The Banking Regulation Review

Sixth Edition

Editor
Jan Putnis

Law Business Research

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EDITOR'S PREFACE

While the pace of new rulemaking affecting banking groups has slowed somewhat in Europe and the United States in the past year, the debate about the future of global banking rages on, not least because implementation of the vast body of rules made since the financial crisis continues. If anything, the debate has become a more complex one, with a number of new fronts opening. Implementing complex new rules is, of course, generally more difficult than making them, and in many areas of activity rules that took shape some time ago are only now exhibiting their shortcomings and unintended consequences.

Questions about 'too big to fail' remain, but with gradually increasing realism among regulators, some governments and banks ask themselves about how this issue might best be managed in the long term. There is now greater recognition that painstaking recovery and resolution planning was not just an urgent post-crisis task but must remain a critical feature of banking supervision in perpetuity. Indeed, the list of points on which regulators should improve cross-border coordination on recovery and resolution matters remains formidably long. There is also a risk that while 'too big to fail' was the most well known and eye-catching phrase to emerge from the financial crisis, any attempt by governments to force or catalyse the break-up of large banking groups would risk neglecting the importance of the 'too inter-connected to fail' problem, which is, of course, far less a function of the size of banks.

The past year has seen further large fines for banks from conduct regulators, most notably in the context of the spot FX markets. Many bank prudential regulators are, sensibly, thinking more seriously now about the implications of these fines (and associated litigation) for the prudential supervision of the banks affected and, potentially, for financial stability itself. The 'conduct agenda', as it is now frequently called, has moved on in other ways in some countries, including increasing discussion among regulators about competition (antitrust) aspects of wholesale as well as retail financial markets. This will begin to create new and, in many cases, unwelcome challenges for large banks.

Return on equity continues to be a significant challenge in the banking sector, with signs of increasing shareholder pressure on some banks. This may add a further dimension to structural reform in addition to the existing regulatory one. In some cases, particularly where activist investors are concerned, all involved would do well to remember that shareholder activism lay behind some of the more disastrous mergers and acquisitions in the banking sector before the financial crisis. While it can be expected that regulators in most important financial jurisdictions will be more vigilant in assessing the viability of major transactions in the sector now than they were before the crisis, boards of directors of banks will also need to avoid the temptation to give in to short termism in the face of poor shareholder returns. This is arguably particularly the case in an environment where market restructuring and new technology present long-term opportunities for some banks as well as threats.

Governance of banking groups continues to be high on the agendas of many regulators around the world. Directors of banks in the UK, many other European countries and the US rightly focus increasingly on whether they are discharging their regulatory obligations properly when taking significant decisions, and whether their knowledge (and their ability to oversee) the businesses for which they are responsible is sufficient. A cynical bystander would, however, continue to say that in a global bank with tens of thousands of employees worldwide, good governance structures will only ever play a limited role in reducing the risk of a calamity on, for example, a trading desk, and that good luck (or bad luck) is more likely to determine success or failure in global compliance. That is surely too cynical a view in light of the significant strides that many banks have made to improve their governance and oversight in recent years. However, it remains a view with some validity in relation to emerging threats that are not yet generally well understood. These include many cyber-related risks, not just the possibility of the use of banks' IT systems by criminals but also the threat to financial stability posed by vulnerabilities (and in some cases unreliability) in systems used to settle payments and securities transactions. Bank governance in the context of the use of banks for criminal purposes, including tax evasion, has continued to have a very high profile over the past year.

Important developments in prudential regulation in the past year include further advances in the EU towards implementation of the Recovery and Resolution Directive and the Financial Stability Board's proposals on Total Loss-Absorbing Capacity (TLAC). TLAC looks set to continue to dominate debates on capital structure and funding in the banking sector this year, particularly on the difficult question of where and how TLAC should be 'positioned' within groups of companies in order to facilitate their chosen resolution strategy.

This sixth edition of *The Banking Regulation Review* contains submissions provided by authors in 48 countries and territories in March and April 2015, as well as the customary chapters on International Initiatives and the European Union. It is a great privilege to share space in this book with such a distinguished and interesting group of banking and regulatory lawyers from around the world, and I would like to thank them all again for their participation (and those authors who have joined the book for the first time this year).

My thanks also to Shani Bans, Nick Barette and Gideon Roberton at Law Business Research Ltd for their further unusual levels of patience and skill in compiling this edition and for continuing to encourage the participation of the authors.

The partners and staff of Slaughter and May continue to inspire and innovate in the area of banking regulation, and to tolerate the time that I spend on chapters of this book. Particular thanks go to Ben Kingsley, Peter Lake, Laurence Rudge, Lucy Bennett, Nick Bonsall, Edward Burrows, Tim Fosh, Helen McGrath and Tolek Petch.

