Finansinspektionen's Regulations

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Finansinspektionen's (the Swedish Financial Supervisory Authority) Regulations and General Guidelines Governing Measures against Money Laundering and Financing of Particularly Serious Crimes in Certain Circumstances;

decided 27 May 2005.

Finansinspektionen hereby prescribes the following pursuant to the Measures Against Money Laundering and Financing of Particularly Serious Crimes in Certain Circumstances Ordinance (2002:552).

Finansinspektionen provides general guidelines following each section in the regulations.

In supplementation of these general guidelines, Finansinspektionen has also issued general guidelines regarding Governance and Control of Financial Undertakings (FFFS 2005:1).

Scope and definitions

1 § These regulations shall be applied by:

1. natural and legal persons conducting operations as set forth in section 2, first paragraph, subsections 1–7 of the Act on Measures Against Money Laundering (SFS 1993:768) (hereinafter referred to as the Act on Money Laundering);

2. branch offices in Sweden of foreign legal persons with head offices abroad which conduct such operations as referred to above;

3. natural and legal persons set forth in section 8, first paragraph of the Act on Criminal Responsibility for the Financing of Particularly Serious Crimes in Certain Circumstances (SFS 2002:444) (hereinafter referred to as the Act on Financing).

Provisions applicable to the board of directors or managing director of legal persons shall apply similarly in respect of authorised representatives in types of association in which a board of directors or managing director is not appointed.

2 § The regulations govern, *inter alia*, the following:

– the internal routines to be applied for the purpose of preventing an undertaking's products and services being used for money laundering or financing of particularly serious crimes;
– the manner in which identity shall be verified;
– the extent to which documents or information used in verification of identity are to be preserved; and
– the training to be undertaken by the employees of the undertaking.

The rules have principally been drafted to cover measures against money laundering and measures against financing of especially serious crimes.

3 § In these provisions:

undertaking means such natural and legal persons as referred to in section 1, subsections 1–3;

internal rules means policy and governance documents, guidelines, instructions or other written documents through which the issuer (board of directors, managing director or other official) directs the operation.

Internal rules regarding measures against money laundering and financing of particularly serious crimes

4 § The undertaking's board of directors or managing director shall establish the following in internal rules in order to prevent money laundering or financing of particularly serious crimes:

– decision-making and reporting routines in the administration of matters when there is reason to assume that transactions are occurring which constitute money laundering or financing of particularly serious crimes;

– duties and responsibilities of the central functional manager;

– routines for the manner in which identity shall be verified in respect of a person who wishes to initiate a business relationship with the undertaking and in respect of any other person in conjunction with transactions involving an amount equal to EUR 15,000 or more or where the transaction is less than EUR 15,000 but may be assumed to be related to another transaction in combination with which the amount is equal to not less than this amount;

– routines for verification of identity where it may be assumed that the person who wishes to commence a business relationship with the undertaking or carry out such a transaction as referred to in the second part of the immediately preceding indent is not acting on his own behalf;

– routines for scrutinising transactions;

– routines for preservation of documents; and

– routines for training employees in respect of money laundering issues and issues regarding financing of particularly serious crimes.

General guidelines

Policy

The undertaking's board of directors should establish an overall policy regarding measures against money laundering and financing of particularly serious crimes. This may also entail the undertaking's policy to counteract other criminal activities.

Risk management

FFFS 2005:1 provides guidelines for, *inter alia*, the administration and control of risks by undertakings. The undertaking's level of risk exposure to money laundering and financing of particularly serious crimes is, to a significant extent, associated with the type of activity conducted by the undertaking and the markets on which the undertaking operates.

The undertaking's board of directors or managing director should establish internal rules for the identification and analysis of risks of being exposed to money laundering and financing of particularly serious crimes in the undertaking's operations. The rules should pertain to products, services and distribution channels aimed at customers within all business areas.

The undertaking should also document in internal rules circumstances which may constitute indications of money laundering or financing of particularly serious crimes. Examples of such circumstances are provided in the general guidelines in section 11.

The documentation should be regularly reviewed and supplemented.

Know your customer

The undertaking's board of directors or managing director should establish internal rules for the application of the principle of know your customer in the undertaking's business relationships with customers.

This principle entails that the undertaking should, in addition to that which is prescribed by law, obtain to the extent relevant, information regarding the customer's background, origin of money or other assets, the purpose of the customer relationship and the intended use of products and services. The undertaking should also regularly follow up the customer relationship in respect of, for example, changes in the customer's operations and the customer's use of the undertaking's products and services.

