Finansinspektionen's Regulatory Code

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Finansinspektionen's general guidelines regarding consumer credit;

decided on 16 June 2014.

Finansinspektionen provides the following general guidelines for the application of sections 2, 6, 12–14, 17, 28 and 36 of the Consumer Credit Act (2010:1846), Chapter 6, section 4 of the Banking and Financing Business Act (2004:297) and Chapter 8, section 1 of the Securities Market Act (2007:528).

Chapter 1 Scope and definitions

These general guidelines apply to undertakings under the supervision of Finansinspektionen that issue loans to consumers. However, they shall not apply to undertakings authorised to conduct operations under the under the Certain Consumer Credit-related Operations Act (2014:275).

The guidelines set out in Chapter 5 should also be applied to loans other than those issued to consumers when a natural person concludes an agreement regarding a guarantee or third-party pledge.

The guidelines state aspects that should be taken into account with regard to

– granting loans (Chapter 2),
– housing loans (Chapter 3),
– early payment of housing loans with fixed interest rates (Chapter 4),
– guarantees and third-party pledges (Chapter 5), and
– offsetting and payment of past-due loans (Chapter 6).

These guidelines do not apply to marketing and information provided to a consumer prior to entering into a credit agreement, which are instead governed by the Swedish Consumer Agency's general guidelines (KOVFS 2011:1) regarding consumer credit.

Definitions

The terms and expressions used in section 2 of the Consumer Credit Act (2010:1846) have the same meaning in these general guidelines. In addition, the following definitions apply:

housing loan: a loan that is associated with liens on real property, site-leasehold rights or tenant-owner rights or similar rights, or that is associated with corresponding rights in a building that is not part of a property,

early repayment date: the date on which a consumer makes early repayment of a fixed-interest loan,

comparison interest rate: the rate with which a loan's fixed interest rate is compared for the calculation of an interest rate differential charge,

interest rate differential charge: the charge to which a lender is entitled when a consumer makes early repayment of a fixed-interest loan,

interest rate adjustment date: the date on which the fixed-interest term of a loan expires under the loan agreement and the borrower can settle the loan free of charge, if a notice time or notice period has been observed,

government securities: treasury bills and government bonds,

third-party pledge: a third party's pledging of property as collateral for a borrower's obligations, and

terms and conditions amendment date: the date on which a new terms and conditions period in a loan agreement starts to apply.

Chapter 2 Granting of loans

Credit assessment

For sections 6 and 12 of the Consumer Credit Act

In its credit assessment, a lender should assess the financial circumstances of a consumer based on his or her income, assets, expenditure and debts, as well as any guarantee undertaking. The credit assessment should be based on written material or other reliable information, such as a credit report.

A credit assessment should be performed even if collateral is provided for the loan.

Documentation of credit assessment

For sections 6 and 12 of the Consumer Credit Act

The lender should document the data used for a credit assessment.

Notification of loan denial

For sections 6 and 13 of the Consumer Credit Act

The lender should notify the consumer clearly of the reason why he or she has not been granted a loan by stating the grounds for the decision. Where the grounds for the decision are the result of a "credit calculation model", the lender should provide a more detailed explanation if so requested by the consumer.

Loan commitments

For section 6 of the Consumer Credit Act

A loan commitment provided to a consumer should be in writing and contain the terms of the loan commitment.

Loan agreements

Effective interest rate

For sections 6 and 14 of the Consumer Credit Act

When a 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.

Interest adjustment

For sections 6 and 17 of the Consumer Credit Act

When adjusting the interest rate for a variable-rate loan, the lender should state the reason for the adjustment if so asked by the consumer.

If the rate of interest on the loan is increased due to higher borrowing costs, the lender should give the reasons for the increase in costs if so asked by the consumer.

Changes to credit limits

For section 6 of the Consumer Credit Act

A lender should not raise an agreed credit limit if the consumer has not applied for such an increase.

Assignment of claims

For sections 6 and 28 of the Consumer Credit Act

The lender should ensure that the loan agreement contains information on the lender's right to assign or pledge a claim. The agreement should also specify that the lender's consent is required if a claim is to be assumed by another obligor.

In the event of the assignment of a claim, e.g. in a securitisation arrangement, the lender should inform the consumer in particular about the implications of such assignment.

Repayment in the case of credit purchases

For section 6 of the Consumer Credit Act

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 size that the loan amortisation effected is reasonable over the repayment period, and
– the repayment period does not exceed the deemed useful life of the item for which the loan was granted.

Chapter 3 Housing loans

The following also applies to housing loans.

Calculation of housing costs

For sections 6 and 12 of the Consumer Credit Act

A lender should perform a housing cost calculation as part of its assessment of a consumer's repayment ability.

The lender should inform the consumer of the purpose of such calculation and what estimates it will make based thereon. The borrower should also be informed that such estimates can be affected in part by material changes to systems of taxation and subsidies that have been decided on but not yet implemented, and in part by changes to interest rate levels.