Jan Putnis
Slaughter and May
London
May 2015

Chapter 42

SWEDEN

Fredrik Wilkens and Helena Håkansson[1]

I INTRODUCTION

Swedish banks, which represent the larger part of the financial market and which can provide all types of financial services, are usually categorised as universal banks. These consist of Nordea, Swedbank, Handelsbanken and SEB (Big Four).[2]

	Number of employees	*Lending to the public (billion kronor)*	*Balance sheet total*
Nordea	29,429	3,270	6,287
SEB	17,096	1,356	2,641
Handelsbanken	11,503	1,808	2,817
Swedbank	16,022	1,405	2,121

In terms of the headline events of 2014, in November 2014, the Spanish banking conglomerate Banco Santander entered the Swedish banking market by acquiring General Electric's Swedish bank GE Money Bank AB. The purchase price of the transaction amounted to €700 million after a pre-closing dividend to remove excess capital.[3]

[1] Fredrik Wilkens is a partner and Helena Håkansson is an associate at Advokatfirman Vinge.

[2] www.swedishbankers.se/Sidor/3_Bankfakta/Svensk%20bankmarknad/De-fyra-stora%20bankerna.aspx.

[3] www.santander.com/csgs/Satellite?appID=santander.wc.CFWCSancomQP01&canal=CSCORP&cid=1278697504743&empr=CFWCSancomQP01&leng=en_GB&pagename=CFWCSancomQP01%2FGSNoticia%2FCFQP01_GSNoticiaDetalleMultimedia_PT18.

II THE REGULATORY REGIME APPLICABLE TO BANKS

i The Swedish Banking and Financing Business Act (BFBA)

Entities wishing to conduct business that is regulated under the BFBA, meaning 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 Banking Consolidation Directive (BCD) 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 BCD.

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 that 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-EU 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 of 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 on a case-by-case basis. It is, however, clear that a number of factors are taken into account and that the SFSA will judge each case on its own merits. The SFSA would, *inter alia*, consider:

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 size of the client or clients;

e the character of the client or clients; and

f whether the foreign bank acted through a permanent representative in Sweden (such as an agent).

As regards EU banks, such banks may provide their services in Sweden on a cross-border basis after having obtained a Swedish cross-border passport pursuant to the BCD. 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 BCD.

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. While the SFSA has a direct responsibility to supervise Swedish credit institutions, the SCB has an 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 such 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 actual 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 three-year period, be subject to at least one supervisory activity, the reasoning behind this goal being 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 the stability of the system in particular. The Big Four are, according to the SFSA, systematically important due to their predominant position on 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.

ii Management of banks

Board of directors

The board of directors of a Swedish credit institution must consist of at least three board 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 of directors 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 with the Swedish Companies Registration Office (SCRO).

Directors sitting on the boards of Swedish credit institutions that are systemically important financial institutions are only permitted to sit on the boards of three other companies. When calculating the amount of permitted directorships, board assignments within the same group will constitute one directorship, and the same will apply in relation to assignments in a company in which the systemically important financial institution has a qualifying holding (i.e., 10 per cent or more of the shares, voting rights, or both). However, directorships in non-commercial companies are not taken into account. In addition, the managing director of a systemically important financial institution may not have more than two additional directorships, although it will be possible for the SFSA to grant exemptions for an additional directorship.

In connection with the granting of a Swedish credit institution licence, the board of directors of the company and the managing director are management assessed by the SFSA. If, during its ongoing supervision of a Swedish credit institution, the SFSA finds that a member of the board of directors or the managing director of such credit institution is unsuitable for such assignment it will, 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 from 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

Where 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 the 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 such 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 evenly distributed over a period of time for 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 Articles 52 or 63 of Regulation (EU) No. 575/2013 (Capital Requirements Regulation) or in accordance with Commission Delegated Regulation (EU) No. 527/2014 of 12 March 2014 supplementing Directive (EU) No. 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the classes of instruments 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 (a) and (b).

Loss of remuneration

A credit undertaking must ensure that variable remuneration to employees whose work duties have a material impact on the undertaking's risk profile, including deferred remuneration, is only paid or passed to the employee to the extent 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 (CET 1 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 1 per cent of risk-weighted assets (from 13 September 2015) and, in relation to the Big Four, a systemic risk buffer of 3 per cent of risk-weighted assets on the group level. All risk buffers must consist of CET 1 capital. Within the scope of Pillar 2, the Big Four is also subject to a CET 1 capital systemic risk buffer requirement of 2 per cent of risk-weighted assets on the group level.