The principle of know your customer should be applied within all of the undertaking's business areas aimed at customers and in respect of all types of customers.

Group relationships

In a group of undertakings, the board of directors or managing director of the parent undertaking should, provided that the parent undertaking is an undertaking subject to the Act on Money Laundering, endeavour to establish:

- a group-wide policy for measures against money laundering or financing of particularly serious crimes;
- common internal principles in the formulation of the routines set forth in section 4;
- common internal principles for carrying out risk analysis and the application of the know your customer principle.

In the event the group conducts operations through foreign branch offices or subsidiaries, Finansinspektionen should be immediately informed in the event the undertaking determines that its internal rules against money laundering and financing of particularly serious crimes cannot be applied due to

deficiency in such country's regulation within this area. The aforementioned does not refer to appropriate adjustments to internal rules due to local legislation or the requirements imposed by governmental authorities in such country.

Central functional manager

5 § The undertaking's board of directors or managing director shall appoint a central functional manager with responsibility for the control systems, work routines, decision-making and reporting routines and training programmes to be applied within the organisation in respect of issues regarding money laundering and financing of particularly serious crimes.

The central functional manager shall also otherwise constitute a central support in respect of measures against money laundering or financing of particularly serious crimes.

6 § The central functional manager shall have an executive position within the undertaking which is directly subordinate to the managing director. The central functional manager can appoint one or more persons to assist him or her and delegate powers thereto.

Decision-making and duty to provide information

7 § Decisions regarding the provision of information to the Financial Intelligence Unit of the National Police pursuant to section 9, second and third paragraphs of the Act on Money Laundering and section 8, second and third paragraphs of the Act on Financing shall be taken by the central functional manager or by the person or persons appointed to assist him or her. Such a decision may also be taken by another senior official in the undertaking.

The information shall be provided to the Financial Intelligence Unit without delay and only through the central functional manager or the person or persons appointed to assist him or her.

General guidelines

The undertaking should provide information in the manner designated by the Financial Intelligence Unit. The central functional manager, or the person or persons appointed to assist him or her, shall be the first contact person in this communication.

In conjunction with decisions pursuant to section 9, second paragraph, first sentence of the Act on Money Laundering and section 8, second paragraph, first sentence of the Act on Financing, such should be reported internally in accordance with the undertaking's internal rules. Reporting should at all times take place to the unit or the function which initiated the matter. The aforementioned should apply also in those cases in which decisions are taken not to provide information to the Financial Intelligence Unit.

In a group of undertakings, the central functional manager of the parent undertaking should be informed regarding decisions to provide information to the Financial Intelligence Unit taken by another company in the group, provided that the parent undertaking is an undertaking which is subject to the Act on Money Laundering.

In the event the group also conducts operations via foreign branch offices and subsidiaries, the central functional manager should be regularly informed of decisions taken by the foreign branch offices and subsidiaries to provide information to the Financial Intelligence Unit (or equivalent) concerning suspicion of money laundering or financing of particularly serious crimes. However, the aforementioned shall be conditional upon the provision of information to the central functional manager in the parent undertaking conforming with the legislation and requirements established by governmental authorities in such country.

Verification of identity

8 § Verification of the identity of a customer in the administration of a matter in the presence of the customer shall be carried out in the following manner.

Natural persons

In the event the customer is not known to the undertaking, verification of identity shall be carried out on the basis of a valid certified identity card, other identity cards approved by the banks as an identity document, and driving licence. Verification shall also be conducted by means of passports issued following the expiry of 1997.

In respect of foreign citizens who lack a valid certified Swedish identity card, another Swedish identity card approved by the banks or a Swedish driving licence, the verification of identity shall be carried out by means of a valid passport or other identity documents issued by a governmental authority or other authorised issuer which evinces citizenship. Where deemed necessary in order to ensure the customer's identity, additional documentation shall be obtained such as bank certification or other references from the customer's home country. In respect of foreign passports or another foreign identity document, a copy of the document shall at all times be preserved.

Legal persons

Verification of the identity of a Swedish legal person and information regarding legal representatives thereof shall be conducted on the basis of a registration certificate or, to the extent such has not been issued in respect of the legal person, other authorising documents. The aforementioned shall apply similarly to a foreign legal person.

