

# Finansinspektionen's Regulatory Code

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## **Finansinspektionen's general guidelines regarding application for authorisation to conduct banking or financing business;**

**FFFS 2011:50**

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decided on 9 November 2011.

For the application of Chapter 3, sections 8 and 9, Chapter 4, sections 5 and 6, Chapter 5, sections 1, 3, 4 and 5 of the Banking and Financing Business Act (2004:297), Chapter 1, section 1 of the Members' Banks Act (1995:1570), Chapter 1, section 1 of the Savings Banks Act (1987:619) and Chapter 2, sections 1, 2, 4 and 5 of the Banking and Financing Business Ordinance (2004:329), Finansinspektionen provides the following general guidelines.

### **Chapter 1 Scope**

These general guidelines relate to the procedure in conjunction with

1. application for authorisation to conduct banking or financing business,
2. application for authorisation for foreign credit institutions to establish a branch in Sweden,
3. application for authorisation or notification for credit institutions to establish a branch abroad, and
4. notification of cross-border operations and representation offices.

Regulations regarding the aforesaid are set forth, inter alia, in

- Savings Banks Act (1987:619),
- Members' Banks Act (1995:1570),
- Banking and Financing Business Act (2004:297),
- Banking and Financing Business Ordinance (2004:329), and
- Capital Adequacy and Large Exposures Act (2006:1371).

### **Definitions**

In these general guidelines

1. *EEA*: European Economic Area,
2. *financial group*: the same as in Chapter 9, section 1 and section 2, first paragraph of the Capital Adequacy and Large Exposures Act (2006:1371),
3. *credit institution*: bank or credit market company,
4. *qualifying owner*: natural or legal person in possession of a qualifying holding,

5. *qualifying holding*: a direct or indirect ownership in an undertaking where the holding represents ten per cent or more of the share capital or of the voting capital or where the holding otherwise renders it possible to exercise a significant influence over the management of the undertaking.

## **Chapter 2 application for authorisation to conduct banking or financing business**

### **Formulation of application**

Chapter 1, sections 4–6 and Chapter 2, sections 1 and 2 of the Banking and Financing Business Ordinance (2004:329) lay down the formalities that apply to the application and the information that should be included in the application.

The original application and one copy should be submitted to Finansinspektionen. An additional copy should be furnished to the undertaking's auditor. The undertaking can state in its application which documents it considers to be subject to confidentiality pursuant to Chapter 30, section 4 of the Public Access to Information and Secrecy Act (2009:400).

### **Articles of association, etc.**

The undertaking's proposed articles of association, regulations or bylaws should set forth the operations that the undertaking intends to conduct. The undertaking should use the examples provided in Chapter 7, section 1, second paragraph of the Banking and Financing Business Act (2004:297) as a basis.

### **Business plan**

An undertaking's business plan should contain the information set out below. The undertaking should append to the plan

1. an organisational diagram in accordance with the guidelines in the Description of operations section,
2. outsourcing agreement, if relevant, in accordance with the guidelines in the Outsourcing agreements and Auditing function sections,
3. a group or ownership chart, in accordance with the guidelines in the Ownership section,
4. documentation for ownership and management assessment, in accordance with the guidelines in the Suitability of owners and Suitability of senior management sections,
5. annual reports, interim reports, forecasts and lending instructions, in accordance with the guidelines in the Equity ratio and liquidity section, and
6. guidelines and instructions, in accordance with the guidelines in the Risk management, Customer protection, Ethical rules, Events of material significance, Measures against money laundering and financing of terrorism and Audit function sections.

### *Description of operations*

A detailed description of the operations to be conducted by the undertaking should be submitted. The description should, inter alia, contain:

- a general outline (organisational chart) regarding the manner in which the operations are organised,
- a general description of the areas of operation and functions,
- information regarding the number of employees, broken down by various areas of operation and functions, and
- a description of the responsibility and positions of employees with special responsibility for a particular function or area of operation.

