

# Finansinspektionen's Regulatory Code

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## Finansinspektionen's general guidelines regarding consumer credit;

**FFFS 2005:3**

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decided on 20 April 2005.

Finansinspektionen provides the following general guidelines.

### Chapter 1 Scope

Finansinspektionen's aim with these general guidelines is to endeavour to ensure that companies supervised by the authority deal with consumer loans in a satisfactory manner.

The guidelines should apply to all companies supervised by the authority engaged in granting loans to consumers. The fourth chapter should also apply to other loans where a physical person enters into an agreement on security.

The guidelines state aspects that should be taken into account in particular in the case of:

- marketing and information (chapter 2),
- granting loans (chapter 3),
- guarantees and third-party pledges (chapter 4),
- calculation of interest differential compensation in cases of early settlement of tied housing loans (chapter 5), and
- lender's offsetting of credit claims (chapter 6).

When it is a case of cash deposits and reserve of the right to recovery, see the Swedish Consumer Agency general guidelines (KOVFS 2004:6) on consumer credit.

### Chapter 2 Marketing and information

#### 2.1 Clear and neutral

A lender should act on the basis that a loan agreement can be of great significance for an individual's financial circumstances.

Information that should be provided to a consumer in accordance with the Consumer Credit Act (1992:830) or in accordance with these general guidelines should therefore be clear and easily visible.

The information on the loan should be neutral. It should also contain information that may be considered to be of particular importance for the loan applicant.

## **2.2 Information on the lender**

The identity of the lender should be clearly stated when marketing loans and in other information on loans.

## **2.3 Marketing and information on a party other than the lender**

If a lender finances a purchase of a good or service that is supplied and marketed by another trader, the lender should endeavour to ensure that the trader fulfils current provisions on marketing and information when marketing of the loan.

## **2.4 Restraint and moderation**

The lender should be restrained and moderate in its marketing and take into account the following:

- A loan should not be presented in such a way that it may mislead the consumer as to the financial consequences or give the impression that the loan offered involves no or only negligible financial encumbrances.
- When a loan may be obtained quickly, speed in itself should not be stressed as a decisive reason compared to other loan conditions.
- In the case of a continuous loan, e.g. an overdraft facility, a borrower should not be offered any credit purchase or cash amount with express reference to the fact that the borrower has an unused credit facility.
- The requirements regarding moderation and neutral information should be taken into account in particular when designing advertisements to which forms for credit applications are attached, regardless of whether they relate to new loans or increases in existing loans.

## **2.5 Information on requirements for security**

If security is normally required in order for a loan to be granted, the marketing should be designed in such a way as to make that clear.

## **2.6 Effective rate of interest in marketing**

### *2.6.1 Calculation*

The method for calculating the effective interest rate is set out in the Ordinance (1992: 1010) on effective interest rates on consumer credits. See also *the appendixes* to these general guidelines.

An intended loan amount (standard amount) should form the basis for the credit information that must conform to the Consumer Credit Act (1992:830) and that should conform to these general guidelines.

The standard amount should be chosen taking into account the stated or anticipated size of the marketed loan:

- For loans equal to or below SEK 40,000, the amount of SEK 10,000 should be used.
- For loans over SEK 40,000, the amount of SEK 100,000 should be used.

### 2.6.2 *Marketing*

If the marketing merely states that a loan is offered, information on the effective interest rate need not be supplied.

Nevertheless, if the marketing argues in favour of the advantages of the loan or contains factual information on the loan, information must be supplied on the effective interest rate even if no set loan amount is stated. In this context, the effective interest rate should be given for a normal loan at the lender in terms of the loan amount, structure of the loan and security.

If the loan can be granted both with and without security and the interest rate on the loan may vary as a consequence or if the interest rate on the loan can vary according to the customer's circumstances, the effective interest rate can be given in an example. In that context, the circumstances on which the example is based should be stated.

The date for which the effective interest rate given is calculated should be stated.

## **2.7 Cost of the loan and term of the loan**

If the cost of the loan and the term of the loan is calculated for a continuous loan, when the calculation is carried out the loan should be considered to be unused prior to the purchase or cash withdrawal in question. It is considered thereafter to be completely repaid, taking into account the conditions for repayment.

When marketing a loan which contains information on the size of partial repayments, the term of the loan or the number of partial repayments on which the calculation is based should be stated.

## **2.8 Information on payment moratoria**

If the borrower has made use of a so-called month's payment holiday, the lender should advise the borrower in the next notice that such a moratorium has been used.