Terms and conditions period or fixed interest term exceeding three months

For section 6 of the Consumer Credit Act

If the terms and conditions period or the fixed interest term in a loan agreement exceeds three months, the consumer should be reminded by the lender in writing at least one month in advance of any intended change in the terms and conditions period or fixed interest term.

Such reminder should clearly inform the borrower about:

– the terms and conditions periods, amortisation and interest rate terms and conditions offered,
– how any cancellation of the loan shall be carried out,
– the consequences for the loan if the consumer fails to reply, and
– the lender's entitlement to impose an interest rate differential charge.

As far as information on interest rate terms and conditions is concerned, the lender should state the date from which the information applies and that the interest rate offered may be changed on the terms and conditions amendment date.

When a change to the terms and conditions period or fixed interest term has been made, the lender should state the date of the change no later than upon the initial notification following the change.

Chapter 4 Early repayment of fixed-interest housing loans

For sections 6 and 36 of the Consumer Credit Act

Redemption terms and conditions

The period for which an interest rate differential charge is calculated should be from the date on which early repayment takes place up to and including the interest rate adjustment date immediately following that date. If no interest rate adjustment

date exists, the interest rate differential charge should instead be calculated up to and including the final payment date in accordance with the loan agreement.

If notice is provided to cancel the loan on an interest rate adjustment date without the notice time or notice period being observed, the interest differential charge may be calculated up to and including the next interest rate adjustment date. In that case, the interest rate for the loan for the final terms and conditions period may be considered to amount to the lending rate for an equivalent loan on the early repayment date.

If a lender has provided a consumer with information about what interest rate differential charge he/she must pay, the lender should also inform the consumer about the period during which the consumer may make early repayment of the loan at the specified amount.

Information

At the consumer's request, before early repayment, the lender should supply information that generally describes how the charge is calculated.

Calculation of interest rate differential charge

Generally applicable interest rate for mortgage bonds

When calculating the interest rate that generally applies at the point of payment for mortgage bonds, the lender should base the calculation on the interest rate on the government security with a maturity corresponding to the loan's outstanding fixed interest term, and charge a supplement on top of this.

If no government security with a maturity corresponding to the loan's outstanding fixed interest term exists, the lender should use linear interpolation based on the two government securities with the closest maturity before and after the loan's fixed interest term. If no such government securities exist either, the lender should use the government security that has the closest maturity before or after the loan's outstanding fixed interest term.

The lender should determine the supplement on a straight-line basis, with the supplement being specified on the Y axis and the loan's outstanding fixed interest term specified on the X axis. Such straight line should be adapted to the differences that can be calculated between the interest rates on mortgage bonds and the interest rates on government securities, in accordance with the first and second paragraphs, with the same maturity. The parameters describing the straight line should be selected so that the sum of the square of deviations between the straight line and the calculated differences between the interest rates are minimised (the "method of least squares").

When adapting the straight line, the lender should only include mortgage bonds that:

– are issued in SEK,
– are subject to an agreement between the issuer of mortgage bonds and market makers regarding trade on a secondary market,
– have an outstanding amount of at least SEK 3 billion, and
– have a maturity of less than seven years.

Each quarter, the lender should establish which mortgage bonds are to be included when adapting the straight line calculation and should assign the same weighting to these mortgage bonds in such adaptation.

For loans with an outstanding fixed interest term of up to seven years, the lender should determine the supplement as the Y value for the straight line for the corresponding maturity. For loans with a remaining fixed interest term of more than seven years, the lender should determine the supplement as the Y value for the straight line for a maturity of seven years.

The lender should select the selling rates for government securities and mortgage bonds that apply at the close of the previous business day.

When calculating the interest rate differential charge, the lender should convert the rate that generally applies for mortgage bonds at the point of payment to an effective annual rate, unless it is already expressed as such. Following a one percentage point increase in accordance with section 36 of the Consumer Credit Act, a comparison rate is obtained, expressed as an effective annual comparison interest rate.

The lender should calculate the interest rate differential charge by calculating the present value of the following items back to the early repayment date using the effective annual comparison interest rate:

– all the payment flows under the agreement up to and including the end of the fixed interest term, and
– the capital debt at the end of the fixed interest term.

The difference between the calculated present value and the capital debt at the early repayment date constitutes the interest rate differential charge.

Interest rate on government securities

For section 36 of the Consumer Credit Act as worded prior to 1 July 2014

As the comparison interest rate, the lender should choose the selling rate for the government securities specified in section 36 of the Consumer Credit Act, as worded prior to 1 July 2014. As interest rates change constantly, the lender should apply a practice for establishing the comparison interest rate, for example, using the previous day's closing rates.

The maturity that should be used to establish the comparison interest rate should be the same as the loan's outstanding fixed interest term. If no government security with such maturity exists, the lender should use linear interpolation based on two treasury bills or two government bonds with the closest maturity before and after the loan's fixed interest term. In the event two such government securities of the same type with an outstanding and longer maturity than the remaining fixed interest term does not exist, the closest

– treasury bill should be used if the outstanding loan's fixed interest term is less than one year, or
– government bond should be used if the remaining loan's fixed interest term is one year or more.