The undertaking should describe in particular the parts of the operations which require authorisation in accordance with Chapter 1, sections 3 or 4 of the Banking and Financing Business Act (2004:297).

The undertaking should furnish information regarding the manner in which its IT operations will be organised, the systems it will use and the strategy which may be relevant. Information should also be furnished regarding how the undertaking intends to organise and structure the responsibility for its IT support and information security.

The managing director and other persons active in the undertaking should be employees thereof. The application should state whether any person will be employed also in any other undertaking and, in such case, should describe the assessment which has been made regarding, inter alia, risks of any conflict of interest.

#### *Outsourcing agreements*

Where an undertaking intends to outsource parts of its operations to another legal person or independent natural person, the business plan should contain a description of the engagement. When drawing up the outsourcing agreement, the undertaking should follow Chapter 7 of Finansinspektionen's general guidelines (FFFS 2005:1) regarding governance and control of financial undertakings.

The undertaking should provide Finansinspektionen with an outsourcing agreement as set out in Chapter 6, section 7 of the Banking and Financing Business Act.

#### *Ownership*

An undertaking should provide information in its business plan regarding owners with qualifying holdings of shares or participating interests in the undertaking. In the event the undertaking is part of a group or financial group, it should provide information regarding the company name and type of operations with respect to other undertakings in the group or financial group.

The undertaking should append a group or ownership diagram to the business plan that demonstrates the ownership structure by specifically stating each owner's share of the capital and voting rights.

#### *Suitability of owners*

An undertaking's qualifying owners and senior management in legal persons possessing a qualifying holding should furnish the information set forth in Finansinspektionen's regulations (FFFS 2009:3) regarding ownership and management assessment.

*Suitability of senior management*

An undertaking's board members, alternate board members, managing director and deputy managing director should furnish the information set forth in Finansinspektionen's regulations (FFFS 2009:3) regarding ownership and management assessment.

*External board members*

An undertaking should state in its business plan which of the members of the board of directors are external members, i.e. which members do not belong to the group of owners and other persons who are connected to the undertaking, e.g. in the capacity of employee, service provider or relative.

The undertaking should have external members of the board of directors in order to strengthen the board's control function. If the undertaking's board of directors does not have any external members, the reasons for this should be stated.

*Initial capital*

The definition of initial capital is the same as in Chapter 1, section 5 of the Banking and Financing Business Act.

*Equity ratio and liquidity*

An undertaking which conducts operations on the date of the application should append an audited annual report which has been approved by the undertaking's general meeting. Where the undertaking is included in a group, an annual report for the parent company and for the group in which the institution is included should also be appended. The annual reports should refer to the immediately preceding financial year. In addition, where applicable, the most recent preceding interim report should be appended.

A forecast for the upcoming three financial years should also be appended to the undertaking's business plan.

The forecast should include the following information:

- balance sheets and profit and loss accounts for both the undertaking and the financial group which the undertaking may come to lead or be included in. The forecast should be prepared in accordance with Appendices 1–3 to Finansinspektionen's regulations and general guidelines (FFFS 2008:25) regarding annual reports of credit institutions and investment firms.
- an analysis of the own funds, capital adequacy ratio and exposures regarding both the undertaking and the financial group which the institution may come to lead or be included in. The analysis should be prepared in accordance with the report appendix to Finansinspektionen's regulations and general guidelines (FFFS 2007:1) regarding capital adequacy and large exposures.

The undertaking should state the assumptions upon which the forecasts and analyses are based. These should be described for each business area. A sensitivity analysis should be provided regarding the impact on stated analyses and forecasts of changes in assumptions regarding e.g. volumes, interest rate levels and interest margins.

In the business plan, the undertaking should describe the manner in which it intends to resolve the issue of financing the business. The description should contain information regarding the markets on which the undertaking intends to obtain refinancing and the content of agreements regarding refinancing with another credit institution or creditor. Specific information should be provided regarding the relationship between short-term and long-term borrowing, relative to the terms until maturity of outstanding loans or other financing operations, such as leasing. The undertaking should append to the description instructions for the function which shall be entitled to decide upon borrowing on behalf of the undertaking and the restrictions that shall apply.

