

Finansinspektionen's Regulations

Publisher: Gent Jansson, Finansinspektionen, Box 6750, 113 85 Stockholm.
Ordering address: Thomson Fakta AB, Box 6430, 113 82 Stockholm. Tel +46 8-587 671 00, Fax +46 8-587 671 71.
Subscribe also by e-mail at www.fi.se.
ISSN 1102-7460

FFFS 2004:9

Published

29 June 2004

Finansinspektionen's (Swedish Financial Supervisory Authority) General Guidelines regarding Applications for a Licence to Conduct Banking or Financing Business or to Issue Electronic Money;

decided 18 June 2004.

Finansinspektionen provides the following general guidelines:

Chapter 1. Scope and definitions

1 § These general guidelines relate to the procedure in conjunction with:

1. applications for a licence to conduct banking or financing business;
2. applications for a licence to issue electronic money;
3. applications for a licence for foreign credit institutions and foreign electronic money institutions to establish a branch in Sweden;
4. applications for a licence for Swedish credit institutions and electronic money institutions to establish a branch abroad or notification thereof; and
5. notifications regarding cross-border operations and representation offices.

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

- the Savings Banks Act (SFS 1987:619),
- the Capital Adequacy and Large Exposures (Credit Institutions and Securities Companies) Act (SFS 1994:2004);
- the Members' Banks Act (SFS 1995:1570);
- the Electronic Money (Issuance) Act (SFS 2002:149);
- the Banking and Financing Business Ordinance (SFS 2004:329); and
- the Banking and Financing Business Act (SFS 2004:297).

2 § In these general guidelines:

1. *EES* means the European Economic Area;
2. *financial group* means that which is stated in Chapter 6, section 1 and section 2, first paragraph, sub-section 1 of the Capital Adequacy and Large Exposures (Credit Institutions and Securities Companies) Act (SFS 1994:2004);
3. *institution* means a bank, credit market company or electronic money institution;
4. *credit institution* means a bank or credit market company;
5. *qualifying owner* means a natural or legal person in possession of a qualifying holding;
6. *qualifying holding* means a direct or indirect ownership in an undertaking where the holding represents ten percent 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. Applications for a licence to conduct banking or financing business or to issue electronic money

Formulation of the application

1 § Chapter 2, section 1, third paragraph of the Banking and Financing Business Ordinance (SFS 2004:329) states by whom an application to conduct banking or financing business shall be signed. An application for a licence to issue electronic money shall be signed by an authorised representative of the applicant undertaking.

Chapter 1, sections 4-6 of the Banking and Financing Business Ordinance (SFS 2004:329) contain certain provisions regarding formalities relating to application documents. Where appropriate, these formalities should be observed also in conjunction with applications for a licence to issue electronic money.

The institution's application should be submitted in original and a copy. A further copy should be furnished to the institution's auditor. The application may state which documents the institution considers to be covered by confidentiality in accordance with Chapter 8, section 5 of the Secrecy Act (SFS 1980:100).

2 § With respect to credit institutions, Chapter 2, sections 1 and 2 of the Banking and Financing Business Ordinance (SFS 2004:329) provide that an application shall contain:

1. certain names and address information;
2. an assurance by founders or board members that they have not been declared bankrupt, etc;
3. a business plan; and
4. proposed articles of associations, regulations or bylaws or amendments thereto.

An application for a licence to issue electronic money should contain corresponding information.

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

Business Plan

3 § A credit institution's business plan should contain the information set forth in sections 4-20. The following should be appended to the plan:

1. an organisation plan in accordance with section 4;
2. any outsourcing agreements, in accordance with sections 5 and 20;
3. a group or ownership diagram, in accordance with section 6;
4. information for ownership and management assessments, in accordance with sections 7 and 8;
5. annual reports, interim reports, forecasts and instructions regarding borrowing in accordance with section 11; and
6. guidelines and instructions in accordance with sections 15-20.