Furthermore, information should be supplied that the balance has thereby increased through interest and any charges for the month's payment holiday.

## **2.9 Housing loans**

### *2.9.1 General*

The borrower should be specifically informed of the following, no later than when the agreement is made:

- the moment when the interest rate for the loan is established,
- exact fixed interest periods for the loan, and
- the conditions applying to extension or renewal of the loan and to early repayment.

If the lender is unable to give the exact fixed interest period for the loan at this point, the largest difference that may arise from the stated fixed interest period should be given.

If a new borrower is to take over an existing loan, the lender should supply the following:

- a copy of the undertaking to take over the credit, and
- the general conditions as they are set out in, for example, the appendixes containing conditions.

### *2.9.2 Condition periods or fixed interest periods of over three months*

If the condition period or the fixed interest period exceeds three months, the borrower should be reminded in writing at least one month in advance of any intended a change in the conditions or the interest rate.

Furthermore, the borrower should be informed of:

- the condition periods, repayment and interest conditions offered,
- how any cancellation of the loan should be carried out, and
- the consequences for the loan if the borrower fails to reply.

As far as information on interest conditions is concerned, the date at which the information applies should be stated and a statement should also be included that the interest rate may be changed at the condition amendment date.

The date of any change to the conditions or interest rate should be stated no later than at the time of the first notice after the change.

## **Chapter 3 Granting of loans**

### **3.1 Applications for loans**

A lender should endeavour to ensure that a borrower understands the financial consequences of the loan agreement.

Therefore, at the time of the loan application the lender should provide the applicant with information giving guidance on the financial pre-requisites in order to settle the obligation. The information should also include the need for amortization.

## 3.2 Credit checks

### 3.2.1 General

In accordance with Finansinspektionen's general guidelines (FFFS 2004:6) regarding credit risks in credit market companies and investment firms, companies should draw up internal rules.

Those rules should clearly state aspects that should be taken into account in particular in the case of credit checks on a consumer, including the following aspects, for example:

- that a credit check should be carried out even if security is given,
- that the check should aim to assess the borrower's current and future ability to pay and should be founded on written supporting documents or other reliable information,
- that a credit report should be obtained, and
- that the applicant's ability to repay should be assessed on the basis of his or her income, assets, expenses and debts (including guarantee commitments).

### 3.2.2 Simplified credit check

It should be possible to simplify the credit check if the loan amount is a maximum of 50 per cent of the price base amount in accordance with the General Insurance Act (1962:381).

### 3.2.3 Credits for restructuring finances

The lender should grant a loan to restructure the borrower's finances only if a credit check indicates that the borrower's ability to repay meets the conditions applying to the new loan.

### 3.2.4 Information on credit checks

Information on credit checks should be supplied if the borrower so requests.

### 3.2.5 Housing loans

In the case of housing loans, the lender should draw up a housing cost calculation as part of an assessment of the borrower's ability to repay.

The borrower should be informed on the contents of the calculation and the fact that it may be affected by changes of substantial significance to systems of taxation and subsidies which have been decided on but which have not yet been implemented. The borrower should also be informed of how any change in interest levels will affect the calculation.

When assessing a loan application concerning a tenant-owner property, the lender should also obtain information on the tenant-owners' association's latest adopted balance sheet and income statement.

### **3.3 Credit commitment**

The lender should normally only issue the loan commitment in writing or in electronic form. The guarantee undertaking should state conditions for how the loan is to be paid out.

### **3.4 Loan agreements**

#### *3.4.1 General*

The loan agreement should contain full conditions in accordance with generally-accepted standards for granting loans. The conditions should clearly state the identity of the lender and what rights and obligations are conferred in the agreement.

Conditions and information of substantial significance for the borrower should be specifically pointed out. If a loan is granted for an indefinite period, this should be clearly stated in the agreement.

#### *3.4.2 Repayment in the case of credit purchases*

The conditions for repayment in the case of credit purchases should be such that:

- the amount to be paid on each occasion is of such a size that a reasonable amount of the loan is paid off, and that
- the length of the repayment period does not normally exceed the lifespan of the good or utility.

#### *3.4.3 Change of loan conditions*

An agreed credit limit should not be increased unless the borrower has applied for such an increase.

In the case of changes of interest rates for variable-interest loans, the lender should state the reasons for the change when asked to do so by the borrower.

If the rate of interest on the loan is increased due to higher lending costs, the lender should give clear reasons for the increase in costs when asked to do so by the borrower.

#### *3.4.4 Premature payments*

The loan agreement should contain information on the borrower's right to pay in advance and on how the costs are calculated for fixed-interest loans.