The undertaking should also furnish other information which may be of significance for an assessment of the financial circumstances.

#### *Auditors*

The business plan should furnish information regarding the undertaking's external auditors.

#### *Accounting*

The business plan should contain a description of the organisation, allocation of responsibility and payment approval instructions with respect to the economy and accounts function. A description of the accounting system should state the connection between the subsidiary ledgers and the books of prime entry and general ledger. Measures which have been or will be taken by the undertaking to ensure satisfactory control regarding book keeping and funds management should also be stated.

#### *Management, internal information and internal control*

An undertaking should append to its business plan proposed guidelines and instructions for the areas set out below in the Risk management, Customer protection, Ethical rules, Events of material significance, Measures against money laundering and financing of terrorism and Auditing function sections. Guidance for this is available in Finansinspektionen's general guidelines (FFFS 2005:1) regarding governance and control of financial undertakings.

#### *Risk management*

The business plan should contain a description of the manner in which the undertaking will handle the risks associated with its operations. Examples of material risks include

- credit risks,
- market and liquidity risks, and
- operational risks.

Proposed guidelines and instructions should be appended. Guidance is available in Finansinspektionen's general guidelines (FFFS 2004:6) regarding credit risk management in credit institutions and investment firms, Finansinspektionen's general guidelines (FFFS 2000:10) governing management of market and liquidity risks in credit institutions and investment firms with regard to market risks, and

Finansinspektionen's regulations (FFFS 2010:7) regarding management of liquidity risks in credit institutions and investment firms.

#### *Customer protection*

In the business plan, an undertaking should describe the measures planned to ensure that its operations comply with consumer protection legislation. The undertaking should provide information about its procedures for handling complaints. Information should be provided regarding the name of the person or the senior managers who will be responsible for complaints from the public. Guidance may be obtained from Finansinspektionen's general guidelines (FFFS 2011:47) regarding consumer credit and Finansinspektionen's general guidelines (FFFS 2002:23) regarding complaints management concerning financial services for consumers.

#### *Ethical rules*

An undertaking should append to its business plan the guidelines for handling ethical issues that the undertaking shall apply. The application should state the manner in which common knowledge of ethical rules in the industry is to be disseminated within the undertaking and the person or function which is to be responsible therefor. In addition, the undertaking should state the manner in which it handles follow up, control and reporting, as well as internal information and training, concerning ethical issues. Guidance can be obtained from Finansinspektionen's general guidelines (FFFS 1998:22) regarding guidelines for handling ethical issues at institutions under the supervision of the supervisory authority.

#### *Events of material significance*

An undertaking should append to its business plan guidelines for handling and reporting events of material significance which are to be applied by the undertaking. These guidelines should, among other things, set forth decision-making and reporting procedures in such matters. Guidance may be obtained from Finansinspektionen's general guidelines (FFFS 2005:12) regarding reporting of events of material significance.

In the event any crime, attempted crime or preparation for a crime against the undertaking has been discovered during the past two years, the undertaking should furnish information relating thereto in the business plan. An undertaking which conducts operations on the date of the application should also state whether it is a party to any judicial or arbitration proceedings which, separately or together, involve a more significant amount relative to the size of the undertaking.

#### *Measures against money laundering and financing of terrorism*

An undertaking should append to its business plan an account of the measures it has taken or intends to take to prevent money laundering and financing of terrorism. Proposed instructions should be appended. Guidance can be obtained from Finansinspektionen's regulations and general guidelines (FFFS 2009:1) governing measures against money laundering and financing of terrorism.

*Internal audit function*

In its business plan, an undertaking should describe the manner in which the independent internal audit function is to be structured and how it is to work.

The description should state

1. the manner in which the internal audit function will be organised,
2. instructions for the function,
3. whether there is to be an independent review of IT and information security,
4. whether an audit plan will be produced and who will adopt this plan, and
5. how often and to whom the internal audit function will report.

