcome in any large, established banks.

So much for the opportunities; what about the threats? Cyber risk remains a very significant concern for regulators, perhaps the single most important area of bank regulatory concern worldwide at present. But there is another challenge that banks must face from technology, which is simply that more will be expected of them by regulators and customers alike once technology makes banking more transparent. So, from a front office perspective, technology does not just offer ways of providing better services to customers; it also raises their expectations, and banks will have to be ready to live up to those expectations, or they will simply lose customers. From a back-office perspective, technology is beginning to provide banks with innovative ways of understanding better the risks they have taken and their relationships with providers of funding, hedging services and other counterparties. For example, machine learning has now advanced to a level where it can provide real assistance to banks in understanding very quickly, in a very detailed way, the terms of the agreements to which they are party, how they interrelate with each other and how they would perform in a crisis. One of the lessons of the financial crisis was that recovery and resolution planning is a very resource-intensive exercise when done by means of a manual review of documents. Machine learning will eventually allow many of these review processes to be done in almost real time and for banks to verify the application of policies and procedures to documents and customer relationships as they develop, rather than retrospectively. Once these capabilities are developed to a usable level, which is likely to be in the next few years, it will not be surprising if regulators begin to expect banks to apply them. The fact that it might take a bank several months to review 100,000 documents manually will then no longer be a complete excuse for not having fairly immediate answers to regulators' straightforward questions about the nature of the risks on a bank's balance sheet; the bank should either know the answers or will be expected to have the means to find out quickly.

Much of this would suggest that the adoption of new technology may ultimately have more profound effects on large banks than post-crisis structural reform. Apart from customer services, I would expect these effects to manifest themselves in reductions in staff numbers, particularly in front-office roles, risk management and compliance. It is apparent that even the most sophisticated and well-resourced banking regulators around the world are still behind the curve in realising the true impact of these developments: just as the banks have an enormous challenge in devising profitable and prudent ways of applying technology, regulators have an almost equal challenge in understanding the risks as well as the benefits.

Away from technology, the past year has failed to produce the destructive earthquake in international regulatory initiatives that some commentators predicted following the election of Donald Trump as President of the United States. Nevertheless, further and deeper international regulatory cooperation now looks significantly less likely than it did two years ago and regulators should be trying to work out what this will mean in a future banking crisis. For their part, the Basel Committee on Banking Supervision and other international organisations that promulgate bank regulatory reform will no doubt be wary of proposing ideas that do not receive widespread support from major banking jurisdictions.

In Europe, the preparations that banks are making for the UK's departure from the European Union in 2019 continue apace, even as the progress towards a political agreement and related transitional arrangements remains, at the time of writing, slow and fraught with difficulty. Almost whatever the nature of this agreement, the legal and regulatory barriers to cross-border banking and securities business that will be erected between the United Kingdom and the European Union when, as currently planned, the UK leaves the EU single market, are expected to make Europe as a whole a more expensive region for global banks. As a result, many of these banks are reconsidering their participation in certain less profitable business lines and some geographical markets in Europe. It remains to be seen whether smaller EU banks with a domestic or a regional focus can capitalise on these developments. Meanwhile, attempts to strengthen and deepen the eurozone's banking union continue, albeit very slowly. The move of some business from London to mainland Europe as a result of Brexit is unlikely to achieve the natural desire of many European politicians and central bankers for the eurozone to have its own, genuinely global financial centre.

In Asia it remains, as ever, as foolish as it is difficult to generalise about developments across such a diverse and fast developing region. However, the continuing growth of wealth management services is still of great interest to many banks in the region and beyond. It remains to be seen whether all the most important bank regulators in the region can keep up with understanding and monitoring the increased risks associated with this development, from investor protection to money laundering.

In the United States, we saw tangible proposals for regulatory reform during 2017, although at the time of writing it is not yet clear what the outcome will be.

This ninth edition of *The Banking Regulation Review* contains chapters provided by authors in 35 countries and territories in March and April 2018, as well as the usual chapters on International Initiatives and an overview of the European Union.

My thanks go once again to the authors, who thankfully find this subject sufficiently interesting and profitable both to continue to advise clients on it as well as to write about it in their spare time. However, I remain conscious of the fact that spare time has been in very short supply to many of the authors during the past year, and I am therefore very grateful for their dedication in contributing to this book.