The provisions of the first paragraph shall apply also to electronic money institutions unless otherwise stated in sections 4-20.

Description of operations

4 § A detailed description of the operations to be conducted by the institution should be submitted. The description should, *inter alia*, contain:

- a general outline (organisation plan) 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.

Credit institutions should describe in particular the parts of the operations which require a licence in accordance with Chapter 1, sections 3 or 4 of the Banking and Financing Business Act (SFS 2004:297). Electronic money institutions should describe in particular systems for the issuance and handling of electronic money. Finansinspektionen's regulations regarding the Issuance of Electronic Money (FFFS 2002:14) contain detailed information regarding the requirements imposed for such systems.

The institution should furnish information regarding the manner in which IT operations will be organised, the systems to be used and the strategy which may be relevant. Information should also be furnished regarding the manner in which it is intended to organise and structure responsibility for IT support and information security.

The managing director and other persons active in the institution 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.

Services agreements

5 § Where the institution intends to outsource parts of the business to another legal person or independent natural person, the business plan should contain a description of the engagement. When drawing up an outsourcing agreement, the institution should comply with Finansinspektionen's memorandum regarding outsourcing dated 18 December 1998 (www.fi.se).

A credit institution should submit such services agreements as are referred to in Chapter 6, section 7 of the Banking and Financing Business Act (SFS 2004:297). Electronic money institutions should also submit to Finansinspektionen any engagement agreements regarding financial services.

Ownership structure

6 § In the business plan, the institution should furnish information regarding owners of qualifying holdings of shares or other participating interests in the institution. Where the institution is included in a group or financial group, information should be furnished regarding ownership shares or equivalent, business names and type of operations of other undertakings in such group.

The ownership structure should be illustrated through a group or ownership diagram which is appended to the business plan in which each owner's portion of the share capital and voting capital is specifically stated.

Owner's suitability

7 § The institution's qualifying owners and senior executives in legal persons who possess a qualifying holding should furnish the information set forth in Finansinspektionen's general guidelines regarding Ownership and Management Assessment (FFFS 1998:14).

Suitability of senior executives

8 § The institution's board members, alternate board members, managing director and deputy managing director should furnish the information set forth in Finansinspektionen's general guidelines regarding Ownership and Management Assessment (FFFS 1998:14).

External board members

9 § The institution should state in the 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 institution, e.g. in the capacity of employee, service provider or relative.

Finansinspektionen is of the opinion that external board members may strengthen the board's control function. To the extent the institution's board of directors' does not contain any external members, the reason for this should be stated.

Start capital

10 § In section 2 of Finansinspektionen's regulations regarding the Issuance of Electronic Money (FFFS 2002:14) sets forth what shall be included in the start capital of an electronic money institution. This provision should also be applied by credit institutions.

Equity ratio and liquidity

11 § An institution which conducts business on the date of the application should append an audited annual report which has been approved by the institution's general meeting. Where the institution 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 relate to the immediately preceding financial year. In addition, where appropriate the immediately preceding interim reports should be appended.

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

The forecast should contain the following information;

- balance sheets and profit and loss accounts for both the institution and the financial group which the institution 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 regarding Annual Reports of Credit Institutions and Investment Firms (FFFS 2003:11);

- an analysis of the capital base, capital adequacy ratio and exposures regarding both the institution 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 regarding Capital Adequacy and Large Exposures (FFFS 2004:8).

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

In the business plan, the institution 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 institution intends to obtain refinancing and the content of refinancing agreements with other credit institutions or lenders. Particular 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 institution should append to the description instructions for the function which shall be entitled to decide upon borrowing on behalf of the institution and the restrictions that shall apply.

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

Auditors

12 § The business plan should furnish information regarding the institution's external auditors.

Reporting

13 § 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 in order to ensure satisfactory control regarding book keeping and funds management should also be stated.

