THE BANKING REGULATION REVIEW

FOURTEENTH EDITION

Editor
Jan Putnis

THE LAWREVIEWS

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PREFACE

This edition of *The Banking Regulation Review* is emerging during significant turbulence in the banking sector following the failure of two medium-sized US banks and the merger – yet to be completed at the time of writing – between the UBS and Credit Suisse Groups in order to save the latter. Whatever happens next, it is clear that business strategy, prudential regulation and resolution strategies in the banking sector will fall under further scrutiny in all major banking centres as a result of these events. As a result, a sector that hitherto had, on the whole, been doing a reasonable job of recovering from the stresses that the covid-19 pandemic imposed in many countries has, in a matter of weeks, been thrown into a new period of regulatory uncertainty.

Up until these market shocks, banks had been preparing for a range of regulatory changes, many of which have been a very long time coming, including the implementation of Basel III. Other items on the reform agenda included the ongoing focus on environment, social and governance (ESG) considerations, particularly climate-related initiatives; greater focus on consumer outcomes in a number of jurisdictions (including the introduction in 2023 of the UK's 'consumer duty'); the re-examination of some post-financial crisis reforms; still greater focus on the quality of banks' controls over outsourcing and other third-party service arrangements; continued regulatory activism in relation to actual and suspected failings in banks' anti-money laundering systems and controls; further moves to encourage 'open banking'; and the gradual move towards the regulation of activities relating to cryptoassets. The UK government, in particular, has unveiled a complex set of post-Brexit reform proposals which, even though not particularly radical, will set in train real divergence of the UK from the EU in banking regulation. In addition, the prospect of central banks issuing digital currencies in the future is now beginning to get the attention it deserves among banks.

All of these items remain on the agenda, but it is hard to see how there will not now also be renewed focus on the causes of bank distress. Bank resolution authorities will be looking carefully again at their powers to act in a crisis and barriers that may exist to the use of those powers. This is further proof that there is never an ideal moment to publish a book such as this as there always seems to be an important set of legal, regulatory or market developments of uncertain impact just around the corner. Yet that is also what makes banking regulation so interesting.

This edition of *The Banking Regulation Review* covers 31 countries and territories in addition to the usual chapters on international initiatives and the European Union. My thanks go to the authors for continuing to prepare informative chapters while running busy practices advising their clients. They make this book the useful overview and guide to banking regulation around the world that it is.

Thank you also to the partners and staff of Slaughter and May in London and Hong Kong for continuing to support and contribute to this book, and in particular to Nick Bonsall, Vincent Chan, Emily Bradley, Ben Goldstein, Selmin Hakki, David Kasal, Tolek Petch, Jocelyn Poon and David Shone. Thanks also to Chino Asiegbu and Natalie Se for their help.

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Jan Putnis
Slaughter and May
London
April 2023

Chapter 29

SWEDEN

Fredrik Wilkens and Henrik Schön[1]

I INTRODUCTION

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

	Number of employees	Lending to the public	Balance sheet total
Nordea	28,268	€346 billion	€560 billion
SEB	17,714	2,065 billion Swedish kronor	3,532 billion Swedish kronor
Handelsbanken	12,030	2,315 billion Swedish kronor	3,453 billion Swedish kronor
Swedbank	16,803	1,842 billion Swedish kronor	2,854 billion Swedish kronor

Sweden has witnessed vigorous activity within the payments and fintech sectors in recent years, with a number of new companies and business models entering the market (e.g., Klarna, iZettle and Trustly), creating a new competitive landscape on the Swedish market, a trend that is very much ongoing and strengthening. There is also a strong focus on financial regulation, with consumer protective issues being one of the top priorities.

II THE REGULATORY REGIME APPLICABLE TO BANKS

i The Swedish Banking and Financing Business Act

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

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

2 The annual report for 2022 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 licence from the SFSA to provide their services in Sweden. However, these 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 (and ultimately the Swedish courts) for each case. It is clear, however, that a number of factors are taken into account, and that the SFSA will judge each case on its own merits. The SFSA would consider, inter alia:

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

EEA credit institutions may provide their services in Sweden on a cross-border basis after having obtained a Swedish cross-border passport pursuant to the CRD. The establishment of a Swedish representative office is also possible but subject to numerous restrictions. 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

At a very general level, the SFSA mainly applies three types of supervision: ongoing supervision, investigations and event-driven supervision.