In the event the internal audit function is to be carried out by external auditors or consultants, a comparable description should be provided in respect of their engagement. The engagement should be regulated in a separate agreement which is appended to the business plan.

Guidance can be obtained from Finansinspektionen's general guidelines (FFFS 2005:1) regarding governance and control of financial undertakings.



### **Chapter 3 Authorisation to establish a branch in Sweden and notification of representation offices**

#### **Establishment of branches**

A foreign credit institution not domiciled within the EEA may, upon obtaining authorisation, establish a branch in Sweden. Where the foreign credit institution intends to conduct securities operations in the branch, separate authorisation is required in accordance with the Securities Market Act (2007:528).

#### *Content of the application*

The following should be appended to an application:

1. the articles of association or equivalent,
2. a business plan which contains information corresponding to that set out in Chapter 2 in the Description of the operations, Outsourcing agreements, Equity ratio and liquidity, Accounting, Governance, internal information and internal control, Risk management, Customer protection, Ethical rules, Events of material significance, Measures against money laundering and financing of terrorism and Internal audit function sections, and
3. a power of attorney in accordance with section 10 of the Foreign Branch Offices Act (1992:160).

An application should also contain information regarding

1. business name and address of the branch,
2. the branch's external auditors,
3. the registered office of the board of directors and the foreign credit institution's address,
4. qualifying owners of the foreign credit institution,
5. board members and senior management of the foreign credit institution,
6. annual report for the most recent financial year and consolidated financial statements for the group in which the foreign credit institution is included or of which it is the parent company,
7. the capital adequacy for both the foreign credit institution and the financial group or group in which the institution is included or leads, calculated in accordance with the Basel Committee's rules, and
8. any co-operation with credit institutions or investment firms in Sweden.

#### **Representation offices**

**FFFS 2011:50**

A foreign credit institution may open a representation office in Sweden following notification to Finansinspektionen. The credit institution may not provide banking or financing services from the representation office.

The foreign credit institution's annual report should be appended to the notification together with information regarding

1. the representation office's business name and complete address,
2. name and complete personal details of the person who shall be responsible for the representation office,
3. the planned operations, and
4. the foreign credit institution's branches of business.

Finansinspektionen must be notified about changes in the above information. The foreign credit institution should also submit its annual report to Finansinspektionen every year.

## **Chapter 4 Operations in foreign countries**

### **Establishment of branches**

Upon obtaining authorisation from Finansinspektionen, a credit institution may establish a branch office in a country outside the EEA. Where establishment takes place in a country within the EEA, the institution shall notify Finansinspektionen. The information that should be included in the notification is set out in Chapter 5, section 1 of the Banking and Financing Business Act (2004:297).

#### *Content of the application*

A credit institution should append to an application for authorisation or notification of establishment of a branch a plan for the branch operations. With regard to the establishment of a branch in another EEA country, the institution should fill in a questionnaire that is then appended to the notification, see *Appendix 1* which applies to credit institutions. Credit institutions should also, in *Appendix 2*, state which services the credit institution intends to provide from the branch. A translation of the completed questionnaire into the official language of the country of establishment or English should also be provided.

In addition to the business plan, the institution should provide a forecast regarding anticipated financial results for the branch during the upcoming three financial years. The assumptions on which the forecast is based should be stated. These assumptions should be described for each business area. A sensitivity analysis should be provided regarding the impact on stated analyses and forecasts of changes in assumptions regarding, e.g., volumes, interest rate levels and interest margins.

The branch should appoint a person to be responsible for the operations. This person should be domiciled in the country in which the branch is established. A curriculum vitae for this person should be appended.

In the event the branch is to have its own board of directors, information should be submitted regarding the composition thereof, including any alternate members and information identifying the persons who will be the chairman and vice chairman of the board of directors.