Legal representatives of a legal person or other persons who represent a legal person by virtue of a power of attorney shall be identified in the same manner as set forth above in the section regarding natural persons.

9 § Verification of the identity of a customer in conjunction with the administration of a matter not in the presence of the customer shall be carried out in the following manner.

Verification of the identity of natural and legal persons shall be carried out by means of documents or information which the undertaking obtains in writing or in another manner from the customer, from a third party or from the undertaking's own or external registers. Such external registers may be credit information

registers, registers available at card issuers/card manufacturers and registers at governmental authorities such as population registers and business registers.

Verification of identity shall be carried out through an appropriate combination of controls as follows:

– signature verified against certified copy of identity document;

– information regarding personal identification number, company registration number, company signatory and board of directors, address, employer, credit card number, numbers on identity documents compared against information in the undertaking's own register or external registers;

– electronic methods for identification of a customer such as what are commonly referred to as e-IDs or identification methods used in Internet banking services, telephone banking services or credit card services;

– telephone call-back or exchanges of faxes;

– other documentation to verify a customer's identity such as bank certification and certificates from notaries public (or equivalent in the foreign country), embassies, consulates and business partners abroad;

– the first deposit of funds takes place from an account opened in the customer's name in a financial institution within the EU/EEA which is subject to the Act on Money Laundering or comparable provisions.

In the event a customer is a foreign citizen who lacks a valid certified Swedish identity card or other Swedish identity document approved by the Swedish banks, or where a customer is a foreign legal person whose legal representative is such foreign citizen, one of the aforementioned control measures shall, however, be conducted by obtaining a certified copy of a passport or other identification document which evinces citizenship.

General guidelines

Initiation of a business relationship, etc.

According to section 4, first paragraph of the Act on Money Laundering and section 11 of the Act on Financing, verification of identity is obligatory when a customer wishes to initiate a business relationship with the undertaking. Contractually based dealings should normally be regarded as such business relationships. Examples of such a business relationship is the opening of a deposit account, taking of loans, credit card agreements, renting safe deposit boxes, opening accounts with a central securities depository or settlement accounts, purchases and sales of fund units and securities, management services and the procurement of pension or endowment policies.

Supplementary verification of a customer's identity should normally be carried out when the customer executes agreements in respect of additional products and services, unless the customer is known to the unit administering the customer matter.

Information regarding identity documents which are approved by the banks are available at the Swedish Bankers' Association and Finansinspektionen.

In respect of information regarding foreign legal persons, guidance may be obtained from, *inter alia*, what is commonly referred to as the European Business Register at the Swedish Companies Registration Office, national company registers in the respective countries, and national and international credit information companies.

Verification of identity where it may be assumed that the customer is not acting on his own behalf

Section 4 provides that the undertaking's internal rules shall contain routines for verification of identity where it may be assumed that a customer is not acting on his own behalf.

Several situations may arise in an undertaking's business activities directed towards customers in which it may be assumed that a customer is not acting on his own behalf.

Where, in conjunction with the initiation of a business relationship with a customer or regularly during the course of such relationship, it may be assumed that a person other than the customer actually controls the customer's assets and directs the customer's use of the products and services which are provided by the undertaking, the situation is normally such that the undertaking must, in accordance with section 6, first paragraph of the Act on Money Laundering, attempt to obtain in a suitable manner information regarding the identity of the party on whose behalf the customer is acting.

Notwithstanding that the identity of the party on whose behalf the customer may be assumed to be acting cannot be verified, the undertaking should, within the scope of the know your customer principle, evaluate and take into account the information obtained for the assessment of the business relationship and the use of the undertaking's products and services.

Circumstances which may indicate that a customer is not acting on his own behalf may include:

– only persons other than those persons constituting legal representatives according to the registration certificate represent the customer pursuant to general powers of attorney;
– the customer's use of the undertaking's products and services give reason to assume that the customer is controlled by persons other than legal representatives of the customer;
– the customer's legal representatives have previously acted as straw men;
– the customer has a complicated ownership structure which is impossible to clarify; or
– the customer's operations have suddenly changed focus and financial position without any formal changes to its management or ownership.

Where the customer may be assumed to be what is commonly referred to as a shell bank, a customer relationship should not be established. A shell bank normally refers to a bank established in a jurisdiction in which the bank has no physical presence and which is not tied to any financial group under supervision.

Use of automatic deposit machines

Identification of depositors should take place by means of a card and PIN code or other similar method in conjunction with deposits of cash funds in an automatic deposit machine.