Governance, internal information and internal control

14 § The institution should append to the business plan proposals for guidelines and instructions with respect to the areas stated in sections 14-20. Guidance may be obtained from Finansinspektionen's general guidelines regarding Governance, Internal Information and Internal Controls within Credit and Securities Institutions and in Mutual Fund Companies (FFFS 1999:12).

Risk management

15 § The business plan should contain a description of the manner in which the institution will handle the risks associated with its business. Examples of material risks include:

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

Proposed guidelines and instructions should be appended. Guidance may be obtained from Finansinspektionen's general guidelines regarding Credit Risk Management in Credit Institutions and Investment Firms (FFFS 2004:6) and Finansinspektionen's general guidelines regarding the Handling of Market and Liquidity Risks in Credit Institutions and Investment Firms (FFFS 2000:10).

Customer protection

16 § In the business plan, the institution should describe the measures planned in order for the institution, in its business, to comply with consumer protection legislation. The institution should furnish information regarding routines for handling complaints. Information should be provided regarding the name of the person or the officers who shall be responsible for complaints from the public. Guidance may be obtained from Finansinspektionen's general guidelines regarding Consumer Credit (FFFS 2000:2) and Finansinspektionen's general guidelines regarding the Handling of Complaints concerning Financial Services to Consumers (FFFS 2002:23).

Ethical rules

17 § The institution should append to the business plan the guidelines for handling ethical issues which are to be applied. The application should state the manner in which common knowledge of ethical rules in the industry is to be disseminated within the institution and the person or function which is to be responsible therefor. In addition, the manner in which follow up, control and reporting, as well as internal information and training, concerning ethical issues is to take place should be stated. Guidance may be obtained from Finansinspektionen's general guidelines regarding the Handling of Ethical Issues at Institutions which are Under the Supervision of Finansinspektionen (FFFS 1998:22).

Events of material significance

18 § The institution should append to the business plan guidelines regarding the handling and reporting of events of material significance which are to be applied by the institution. The description should, *inter alia*, state the decision-making and reporting arrangement for such matters. Guidance may be obtained from Finansinspektionen's general guidelines regarding the Reporting of Events of Material Significance (FFFS 1999:7).

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

Measures against money laundering and particularly serious crime

19 § The institution should append to the business plan a description of the measures taken or which are intended to be taken in order to prevent money laundering and to counteract transactions which relate to the financing of particularly serious crime.

Proposed instructions should be appended. See also Finansinspektionen's regulations and general guidelines governing Measures against Money Laundering (FFFS 1999:8) and Finansinspektionen's regulations and general guidelines governing Measures against Financing of Particularly Serious Crimes in Certain Circumstances (FFFS 2002:19).

Review function (internal audit)

20 § In the business plan, the institution should describe the manner in which the independent internal review function is to be structured and how it is to work.

The description should state:

1. the manner in which the review function is to 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 is to be produced and by whom it is to be adopted; and
5. how often, and to whom, the review function shall report.

Where the review function is to be performed by external auditors or consultants, a corresponding description should be provided regarding their engagement. The engagement should be regulated in a separate agreement which is appended to the business plan.

Guidance may be obtained from Finansinspektionen's general guidelines regarding Governance, Internal Information and Internal Control within Credit and Securities Institutions as well as Mutual Fund Companies (FFFS 1999:12).

Chapter 3. Licence to establish a branch in Sweden and notification of representation office

Branch establishment

Generally

1 § A foreign credit institution and a foreign electronic money institution which is not domiciled within the EEA may establish a branch in Sweden pursuant to a licence. Where the foreign credit institution intends to conduct securities business in the branch, a separate licence therefor is required in accordance with the Securities Operations Act (SFS 1991:981).

Content of the application

2 § The following should be appended to an application:

1. articles of association or equivalent;
2. a business plan prepared in accordance with Chapter 2, sections 4-5, 11, 13-20; and
3. a power of attorney in accordance with section 10 of the Foreign Branch Offices Act (SFS 1992:160).