### **Change in the branch's operations**

A credit institution which, after establishing a branch in another EEA country, intends to make changes to the branch's operations, address or senior management shall, pursuant to Chapter 5, section 3, first paragraph of the Banking and Financing Business Act, notify Finansinspektionen in writing about such changes at least one month before the change is implemented. The institution should also notify the supervisory authority in the country in which the branch is established.

A notification procedure corresponding to that stated to in the first paragraph should also be used with respect to a branch in a country outside the EEA.

### **Other cross-border operations**

A credit institution which intends to conduct operations in another EEA country by offering and providing services without establishing a branch there shall, pursuant to Chapter 5, section 4, first paragraph of the Banking and Financing Business Act, notify Finansinspektionen of its plans to conduct operations before they commence. The institution should use the questionnaire in Appendix 1. It should also state which services it intends to provide in accordance with Appendix 2. A translation of the questionnaire into the official language of the country of establishment or English should also be provided.

In the event the credit institution intends to establish a representation office or the equivalent in a country outside the EEA, it should notify such intent in writing to Finansinspektionen.

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These general guidelines shall enter into force on 1 December 2011, whereupon Finansinspektionen's general guidelines (FFFS 2004:9) regarding application for authorisation to conduct banking and financing business or issuer electronic money shall be repealed.

MARTIN ANDERSSON

Roger Jacobsson

*Appendix 1***Establishment of a branch or offering of services through cross-border operations in another EEA country**

A bank or credit market company which intends to establish a branch within the EEA should answer all of the questions below. Where a bank or credit market company intends to offer or provide services without establishing a branch, so-called cross-border operations, questions 1, 2 and 6 and, where appropriate, 7 and 10 should be answered. Finansinspektionen will provide the relevant supervisory authority in the country of operations with this notification.

1. State the full business name and address of the head office in Sweden.
2. State the country in which the establishment will take place.
3. State the business name under which operations will be conducted in the country of operations, the complete address and the telephone number and e-mail address of the place of operations in the country of the branch.
4. State the name and personal identification number of the person who will be responsible for the branch operations. A curriculum vitae should be appended.
5. State whether a board of directors will be appointed for the branch and, where appropriate, the composition and powers thereof.
6. State the operations which are intended to be conducted in accordance with Appendix 2. (The description should be as detailed as possible.)
7. State whether any operations will be conducted which are not listed in Appendix 2.
8. Describe the guidelines regarding the manner in which the credit institution intends to ensure that sufficient liquidity will be maintained in the branch.
9. Describe the branch's organisation (preferably append an organisational diagram).
10. State the name and address of the person who may be contacted in connection with this notification.

The undersigned hereby confirms that the above information is accurate and undertakes to notify Finansinspektionen and the supervisory authority in the country of operations immediately upon any change in the above circumstances.

\_\_\_\_\_  
Place, Date

\_\_\_\_\_  
Place, Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name in print and position

\_\_\_\_\_  
Name in print and position

*Appendix 2*

**List of services**

1. Receipt of deposits and other repayable funds from the public.
2. Lending (includes, inter alia, consumer credits, mortgage loans, factoring with or without recourse and financing of commercial loans (including forfaiting)).
3. Financial leasing.
4. Payment services pursuant to Article 4.3 of Directive 2007/64/EC.
5. Issuance and administration of other means of payment (e.g. travellers cheques and bank money orders) to the extent that these operations are not included under point 4.
6. Guarantees and commitments.
7. Trading on own account or on behalf of customers in
  - a) money market instruments (cheques, drafts, certificate of deposit, etc.)
  - b) foreign currency
  - c) financial futures and options
  - d) currency and fixed-income instruments
  - e) transferable securities.
8. Participation in the issuance of securities and provision of services in connection therewith.
9. Advice to undertakings concerning capital structure, industrial strategy or similar matters as well as services relating to mergers and acquisitions.
10. Money market brokerage.
11. Portfolio management and advisory services.
12. Custody and management of securities.
13. Credit information services.
14. Safe deposit box services.
15. Issuance of electronic money.