The team at Law Business Research have continued to tolerate the work schedules of the authors, and more particularly the editor, with their usual compassion, tolerance and sympathy, and to apply their usual high standard of professionalism to the production of this book. I would like to thank them for once again making this process look easy when it is anything but.

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SWEDEN

Fredrik Wilkens and Henrik Schön[1]

I INTRODUCTION

Swedish banks, which represent the larger part of the financial market and can provide all types of financial services, are usually categorised as universal banks. These consist of SEB, Swedbank, Handelsbanken and Nordea (the Big Four).[2] It should be noted, however, that Nordea decided in March 2018 to move its headquarters from Stockholm to Helsinki, Finland.

	Number of employees	Lending to the public	Balance sheet total
Nordea	30,399	310 billion euros	581.6 billion euros
SEB	15,804	1.485 billion kronor	2.559 billion kronor
Handelsbanken	11,832	2.065 billion kronor	2.767 billion kronor
Swedbank	14,588	1.535 billion kronor	2.212 billion kronor

Furthermore, Sweden has witnessed exuberant activity within the payments and fintech sectors in recent years, in which many firms have sought to obtain a licence to conduct banking or financing business, an aspiration that materialised for the Swedish 'unicorn' Klarna AB (a credit institution focused on payment services), which obtained a full banking licence in June 2017.

II THE REGULATORY REGIME APPLICABLE TO BANKS

i The Swedish Banking and Financing Business Act

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

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

2 The annual report for 2017 of each bank.

ii Forms of banks

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

iii Branches of foreign credit institutions

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

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

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

iv Supervisory architecture

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

III PRUDENTIAL REGULATION

i Relationship with the prudential regulator

Types of supervision and supervisory approach

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

Ongoing supervision is conducted regularly and, to a certain extent, routinely, and consists of monitoring risk development and verifying that firms and market transactions meet set rules and requirements. The basis consists of both the regular reporting of financial and other data that participants are legally obliged to submit to the SFSA, and of the analysis performed by the SFSA based on that material. More thorough supervision comes in the form of investigations, which are used by the SFSA to dig deeper into a firm, area or certain activity, and to find information that does not usually emerge in ongoing supervision or reporting. This can be a case of assessing the quality of a firm's internal governance and its control or risk management. Event-driven supervision relates to risks that have already manifested themselves in different ways (i.e., reactive supervision); for example, a firm facing acute difficulty, consumers being affected by dubious advice, or the detection of some sort of market abuse.

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

Supervision of the banking industry

The SFSA's supervision within the banking industry has a clear emphasis on financial stability in general and stability of the system in particular. The Big Four are, according to the SFSA, systemically important owing to their predominant position in the Swedish market, their complex business models and their extensive cross-border operations. They are therefore thoroughly supervised and constitute Category 1 firms. The SFSA is in close dialogue with each Category 1 firm's board and management. A specific supervision plan is usually prepared for these firms, engaging a high number of employees in different types of activities, and a contact person for the firm bears responsibility for the cohesion and coordination of the work of the team of risk specialists participating in supervising the firm.[3] In this respect, the SFSA has stated that it will continue to maintain its view of Nordea as a systemically important institution after its relocation to Helsinki.

ii Management of banks

Board of directors

The board of directors of a Swedish credit institution must consist of at least three members, and the majority of the board members may not be employed by the institution or an undertaking that is included in a group of which the institution is the parent company. The board must in turn appoint a managing director, who may not be the chair of the board of directors. Authorisation to represent a Swedish credit institution and to sign on its behalf may only be granted to two or more persons acting jointly, and no other restrictions on the signing authority may be registered towards third parties with the Swedish Companies Registration Office (SCRO).

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

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

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

Remuneration

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

Deferred payment

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

Composition of variable remuneration

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

a shares, participations or other instruments in the undertaking that are linked to the undertaking's shares or participations, or other equivalent instruments for undertakings whose shares or participations are not admitted to trading on a regulated market; or *b* other instruments in accordance with Article 52 or 63 of the CRR or in accordance with Commission Delegated Regulation (EU) No. 527/2014 of 12 March 2014 supplementing the CRD with regard to regulatory technical standards specifying the classes of instrument that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration.