#### *3.4.5 Assignment of loans*

The loan agreement should contain information on the lenders' right to assign or pledge its claim to another party. Information should also be included in the agreement that the lender's consent is required for the loan to be taken over by another debtor.

When a loan is assigned to another company, the lender should inform the borrower as soon as possible of the consequences of the assignment that are of substantial significance for the borrower.

If the assignment is a stage in securitisation, the lender should inform the borrower of the specific implications of securitisation of the loan.

#### *3.4.6 Effective interest rate*

When the loan agreement entails a right to make continuous use of a credit facility, the effective interest rate should be given as an annual interest rate calculated on the amount corresponding to the credit facility granted and at least one case must be given where the effective interest rate is calculated on an amount making up only a proportion of the credit facility. This proportion should make up 50 per cent of the credit facility granted.

Information on the effective interest rate for the loan granted should be provided no later than when the borrower is informed that the loan has been granted unless the borrower's corresponding refinancing means that information cannot be provided before the loan is paid out.

## **Chapter 4 On guarantees and third-party pledges**

### **4.1 General**

A lender should take into account the fact that it should be possible for a guarantor or the person (third party) that pledges its property for another person's loan to presume that a satisfactory credit check was carried out with regard to the borrower's ability to repay.

The lender should take into account the interest of the guarantor or third party in being granted access to information in the credit check which is of significance for the commitment before entering into the commitment. One example is if the loan is granted to restructure the borrower's finances or if a damaged credit history exists.

If information emerges in the credit check which is of interest to the guarantee commitment or pledge and the lender is unable to supply such information to the guarantor or the third party, they should be informed of that fact and the reason why the information cannot be supplied. One example of this is when a borrower does not consent to the disclosure of confidential information.

The lender should inform the person providing security of the procedures applying to restoration of the security.

### **4.2 Guarantees**

#### *4.2.1 The guarantor's ability to pay*

The lender should assess the guarantor's ability to pay at the moment when the credit is granted and in the long term. The guarantee commitment should only be accepted if the commitment is considered to constitute satisfactory security for the loan.

The guarantee undertaking may be considered to constitute satisfactory security if the guarantor:

- – has disposable assets which, after careful valuation, are considered sufficient to meet the guarantee liability, and/or
  - – is in a financial position to pay the borrower's debt.
- The guarantor's remaining financial obligations should be taken into account in this context.

#### *4.2.2 Entry into a guarantee commitment*

Before entering into the guarantee commitment, the lender should inform the guarantor in writing of its content.

That information should clearly state:

- situations in which the guarantor may be forced to fulfil its guarantee commitment and, if there is more than one guarantor,
- whether the lender is free to choose to demand payment in full by one or more of the guarantors,
- that the guarantee commitment remains regardless of whether any community of interests with the original borrower ceases, and
- that the guarantee commitment can mean that the guarantor's assets, including his home, must be realised.

A power of attorney should not be accepted when the guarantee is signed unless special reasons for such exist. In such circumstances, the power of attorney should be in writing.

As soon as possible after granting the loan, the lender should furnish the guarantor with a copy of the relevant loan document and guarantee undertaking entered into.

#### *4.2.3 General guarantee undertaking without limitation of amount*

General guarantee undertakings without limitation of amount given by physical persons may only be used in commercial circumstances. The guarantor should have clear, continuous insight into the borrower's financial position and its dealings with the lender. One example is when a shareholder or an executive in a closely-held company signs a guarantee for the company's commitments.

### **4.3 Signing a third-party pledge**

If a party other than the borrower pledges property as security for the borrower's obligations, the lender should issue information in writing on its contents of the pledge before it is signed.

That information should clearly state:

- that the pledge can be realized if the borrower fails to fulfil its commitments,
- that the pledging remains regardless of whether any community of interests with the original borrower ceases,
- that the pledging can reduce the value of the pledge as security for its own borrowing, and
- that the pledging can affect the control over the pledge.



The lender should supply a copy of the relevant loan document and all conditions for the pledging to the third party.

#### **4.4 Information to the guarantor or third party after entering into the commitment**

The guarantor or third party should be informed as soon as possible by the lender when the lender becomes aware of any serious, long-lasting deterioration in the borrower's financial position or has received other information which may affect their possibilities of recourse or which means that the security is being claimed.

If the lender has reason to suppose that the guarantor or third party has any insight into the borrower's finances, no information need be issued on the progress of the borrower's finances under normal circumstances. Nevertheless, the lender should inform the guarantor or the third party of any payment moratoria granted to the borrower, unless it is clearly stated that the moratorium is of no importance to them.