A global systemic institution risk buffer and a systemic institution risk buffer will apply and be gradually implemented as from 1 January 2016; however, the SFSA has not yet decided which entities these buffers will apply to and what the percentage requirements will be.

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

Capital base 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

In cases where there is a risk of serious disruption to the Swedish financial system, the government may provide support to credit institutions. The government has assigned the Swedish National Debt Office (NDO) the role of support agency in this respect.

The government's ability to provide support to credit institutions is regulated in the Swedish Government Support to Credit Institutions Act. The NDO has the operative responsibility of managing all support measures. In general, the government must approve all decisions to support an institution, although it may also delegate the responsibility to the NDO in its capacity as support agency.

To finance support measures to credit institutions, the government has set up a stability fund, and Swedish credit institutions pay an annual stability fee thereto. 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 €100,000 per credit institution. Credit institutions belonging to the deposit guarantee scheme pay a fee to the NDO.

Implementation of the Bank Recovery and Resolution Directive (BRRD)

The European Parliament and the Council of Ministers adopted the final BRRD on 15 April 2014 and 6 May 2014 respectively. On 3 July 2014, a government committee (Committee) published a report presenting a proposal to implement the BRRD into Swedish law (Report). The Report is currently subject to consultation, and a legislative proposal is yet to be issued.

Crisis prevention

The Report proposes new requirements for the establishment of recovery plans and resolution plans, as well as the possibility of requiring institutions to remove obstacles to an effective resolution. The crisis prevention work should also, according to the Report, include the option of writing down and converting debts that can be included in the capital base and require institutions to have sufficient liabilities suitable for bail-in. With the exception of resolution planning, it is the Committee's opinion that the SFSA should be the authority in Sweden responsible for the crisis prevention work.

Resolution

Pursuant to the Report, the basic aim of resolution will be to reconstruct or wind down financial institutions that fail (i.e., are in financial distress) without causing considerable disturbance and interruption of essential services. Resolution can thus be initiated as an alternative to bankruptcy or liquidation. The Report suggests the NDO as resolution authority. When an institution is placed under resolution, it is suggested that control of the institution is transferred to the NDO. The resolution decision also entails a number of other legal consequences such as prohibiting the seizure of assets and stopping the fulfilment of contracts. Furthermore, the Report suggests four resolution tools, namely a sale of business tool, a bridge institution tool, an asset separation tool and a bail-in tool. Before the NDO uses any tool or power that may lead to any creditor losses, the NDO is to take measures forcing owners to bear losses first and fully.

Use of state financing and resolution reserve

Even if the state generally uses the bail-in tool to capitalise the institution under resolution, it may be necessary to provide external financing in the form of state aid in order for resolution to succeed. One reason for this is that liabilities, despite the requirement on the level of liabilities suitable for bail-in, may need to be exempted from write-downs and conversion because of system stability concerns. To enable the use of state aid in connection with resolution measures, the BRRD requires the establishment of a special financing arrangement for resolution. A financing arrangement is to be financed by fees paid by institutions that could be subject to resolution. There are special rules governing the use of the financing arrangement.

There are currently two different systems in Sweden for financing public intervention in distressed financial institutions: the stability fund and the deposit guarantee fund, as described above. To promote the most effective and flexible financing of government intervention possible, the Committee proposes that the financing for government support in connection with general financial crises and crises in individual financial institutions come from three separate funds. Government measures concerning institutions under resolution should mainly be financed by funds from a newly formed resolution reserve. State measures taken as precautionary measures related to credit institutions that are not subject to resolution (such as guarantees and capital injections for solvent institutions) should be financed from the stability fund. The deposit guarantee fund should be used to finance compensation from the deposit guarantee scheme and the protection depositors are entitled to in resolution. The Committee also makes a proposal on how the fees for the resolution reserve should be designed, and recommends that the fee for the stability fund be abolished. It further proposes a division of the funds currently in the stability fund between the new resolution reserve and the modified stability fund.

However, the BRRD contains limitations on the use of the resolution reserve and other state funds in resolution. Before public funds can be provided, a write-down or conversion of owners' and creditors' claims equivalent to 8 per cent of the institution's total liabilities and capital is required. Alternatively, the requirement can be calculated as a contribution by owners and creditors of the equivalent of 20 per cent of the institution's risk-weighted assets. However, to be able to calculate the requirement in the latter way, the resolution reserve must amount to at least 3 per cent of the deposits guaranteed. For the Swedish authorities to have as much freedom of action as possible, the Committee proposes that the resolution reserve be at least 3 per cent of guaranteed deposits.