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

On a more general level, the SFSA applies risk-based supervision, which stands on two pillars: a risk assessment process and a risk classification process. The risk assessment process identifies and ranks the biggest risks, while the risk classification process ranks firms based on where the problems are considered to have the greatest potential to produce negative consequences for consumers or the national economy. 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.

With the increased internationalisation of various regulations within the EU, the SFSA's supervision is influenced by decisions taken by the three EU supervisory authorities regarding, for example, supervisory areas of priority and how the work in relation to such shall be conducted.

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. Each year the SFSA conducts a categorisation of all credit institutions in four distinct categories depending on their systemic importance and the extent of cross-border activities in accordance with guidelines published by the European Banking Authority (EBA/GL/2022/03) which are in turn relevant for the supervisory review and evaluation process (SREP) of each institution. The category, in turn, relates to supervisory goals of the SFSA who seeks to perform a re-evaluation of the SREP more frequently of an institution in a higher category (yearly, bi-annually or every third year) as well as to engage in dialogue with the institution on a more continuing basis. The Big Four are, according to the SFSA, systemically important owing to their predominant position in the Swedish market, their complex business models and their extensive cross-border operations (following Nordea's relocation to Finland, it is no longer subject to the primary supervision of the SFSA, but Nordea Hypotek AB, a company within the Nordea group, has been classified as systematically important by the SFSA). They are, therefore, thoroughly supervised and constitute Category 1 firms. The SFSA is in close dialogue with each Category 1 firm's board and management.

In addition to financial stability, the SFSA has a strong consumer protective focus seeking to maintain and enhance public confidence in the financial markets through ensuring that the assets of consumers held by institutions are subject to adequate protections, consumers receive relevant and understandable information and that consumers purchase suitable products taking into account their needs, associated costs, etc.

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).

Persons who are board members of Swedish credit institutions that are deemed significant owing to the nature, scale and complexity of their operations are restricted in the number of additional directorships they may hold (relating to both executive and non-executive directorships). 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). Directorships in non-commercial companies are not taken into account. In addition, the managing director of a significant financial institution may not have more than two additional directorships, although it is possible for the SFSA to grant exemptions for an additional directorship.

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

Remuneration

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

Deferred payment

The SFSA Regulations provide that at least 40 per cent of the variable remuneration of staff whose actions can have a material impact on risk exposure must be deferred for four to five years. Furthermore, variable remuneration paid to staff whose professional activities have a material impact on the institutions' risk profile (including, e.g., members of the management body and persons forming part of the executive management such as the managing director) or that otherwise is particularly high, at least 60 per cent of the variable remuneration must be deferred. Variable remuneration paid to persons included in the management body of an institution that is significant with respect to size, internal organisation and the nature, scope and complexity of its activities must be deferred for at least five years. Deferred remuneration may be distributed once per year, and evenly distributed over the period of time by which the distribution was deferred (pro rata), whereby the first payment may be made one year from the date on which the remuneration was decided.

The above requirements do not apply to employees whose variable remuneration does not amount to €50,000 per year, provided the variable remuneration does not exceed one third of the employee's total remuneration. Furthermore the deferral requirements do not apply to institutions who are not 'large institutions' (as defined in Article 4(1)(146) of the CRR) or whose assets do not exceed certain thresholds.

Composition of variable remuneration

Generally, an undertaking must ensure that at least 50 per cent of the variable remuneration to an employee whose professional activities have a material impact on the institutions' risk profile consists of:

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

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

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

The above requirement regarding the composition of the variable remuneration does not apply to (1) institutions who are not 'large institutions' (as defined in Article 4(1)(146) of the CRR) or whose assets do not exceed certain thresholds; or (2) employees generally, whose variable remuneration does not amount to €50,000 per year, provided the variable remuneration does not exceed one third of the employee's total remuneration.