When calculating the interest rate differential charge, the officially published interest rate on government securities should be converted to an effective annual rate, unless it is already expressed as such. After adding one percentage point, the comparison interest rate is then obtained expressed as an effective annual comparison interest rate.

The lender should calculate the interest rate differential charge by calculating the present value of the following items back to the early repayment date using the effective annual comparison interest rate:

– all the payment flows under the agreement up to and including the end of the fixed interest term, and
– the capital debt at the end of the fixed interest term.

The difference between the calculated present value and the capital debt at the early repayment date constitutes the interest rate differential charge.

Chapter 5 Guarantees and third-party pledges

For section 6 of the Consumer Credit Act, Chapter 6 section 4 of the Banking and Financing Business Act and Chapter 8, section 1 of the Securities Market Act

General

Before entering into a commitment, a lender should take into account the possibility that the guarantor or pledger may be interested in being granted access to information that is of significance to the commitment. This applies, for example, if the loan is granted to restructure the borrower's finances or in the event of a damaged credit history.

The lender should inform the guarantor or the pledger if information emerges in the credit assessment that is of interest to the guarantee undertaking or pledge and that cannot be supplied and specify the reason for this. One example of this is when a borrower does not consent to the disclosure of confidential information.

The lender should inform the person pledging collateral of the procedures applying to restoring it.

Guarantees

The guarantor's repayment ability

The lender should assess the guarantor's current and future repayment ability and take account of his/her other financial commitments. The guarantee undertaking 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:

– finances that enable paying the borrower's debt, or
– disposable assets which, after conservative valuation, are considered sufficient to meet the guarantee undertaking.

Entry into a guarantee undertaking

Before a guarantee agreement is entered, the lender should inform the guarantor about the implications of this commitment.

This information should include details of the following:

– situations in which the guarantor may be obliged to fulfil his/her guarantee undertaking,
– if there is more than one guarantor,
– any entitlement for the lender to be free to choose to demand payment in full by one or more of the guarantors,
– that the guarantee undertaking remains in place even if any common interests with the borrower cease, and
– that the guarantee undertaking may mean that the guarantor's assets, including his/her home, must be sold.

The guarantee should be personally signed by the guarantor, unless special grounds exist. In such circumstances, the power of attorney should be in writing.

When the loan has been granted, the lender should provide the guarantor with a copy of the loan agreement and the agreed guarantee undertaking.

General guarantee undertakings without limitation of amount

General guarantee undertakings without limitation of amount given by natural persons should only be used in commercial circumstances when the guarantor has a solid and continual understanding of the borrower's financial position and its contacts 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.

Third-party pledges

Before pledging takes places, the lender should inform the pledger in writing of the implications of such pledging.

This information should include details of the following:

– that the pledge may be sold if the borrower fails to fulfil its commitments,
– that the pledge remains even if any common interests with the borrower cease,
– that pledging can reduce the value of the pledge as collateral for own borrowings, and
– that the pledging can affect the third party's control over the pledge.

The lender should provide the pledger with a copy of the loan agreement and all pledging terms and conditions.

Information for the guarantor or pledger after entering into the commitment

The lender should inform the guarantor or pledger as soon as possible if the lender becomes aware of any serious, long-lasting deterioration in the borrower's financial position or other information which may affect the guarantor's or pledger's recourse or result in the collateral being claimed.

If the lender can suppose that the guarantor or pledger has insight into the borrower's finances, no information need be issued about the development of such finances. Nevertheless, the lender should inform the guarantor or the pledger of any payment moratoria granted to the borrower, unless it is clear that the moratorium is of no importance to them.

In the event of any change in terms and conditions of a loan granted, the lender should request the guarantor's or pledger's consent if the change could affect their commitment.

Chapter 6 Offsetting and withdrawal of payment orders

For section 6 of the Consumer Credit Act

Offsetting

Offsetting should be used primarily when a lender and a consumer fail to agree an alternative method of payment. Offsetting should be applied with caution and discretion and with consideration for the consumer.

Offsetting against a balance in an account

A lender that also provides deposit accounts for consumers should inform the consumer, when an account is opened or a loan is granted, that funds in the account may be used to offset its claim.

Claims should not be offset against account balances intended for the consumer's essential expenditure and that derive from sources such as salary, pension or comparable funds.

The lender should not offset funds in accounts that the consumer has designated for making payment orders.

Notification

The lender should immediately inform the consumer of any offsetting that takes place and the reason for it.

Withdrawal of payment orders

If a consumer, which has submitted an order to the lender to repay a loan from a specified account held by the consumer with the lender, requests that the payment order cease, the lender should ensure that this takes place as soon as possible.

These General Guidelines shall enter into force on 1 July 2014, at which time Finansinspektionen's general guidelines (FFFS 2011:47) regarding consumer credit shall be repealed.

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