In the event of any change in conditions for a loan granted, the guarantor's or third party's express consent is obtained if the change could affect their commitment.

## **Chapter 5 Early repayment of fixed-interest housing loans**

### **5.1 Introduction**

Early repayment is normally permitted for consumer loans granted prior to 1993. There is also a legal right to early repayment for consumer loans taken out after that date.

The lender is entitled to charge an amount, referred to as *ränteskillnadersättning* (RSE) [interest differential compensation] for any financial damage it sustains if the agreement is prematurely terminated by the consumer. That damage may in this instance be measured on the basis of the company's alternative investment possibilities for the amount subject to early repayment.

Calculation of the RSE should in each individual case fall within the framework of the legislation and loan conditions applying to the loan. Nevertheless, within these frameworks, the lender, if appropriate, may apply other principles for calculating the RSE, unless these lead to a higher final cost for the borrower. The calculation principles set out in this chapter therefore constitute "ceiling rules" for calculating the RSE.

### **5.2 General**

#### *5.2.1 Condition amendment date*

Condition amendment date means the date when the interest rate is changed in accordance with the loan agreement and the borrower, as far as loans granted from 1990 are concerned, is able to settle the loan without any charge being imposed if the notice time or notice period is observed.

### 5.2.2 Information

The main principles for calculating the RSE should be clearly stated in the agreement conditions.

To enable the borrower to anticipate the cost in the case of early repayment, the lender should, if the borrower so requests, supply information that clearly indicates how the payment is calculated. The information should contain a specific example of the calculation and a formula that the borrower himself can use for an approximately calculation.

If the lender supplies a borrower with information on the method for calculating the RSE, the lender should retain this calculation method if the settlement takes place within the following 10 days.

### 5.3 Redemption conditions, etc.

The moment for establishing a comparison interest rate (the interest rate with which the interest rate on the loan is compared when calculating the RSE), should be either the date on which the early repayment is made or the earlier date as agreed by the lender and the borrower. For loans granted or loans whose conditions were changed from 1 January 1993, the latter alternative may not be applied if the comparison interest rate on the repayment date would be more advantageous for the borrower.

If the borrower pays the loan off early at a time other than on the condition amendment date, the main principle regarding the time for which the RSE is calculated should be that the payment is calculated from the date when the repayment is made up to and including the next condition amendment date at which the borrower may cancel the loan. If no condition amendment date exists, the RSE should instead be calculated up to and including the final payment date in accordance with the loan agreement.

If the loan is cancelled at a condition amendment date without the prescribed notice time or notice period being observed, it means that the RSE may be calculated up to and including the next condition amendment date that falls after the first-named condition amendment date. If that case, the interest rate for the loan for the last condition period is considered to amount to the corporate lending rate for an equivalent loan on the settlement date.

### 5.4 Loans granted before 1993 whose conditions are not changed thereafter

It should be possible to calculate the RSE by comparing the interest rate on the loan to the lender's average borrowing cost for an equivalent term, provided that the loan conditions contain such a provision. The borrowing cost for the period that most closely corresponds with the remaining fixed interest period for the settled loan should be applied.

If the comparison interest rate in accordance with the loan conditions are the lender's borrowing cost, it should also be possible for a standard borrowing interest rate to be used. In such cases, it should also be possible for the lender to apply rules that tie in with the rules contained in the Consumer Credit Act (1992:830) for loans issued after 1 July 1994. Nevertheless, these alternatives should only be applied provided that they do not lead to a worse result for the borrower.

#### *5.4.1 Loans with an interest rate adjustment date with no right of cancellation*

Loans exist in which the interest rate is changed on a particular date, referred to as an interest rate adjustment date, without any right for the borrower to cancel the loan or otherwise influence the conditions. If the premature settlement of such a loan occurs before an interest rate adjustment date, the RSE may, for the period prior to the interest rate adjustment date, be calculated as although the said date were an interest rate adjustment date (see section 5.3 above). For the period after the interest rate adjustment date, the RSE may be calculated as a so called risk compensation not calculated on present values at 0.2 per cent of the loan amount per year for remaining interest rate adjustment periods.

#### **5.5 Loans granted or whose conditions were changed between 1 January 1993 to 1 July 1994**

When determining what are considered to be "new loans of an equivalent type" in accordance with section 24 of the Consumer Credit Act, a comparison should be made with the existing loan's original – and not only the remaining – fixed interest period.

