

## **Bond-financed lending**

### **Summary**

Undertakings that finance lending by issuing bonds need authorisation to conduct financing business in accordance with the Banking and Financing Business Act (2004:297) unless the bonds are combined with a transfer restriction that ensures that the bonds cannot come into the possession of the general public, neither at the time of issuance, nor at a later time.

### **Question**

In this document, we state our position on what is viewed as receiving repayable funds in accordance with Chapter 1, section 4 of the Banking and Financing Business Act. In order to be exempt from the authorisation obligation, is the undertaking required in its lending financing to ensure that no one belonging to the 'general public' can acquire a claim on the undertaking?

### **Governing law**

According to Chapter 2, section 1 of the Banking and Financing Business Act, an undertaking shall have obtained Finansinspektionen's permission to conduct financing business. Included in financing business are, for example, other lending activities that the undertaking finances by receiving repayable funds from the general public.

The repayable funds included in the provision include, for instance, interest-bearing debt instruments in the form of bonds. Securities with loss-absorbing effects such as shares or fund units in the form of dividend- and principal-linked debentures are not normally viewed as being repayable funds. The term 'general public' includes private individuals and all non-financial corporations. 'Financial corporations' includes Swedish banks, insurance companies, credit market companies, securities companies and financial institutions. The foreign equivalents to these types of firms are also viewed as financial corporations. State and municipal institutions are not viewed as the general public (Bill 2002/03:139 pp. 513 and 565.)

## Assessment

According to Finansinspektionen, the overall purpose of defining ‘financing business’ is to prevent those belonging to the general public from financing lending for actors who do not possess the authorisation to conduct financing business. It is the authority's assessment that this should reasonably apply for as long as the lending company conducts business.

An undertaking that does not possess authorisation to conduct financing business in accordance with the Banking and Financing Business Act must start by applying for such authorisation for financing lending by issuing bonds. Only when an undertaking can ensure that the bonds cannot come into the possession of the general public, neither at the time of issuance, nor at a later time, is the undertaking exempt from the authorisation requirement.

It is possible to combine a bond with a transfer restriction that ensures that the repayable funds cannot be acquired by anyone defined as belonging to the general public at the time of the new subscription or on the secondary market. Such a restriction entails, however, that the bonds cannot be traded on a regulated market or a multilateral trading facility that is currently conducted in Sweden as the securities are required to be freely transferable to be traded as such (Chapter 15, section 2 of the Securities Market Act (SFS 2007:528) and the platform regulations).

This legal position applies until further notice.

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### Is your company covered by the position?

Undertakings that fund lending by issuing securities that are viewed as being repayable funds without a transfer restriction or authorisation to conduct financing business – or are in the process of doing so – should contact Finansinspektionen about the measures the undertaking should take. Contact Ida Frössander for matters related to this position.