Loss of remuneration

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

iii Regulatory capital and liquidity

Pursuant to the CRD (as implemented locally) and the CRR, institutions are subject to a variety of capital and liquidity requirements, the majority of which stem from the Basel framework, with certain uniform requirements being applicable to all institutions and others only in relation to specific institutions; for example, those considered to be systematically important. In brief, 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 (CET1) capital. The total capital relation – that is, the institution's capital base as a percentage of its risk-weighted exposure amount – shall amount to at least 8 per cent of risk-weighted assets. Thus, 2 per cent of that 8 per cent may constitute Tier 2 capital. National competent authorities may also impose additional own funds requirements under certain circumstances, and following the introduction of new rules during 2021, competent authorities shall provide guidance to institutions on the level of capital required within the Pillar 2 guidance.

Separate from their own funds' requirements, as of 2021 institutions are required to adhere to a leverage ratio requirement of 3 per cent of the total exposure amount, which shall be met with additional Tier 1 capital.

Furthermore, there are requirements imposed on credit institutions to hold various types of capital buffers, with the specific requirements being dependent on, inter alia, the size of the institution and whether it is considered of systemic importance. The capital buffers include a capital conservation buffer of 2.5 per cent of risk-weighted assets, a countercyclical capital buffer assessed quarterly by the SFSA of currently one per cent (reduced during covid-19 but has been increased to 2 per cent with effect from June 2023) of risk-weighted assets, and, in relation to SEB, Swedbank and Handelsbanken (as systemically important institutions), a systemic risk buffer of 3 per cent of risk-weighted assets at the group level. All risk buffers must consist of CET1 capital. Within the scope of Pillar 2, SEB, Swedbank and Handelsbanken are also subject to a CET1 capital systemic risk buffer requirement (O-SII) of 1 per cent of risk-weighted assets at the group level.

The CRR, as further set out in the Commission's Delegated Regulation (EU) 2015/61, requires a credit institution to have a liquidity buffer that enables it to meet cash flow needs for a period of 30 days in high-stress scenarios. In addition, institutions are also subject to a net stable funding requirement, which complements the above liquidity requirement, meaning that institutions need to have stable funding to meet their financing needs (including in normal and stressed scenarios) for a one-year period.

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

iv Recovery and resolution

Implementation of the Bank Recovery and Resolution Directive

The Bank Recovery and Resolution Directive (BRRD) was implemented into Swedish law on 1 January 2015 through the Swedish Resolution Act (the Resolution Act), which came into effect on 1 February 2016. The BRRD has been amended through EU Directive 2019/879 (BRRD II), with changes relating primarily to requirements regarding total loss-absorbing capacity and minimum requirement for own funds and eligible liabilities. Most of the provisions thereof entered into Swedish law on 1 July 2021, allowing for the gradual fulfilment of certain necessary requirements by 1 January 2024.

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

Crisis prevention

The Resolution Act contains requirements for, inter alia, the establishment of recovery plans and resolution plans. It also gives the NDO the right to require that a credit institution removes obstacles preventing resolution, such as requiring the credit institution to limit its largest or total exposures, dispose of certain assets and terminate certain business operations, or the development of certain services and products. The NDO, with the SFSA, also has the power to decide on the minimum amount of bail-in debt (i.e., the debt possible to write-down or convert into capital) that a credit institution must have in relation to its total risk exposure amount under Article 92 of the CRR and the total exposure amount under Article 429 and 429a of the CRR (leverage ratio). Furthermore, in relation to certain qualified debt and securities issued by a credit institution and that are subject to the laws of a jurisdiction outside the EEA, credit institutions are as a main rule required to include bail-in clauses.

Resolution

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

a the sale of all or part of the business of the relevant entity to a purchaser that is not a bridge institution;

b the transfer of all or part of the business of the relevant entity to a bridge institution;

c the transfer to an asset management vehicle;

d the bail-in tool (write-down and conversion of debt); and

e the temporary public ownership (nationalisation) of the relevant entity.

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

a the power to make share transfers, pursuant to which all or some of the securities issued by a credit institution may be transferred to a commercial purchaser, a bridge bank or the government;

b the resolution instrument power, which includes exercising the bail-in tool;

c the power to transfer all or some of the property, assets and liabilities of a Swedish credit institution to a commercial purchaser or the NDO; and

d the third-country instrument powers that recognise the effect of a similar special resolution action taken under the law of a country outside the European Union.