Outsourcing agreements, etc., for the performance of verification of identity

FFFS 2005:1 provides general guidelines regarding outsourcing agreements. These guidelines provide that outsourcing agreements may be executed with another undertaking to perform verifications of the identity of a customer.

In a group of undertakings, agreements may be entered into with another undertaking within the group to conduct verifications of customer identity. Such verification may be carried out on behalf of another undertaking within the same group without a separate outsourcing agreement where the customer relationship is established in more than one undertaking within the group.

The undertaking's own agents or representatives or other undertakings within the same group and independent agents, insurance brokers and other parties who are themselves subject to the Act on Money Laundering or similar legislation in another country may, in conjunction with the introduction by them of a customer to the undertaking, conduct verification of the identity of the customer on behalf of the undertaking.

When a business relationship with a customer is initiated through the opening of a bank account via an employer, the identity may be established by such employer. The aforementioned should apply when an employer procures occupational pension insurance on behalf of its employees and when an organisation obtains or brokers pension insurance policies for its members.

The responsibility pursuant to the Act on Money Laundering, Act on Financing and these regulations always rests with the undertaking which procures the service or initiates a business relationship with a customer who is introduced by a third party. The aforementioned also covers responsibility for archiving documentation regarding verification of identity in accordance with the aforementioned provisions and the Act on Bookkeeping.

Exemptions from the obligation to conduct verification of identity of certain financial institutions

10 § Regarding foreign financial institutions which conduct operations set forth in section 2, first paragraph, subsections 1–7 of the Act on Money Laundering verification of identity need not be carried out in the event the institution has its registered office in the EU/EEA or in another country with a comparable level in its systems against money laundering.

A list of countries outside of the EU/EEA referred to in section 4 a, first paragraph, subsection 2 of the Act on Money Laundering is set forth in the *Appendix*.

Routines for examination of customer matters

11 § In the event a customer matter gives cause to assume the existence of a transaction constituting money laundering or financing of particularly serious crimes, an official shall, immediately notify the matter to a superior in accordance with the undertaking's reporting routines for closer scrutiny pursuant to section 9, first paragraph of the Act on Money Laundering and section 8, first paragraph of the Act on Financing.

General guidelines

Money laundering and financing of particularly serious crimes are a national and international phenomena and also characterised by significant complexity and continuous development. Accordingly, the undertaking should regularly obtain information regarding new trends, patterns and methods which may be used for money laundering or financing of particularly serious crimes. Guidance may be obtained from relevant international organisations, governmental authorities and other bodies within the area. Particular note may be made of the Financial Action Task Force on Money Laundering (FATF), the European Union (EU), the Basel Committee on Banking Supervision, the International Organisation of Securities Commissions (IOSCO) and the International Association of Insurance Supervisors (IAIS). In respect of financing of particularly serious crimes, the EU has adopted regulations which contain lists of suspected terrorists whose assets are to be frozen.

The principle of know your customer forms a natural basis for examination of whether the transaction may be reasonably assumed to constitute money laundering or financing of particularly serious crimes. The examination should, where applicable, comply with the same basic principles irrespective of whether the transaction was initiated in conjunction with personal customer contact or in some other manner. Transactions pertaining to funds which are initiated in earlier stages by another undertaking subject to the Act on Money Laundering or the Act on Financing, e.g. transfers between customer accounts, do not entail that the recipient undertaking can avoid conducting an independent review in accordance with section 9 of the Act on Money Laundering and section 8 of the Act on Financing. In light of the increased automation in the financial system both in Sweden as well as internationally there are reasons to consider the use of the electronic systems as support in conjunction with the examination of transactions.

Examples of transactions which justify closer scrutiny and investigation are:

- cash transactions or other transactions which are large or deviate from the customer's normal behaviour and/or deviate in comparison with the category in which the customer is included;
- large numbers of transactions during a certain interval which do not appear normal for the customer or the category in which the customer is included;
- transactions which cannot be explained on the basis of what is known regarding the customer's financial position;
- transactions which may be assumed to be without justification or financial purpose;
- transactions where the geographic destination deviates from the customer's normal transaction patterns;
- where the customer requests unusual services or products without providing a satisfactory explanation therefor;
- transactions to or from undertakings or persons who may be deemed to be acting for the purpose of concealing underlying, actual ownership or rights relationships;

– large cash deposits on account through automatic deposit machines which are thereafter immediately disposed of; and
– large loans which are repaid shortly after the loan has been granted where such has not been agreed upon granting of the loan.