Moreover, it is possible in certain circumstances to use regular government funds within the framework of resolution to provide a capital injection, or for the government to temporarily assume ownership of a company in resolution. According to the BRRD, these measures – the government stabilisation tools – do not have to be incorporated into law. Nonetheless, the Committee proposes that they be incorporated into Swedish law and that it be possible to use the stability fund for financing such government interventions.

New law on precautionary state support

The proposal for a new law on resolution entails replacing the rules in the Government Support to Credit Institutions Act that apply to handling institutions in crisis with the rules in the resolution regime. The Committee also proposes adjusting the rules in the aforementioned Act regarding support to sound credit institutions, and the financing of support of this kind in order to comply with the BRRD's rules in this respect by means of a new law on precautionary state support. It is proposed that support can be provided through loans or guarantees of newly issued debt instruments, or both, or through capital injections. It should also be possible to provide the SCB with guarantees in connection with its liquidity support.[4]

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. In relation to the compliance function, it should be noted that such function may not be combined with an employment in the institution's legal division. All of 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. In addition, there must also be internal instructions regarding credit risk, operational risk, reporting of significant events and liquidity risk.

In the absence of authorisation, a natural and legal person's relations with a Swedish credit institution may not be disclosed, and this continues to apply after the person is

[4] www.regeringen.se/sb/d/18205/a/243507.

no longer a customer of the credit institution. 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 during the course of an investigation 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.

Where 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 where the institution is 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 the 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, at 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 such are comprehensive.

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 cases where there is a risk of serious disruption to the Swedish financial system, the government may provide support to credit institutions as further set out in Section II, *supra*.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

Legal or natural persons wishing to acquire shares in a Swedish credit institution will be obliged to undergo ownership and management assessments where they directly or indirectly acquire 10 per cent or more of the shares or voting rights in the institution.

The assessments made by the SFSA are extensive, and the SFSA will grant a licence for acquisition or financial operations 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. The SFSA will also require an extensive business plan containing, *inter alia*, a three-year financial forecast for the credit institution and the group to which it belongs.

Subject to receiving a complete application and the application fee of 50,000 kronor per 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 that company or a superior company in 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, the post-acquisition assistance should at the very least not be secured or agreed between the parties prior to the transaction, and some time (generally three to six months) should lapse from the acquisition until, *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, there is a possibility to apply for an exemption from the Swedish Tax Agency prior to completing a transaction that would otherwise be unlawful. Such an example may be granted in 'special circumstances' but is seldom favoured by parties because of, *inter alia*, timing and publicity aspects.

ii Transfers of banking business

There is no established process for how a Swedish credit institution may transfer all or part of its business (comprising deposits, loan arrangements and other assets) 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

One of the most notable recent developments in the Swedish banking market is that the SCB has decided to cut the repo rate by 0.15 percentage points to minus 0.25 per cent, effective from 25 March 2015. According to the SCB, there are signs that underlying inflation has bottomed out and is on its way up, but the latest strengthening of the Swedish krona may break such trend.[5]

[5] www.riksbank.se/sv/Press-och-publicerat/Pressmeddelanden/2015/Riksbanken-sanker-reporantan-till--025-procent-och-koper-statsobligationer-for-30-miljarder-kronor.

Legislation-wise, 2014 saw the entering into force of legislation making the provision of credit to consumers on a stand-alone basis (i.e., not in combination with accepting repayable funds from the public) available and the intermediation of credit to consumers licensable. Entities wishing to conduct such business in Sweden are now required to apply to the SFSA for a consumer credit institution licence. This legislation is also meant to capture the new phenomenon of 'peer-to-peer lending platforms', where professional actors interconnect consumers so that they can lend money to each other without the involvement of credit institutions.

VIII OUTLOOK AND CONCLUSIONS

In summary, 2014 saw the implementation of the CRR and the CRD IV Directive into Swedish law as well as the introduction of national regulations governing activities bordering on banking business. Taking into consideration the pending implementation of the BRRD as well as numerous other proposals relating to the protection of consumers in the banking industry, we are seeing a continued tendency towards the introduction of a substantial amount of new legislation.

Appendix 1

ABOUT THE AUTHORS

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

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Helena Håkansson is part of Advokatfirman Vinge's financial services with experience in the banking, investment services and funds sectors in particular. She has assisted clients with their establishment in Sweden of financially regulated entities and branch offices, as well as advised on financial services licence matters, including AIFMD marketing licences, credit market company licences and consumer credit institution licences. She has also provided assistance to clients with ownership and management assessments in connection with acquisitions of Swedish financial institutions.

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