In addition, the Resolution Act grants powers to modify contractual arrangements in certain circumstances, and, under certain circumstances, prevents a third party's enforcement or termination rights against the institution 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. This fund may be used in connection with resolutions under certain exceptional circumstances (e.g., when there is a need for excluding conversions or a write-down of debt due for stability reasons).

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

There is also a deposit guarantee fund, which is a state-provided guarantee of deposits in all types of credit institutions through which customers can obtain compensation of up to 1.05 million Swedish kronor per credit institution, or the equivalent of €100,000 in the case of a foreign branch of a Swedish credit institution. Credit institutions belonging to the deposit guarantee scheme must pay an annual risk-based fee to the NDO, which shall amount to a total of 0.1 per cent of the value of the guaranteed deposits.

IV CONDUCT OF BUSINESS

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

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

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

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

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

In the absence of authorisation or just cause, a customer's relations with a Swedish credit institution may not be disclosed, and this continues to apply after the customer relationship has ended. However, a Swedish credit institution is obliged to report information regarding an individual's relations with the institution where this information is requested by an investigating officer pursuant to the provisions regarding preliminary investigations in criminal cases, or where this 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 third parties to perform any regulated services or a service of core importance for the institution's operations, the institution must inform the SFSA and file the relevant outsourcing agreement with the SFSA. Furthermore, outsourcing agreements may only be entered into provided that 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, including but not limited to the European Banking Authority's guidelines on outsourcing arrangements.[3]

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

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

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

V FUNDING

Swedish credit institutions mainly finance themselves through deposit-taking and lending to the general public, lending to each other, holding interest-bearing securities, trading in derivatives and issuing interest-bearing securities (bonds and certificates). In this context, Swedish banking has a high proportion of market funding when seen in an international context, with Swedish banks obtaining around 50 per cent of their funding via the markets.[4] In cases where there is a risk of serious disruption to the Swedish financial system, the government may provide support to credit institutions, as discussed in Section III.

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 are obliged to undergo ownership and management assessments before they directly or indirectly acquire 10 per cent or more of the shares or voting rights of, or if the acquisition otherwise enables the acquirer to exercise a significant influence over the management of, an institution.

3 EBA/GL/2019/02.

4 https://www.fi.se/contentassets/31dc6cccbd37421aad96add306e59e5a/bankbarometern-oktober-2022.pdf.

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

Subject to receiving a complete application and the application fee of 28,000 Swedish kronor for each direct or indirect qualifying acquirer, the SFSA will, as a main rule, process the application within 60 business days.

In relation to the structuring of banking acquisitions, consideration needs to be given to the impact, if any, of the capital requirements and additional regulatory requirements on the acquirer and the group, including, but not limited to, requirements arising as a result of consolidation and group structure.

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

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

ii Transfers of banking business

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

VII THE YEAR IN REVIEW

With rising inflation and interest rates during 2022, the Swedish housing market has taken a toll with a drop of around 10 to 15 per cent, impacting Swedish households that remain some of the most indebted in Europe when looking at debt as a percentage of disposable income, which in turn has led to a debate on whether mandatory amortisation requirements on mortgage loans (between 1 and 3 per cent depending on leverage, etc.) should be relaxed. Credit losses have, however, remained low and Swedish banks continue to show resilience and good profitability.

VIII OUTLOOK AND CONCLUSIONS

It remains to be seen how the state of the global economy will affect Swedish consumers and corporations, particularly the private and commercial real estate markets that are very sensitive to interest rate increases. As a result, the SFSA has expressed that it will be a priority to supervise the private credit market and ensure that proper credit assessments, etc. are performed. Furthermore, we expect the focus on ESG-related issues to become more intense in light of EU-wide rules having come into effect and particularly issues surrounding 'greenwashing'.

Appendix 1

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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 including banks, credit market companies, asset management companies, payment institutions, alternative investment fund managers and UCITS in connection with all types of regulated activities. He also has extensive experience within the banking and financing sector in general and is on the board of several Swedish financial sector companies.

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