Particular attention should be paid to the scrutiny of transactions which are connected with persons or undertakings in countries from which it is very difficult or not possible to obtain information regarding the customer or the customer's principals, or which are connected with persons or undertakings in countries on FATF's list of non-co-operative countries or territories.

12 § Measures and decisions in conjunction with an examination pursuant to section 11 shall be documented and signed by officials or decision-takers. The aforementioned shall also apply in conjunction with enquiries or when obtaining information from the customer.

Internal register

13 § The undertaking shall maintain a central money laundering register for such personal information provided by the undertaking to the Financial Intelligence Unit pursuant to section 9, second paragraph of the Act on Money Laundering and section 8, second paragraph of the Act on Financing.

General guidelines

The undertaking should, in accordance with the provisions of FFFS 2005:1, possess an efficient information- and communications system for internal information.

In the event a register containing personal information is maintained by the using of automated processing of personal data in accordance with the Act on Money Laundering Registers (SFS 1999:163), such information as is registered should, in a suitable manner and to the extent necessary, be made available to officials handling customer matters who require such information.

Preservation of documents

14 § Such documents or information which constitute documentation in conjunction with verification of identity of customers with business relationships with the undertaking such as agreements, receipts bearing the customer's signature, copies of identity documents and registration certificates or other authorisation documents with notations regarding verifications of identity carried out in respect of legal representatives or holders of powers of attorney shall be preserved for not less than five years following termination of the business relationship, however not for a period which is shorter than provided by Chapter 7, section 2 of the Act on Bookkeeping (SFS 1999:1078). The documents shall be archived in a manner and in a form which is permissible for accounting materials.

The aforementioned shall also apply to documents or information which constitute documentation in conjunction with verification of identity carried out in conjunction with such a transaction as referred to in section 4, second paragraph of the Act on Money Laundering and correspondingly in section 11, first paragraph of the Act on Financing, calculated from the date on which verification of identity was carried out.

General guidelines

The undertaking should possess a system and routines to ensure that such documents may be retrieved within a reasonable time.

Independent audit function

15 § In the event the undertaking's independent audit function (internal audit) discovers circumstances which give reason to assume the existence of a transaction which constitutes money laundering or financing of particularly serious crimes, such shall be notified to the central functional manager or another person in the undertaking's senior management.

General guidelines

The independent audit function should, within the scope of its audit of the internal controls, also prepare a specific audit programme in order to follow up the manner in which the undertaking applies the Act on Money Laundering, the Act on Financing and regulations and general guidelines relating to such Acts. The results of the audit should be reported in accordance with the internal rules applied by the undertaking and the central functional manager.

In a group of undertakings, a common system should be established to follow up the application of the Act on Money Laundering and Act on Financing or comparable legislation abroad.

Finansinspektionen should be immediately informed in the event an auditor undertakes such measures as referred to in Chapter 10, sections 39 and 40 of the Companies Act (SFS 1975:1385) in respect of undertakings under the supervision of Finansinspektionen due to suspected money-related receiving pursuant to Chapter 9, section 6 a of the Criminal Code (SFS 1962:700). The aforementioned shall apply regarding an undertaking subject to the supervision of Finansinspektionen where an auditor furnishes information to the Financial Intelligence Unit pursuant to section 9, second paragraph of the Act on Money Laundering.

Training

16 § Each undertaking shall have a training programme regarding issues concerning money laundering or financing of particularly serious crimes.

All employees administering customer matters shall undergo such training. The training shall, where possible, be adapted to the needs of the employees in order to ensure that issues concerning money laundering or financing of particularly serious crimes are comprehensively elucidated.

In addition, employees shall be regularly informed in respect of amendments to rules regarding money laundering and financing of particularly serious crimes and the application thereof.

These regulations and general guidelines shall enter into force on 1 July 2005, whereupon the following statutes shall be repealed:

1. Finansinspektionen's regulations and general guidelines governing measures against money laundering (FFFS 1999:8);

2. Finansinspektionen's regulations and general guidelines governing measures against financing of particularly serious crimes in certain circumstances (FFFS 2002:19).

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Appendix

Countries with provisions comparable to those applied within the EU/EEA

1. Australia

2. Japan

3. Canada

4. China/Hong Kong

5. New Zealand

6. Switzerland

7. Singapore

8. Turkey

9. USA