If the lender no longer offers loans of an equivalent type (e.g. five-year fixed-interest home loan), a comparison should be made with the lender's interest rate for new borrowing or, if the lender so chooses, with the interest rate offered by other companies for loans with the closest term. The latter alternative should only be applied provided that the conditions are otherwise largely the same.

#### **5.6 Loans granted or whose conditions were changed after 1 July 1994**

The selling rate for the treasury securities contemplated in the Consumer Credit Act should be chosen as a comparison interest rate. For practical reasons, no efforts should be made at complete accuracy because the interest rates change continually throughout each day. The lender should therefore apply an established practice for establishing the comparison interest rate, for example the previous day's closing rates.

When the interest rate on government bonds is used in calculating the RSE, the official published rate should be interpreted as an annual effective interest rate. The comparison interest rate is then obtained after adding one percentage point, expressed as a comparison annual effective interest rate. The RSE can then be calculated through all the payment flows under the agreement up to and including the end of the fixed-interest period, and the capital debt at the end of the fixed-interest period, being calculated at present value with the aid of the comparison annual effective interest rate back to the settlement date. The difference between the value thus calculated and the capital debt on the settlement date constitutes the RSE.

#### **5.7 Present value calculation**

For loans granted after 1 January 1993, the RSE should be calculated in such a way as not to give the lender a higher return than if it is calculated at present value in accordance with the method in the Ordinance (1992:1010) on effective interest rates on consumer loans.

## **Chapter 6 The lender's offsetting of loan debts**

### **6.1 General**

A loan debt should be offset with care and good judgement and taking the borrower into consideration.

Offsetting should be used primarily when the borrower fails to agree an alternative method of paying his debt with the lender.

### **6.2 Offsetting against a balance in an account**

If the lender provides a deposit account, the lender should inform the account holder or the borrower, when the account is opened or a credit is granted, that debts may be offset against the balance of the account.

Debts should not be offset against salaries, pensions or comparable funds which are intended for the borrower's day-to-day expenses.

### **6.3 Payment services**

Funds that the lender has received for the performance of a payment service should not be used for offsetting against the borrower's debt – regardless of whether the borrower is the client or the recipient of the payment.

The lender should not appropriate funds through offsetting against the borrower's debt when the borrower presents a money order, cheque or other instruction for settlement.

Nevertheless, offsetting against the borrower's debt may take place if the client or the borrower have given instructions for any payment to the latter's account.

### **6.4 Notification**

The lender should immediately inform the borrower of any offsetting and the reason for it.

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These general guidelines shall enter into force on 15 May 2005, whereupon the following statutes shall be repealed:

1. Finansinspektionen's general guidelines (FFFS 1994:30) regarding interest differential compensation etc. in cases of early settlement of consumer credit at fixed interest for housing purposes,
2. Finansinspektionen's General guidelines (FFFS 2000:2) regarding consumer credit.

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*Appendix***Calculation of effective interest rate****A. Lump-sum loans**

A lump-sum loan means a loan which is not on an open account. (I, II and III below apply only in the case of marketing of lump-sum loans.)

I. Taking into account the conditions (interest rate on the loan, supplements, charges and term of the loan) for the loan marketed, the effective interest rate should be calculated for a loan that is equivalent to the standard amount.

II. The term of the loan should be presumed to be five years for the purposes of the calculation.

III. An arrangement fee or other loan cost charged on the payment date of the loan should be considered as paid on the occasion of the first payment.

IV. Effective Interest Rates on Consumer Credit Ordinance (1992:1010) clearly states how the effective interest rate is to be calculated.

**B. Open-account loans/account loans**

Open-account loans entails a right for the borrower to make continuous use of a credit facility. (I, II and III below apply only in the case of marketing of lump-sum loans/account loans.)

I. The standard amount chosen is considered to constitute the amount of the loan. Taking into account the conditions (interest rate on the loan, supplements, charges and term of the loan) for the loan marketed, the effective interest rate should be calculated for a loan that is equivalent to the standard amount. For the purposes of the calculation, the standard amount is considered to be immediately drawn down in full.

II. For the purposes of the calculation, the term of the loan should be presumed to be five years with monthly repayments.

III. Any arrangement fee or other loan cost charged on the payment date of the loan should be considered as paid on the occasion of the first payment.

IV. Effective Interest Rates on Consumer Credit Ordinance (1992:1010) clearly states how the effective interest rate is to be calculated.

**C. Building loans or equivalent loans**

The amount of the credit is paid out in several instalments according to a set time schedule. (I and III above apply only in the case of marketing of building loans and equivalent loans.)