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

Loss of remuneration

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

iii Regulatory capital and liquidity

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

Furthermore, there is a capital conservation buffer of 2.5 per cent of risk-weighted assets, a countercyclical capital buffer of currently 2 per cent of risk-weighted assets (reaffirmed by the SFSA on 29 January 2018, to be assessed annually), and in relation to the Big Four, a systemic risk buffer of 3 per cent of risk-weighted assets at the group level. All risk buffers must consist of CET1 capital. Within the scope of Pillar 2, the Big Four are also subject to a CET1 capital systemic risk buffer requirement of 2 per cent of risk-weighted assets at the group level.

The CRR requires a credit institution to have a liquidity buffer that enables it to meet cash flow needs during a period of 30 days in difficult stress scenarios. As from 2018, a net stable funding ratio will also apply.

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

iv Recovery and resolution

Implementation of the BRRD

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

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

Crisis prevention

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

Resolution

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

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

Each of these stabilisation options is achieved through the exercise of one or more 'resolution powers', which include (1) the power to make share transfers, pursuant to which all or some of the securities issued by a credit institution may be transferred to a commercial purchaser, a bridge bank or the Swedish government; (2) the resolution instrument power, which includes exercising the bail-in tool; (3) the power to transfer all or some of the property, assets and liabilities of a Swedish credit institution to a commercial purchaser or the NDO; and (4) the third country instrument powers that recognise the effect of similar special resolution action taken under the law of a country outside the European Union.

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

Resolution financing

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

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

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

IV CONDUCT OF BUSINESS

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

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

A Swedish credit institution is required to have several internal regulations in place governing, *inter alia*, internal governance and control, internal audit, risk management, handling of complaints, anti-money laundering, ethics, handling of conflicts of interest, and authorisation and payment approval and outsourcing. There must also be internal instructions regarding credit risk, operational risk, reporting of significant events and liquidity risk.

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

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

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

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

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

V FUNDING

Swedish credit institutions mainly finance themselves through deposit-taking and lending to the general public, lending to each other, holding interest-bearing securities, trading in derivatives and issuing interest-bearing securities (bonds and certificates). In this context, Swedish banking has a high proportion of market funding when seen in an international perspective, with the Big Four obtaining approximately half their funding via the markets, of which 60 per cent is denominated in foreign currency.[4] In cases where there is a risk of serious disruption to the Swedish financial system, the Swedish government may provide support to credit institutions, as discussed in Section II.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

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

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

4 Swedish Riksbank's Financial Stability Report 2017:2: see https://www.riksbank.se/globalassets/media/rapporter/fsr/engelska/2017/fsr-171122/rap_fsr2_171122_eng.pdf.

Subject to receiving a complete application and the application fee of 35,000 kronor for each direct or indirect qualifying acquirer, the SFSA will process the application within 60 days.

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

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

ii Transfers of banking business

There is no established process by which a Swedish credit institution may transfer all or part of its business (deposits, loan arrangements and other assets or liabilities) to another entity without the consent of the customers concerned. Instead, customer consent from each relevant customer of the transferor bank must, as a main rule, be obtained.

VII THE YEAR IN REVIEW

Swedish household indebtedness has risen continuously since the mid-1990s, both in absolute figures and relative to disposable income. The debt ratio (loans in relation to disposable income) for a Swedish household is, on average, slightly more than 180 per cent. A number of measures have been taken in recent years for the purpose of counteracting high indebtedness, including a mortgage cap, whereby home loans may not exceed 85 per cent of the value of the home (introduced by the SFSA), and a risk-weight floor for Swedish mortgages in order to tie up more capital in relation to mortgage lending by banks. To further tackle increasing high indebtedness, the SFSA – following an extensive public debate – adopted regulations regarding amortisation requirements applicable to highly leveraged mortgages, whereby the borrower is required, depending on the circumstances, to pay off 2 or 3 per cent of the capital loan amount annually.

VIII OUTLOOK AND CONCLUSIONS

In summary, 2017 centred around the Swedish housing market and the mandatory amortisation requirements, and Nordea's relocation to Finland following the Swedish government's proposal to raise resolution fees under the BRRD. Both these topics are most likely to remain prominent during 2018, combined with a struggle for market share among incumbents and emerging fintech firms.

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