An application should also contain information regarding:

1. the branch's business name and address;
2. the branch's external auditors;
3. the registered office and address of the foreign institution;
4. qualifying owners of the foreign institution;

5. board members and senior executives of the foreign institution;
6. the annual report for the most recent financial year and consolidated financial statements for the group in which the foreign institution is included or of which it is the parent company;
7. the capital adequacy for both the foreign 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 institutions or investment firms in Sweden.

Representation offices

3 § 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 business; and
4. the foreign credit institution's branches of business.

Changes in the above information must be notified to Finansinspektionen. In addition, the foreign credit institution's annual report must be submitted each year to Finansinspektionen.

Chapter 4. Operations Abroad

Branch establishment

Generally

1 § An institution may, following a licence from Finansinspektionen, establish a branch in a country outside the EEA. Where establishment takes place in a country within the EEA, the institution shall notify Finansinspektionen. The information to be provided in the notification is set forth in Chapter 5, section 1 of the Banking and Financing Business Act (SFS 2004:297) and Chapter 5, section 2 of the Electronic Money (Issuance) Act (SFS2002:149).

Content of the application

2 § A business plan for the branch shall be appended to an application for a licence or notification regarding branch establishment. Concerning the establishment of a branch in another EEA country, the institution shall answer a questionnaire which shall be appended to the notification, see *appendix 1* with respect to credit institutions and *appendix 2* with respect to electronic money institutions. Credit institutions should also, in *appendix 3*, 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 in 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 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 have a person who is responsible for the business. Such person should be resident in the country in which the branch is established. A *curriculum vitae* for the responsible person should be appended.

Where the branch is to have its own board of directors, information should be provided regarding the composition thereof including any alternate members and information regarding the identity of the chairman and deputy chairman of the board.

Change in operations of the branch

3 § An institution which, after a branch has been established in another EEA country, intends to make changes in the branch's business, address or responsible members of management shall notify Finansinspektionen thereof not later than one month prior to the implementation of the change, in accordance with Chapter 5, section 3, first paragraph of the Banking and Financing Business Act (SFS 2004:297) and Chapter 5, section 4 of the Electronic Money (Issuance) Act (SFS 2002:149). 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

4 § An institution which intends to conduct operations in another EEA country, through offering and providing services without establishing a branch therein, shall, pursuant to Chapter 5, section 4, first paragraph of the Banking and Financing Business Act (SFS 2004:297) and Chapter 5, section 5 of the Electronic Money (Issuance) Act (SFS 2002:149) notify Finansinspektionen of such intention prior to the commencement of operations. The institution should use the questionnaire in *appendix 1* or *appendix 2*. A credit institution should also, in *appendix 3*, state the services which the credit institution intends to provide. A translation of the questionnaire, into the official language of the country of establishment or in English, should also be provided.

Where an institution intends to establish a representation office or equivalent in a country outside the EEA, the institution should notify Finansinspektionen thereof.

These general guidelines shall enter into force on 1 July 2004, whereupon Finansinspektionen's general guidelines regarding Applications for a Licence to Conduct Banking or Financing Business (FFFS 1999:13) and Finansinspektionen's general guidelines regarding Applications for a Licence to Issue Electronic Money (FFFS 2002:15) shall be repealed.

INGRID BONDE

Marcus Hjorth

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

Bank or credit market undertakings which intend to establish a branch within the EEA should answer all of the questions below. Where a bank or credit market undertaking 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. This notification will be sent by Finansinspektionen to the relevant supervisory authority in the country of operations.

1. State complete business name and address of the head office in Sweden.
2. State the country to which the establishment relates.
3. State the business name under which operations will be conducted in the country of operations, complete address as well as telephone and fax number of the place of operations of the country of the branch.
4. State the name and personal ID 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 3. (The description should be as detailed as possible.)
7. State whether any operations will be conducted which are not stated in appendix 3.
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 (an organisational diagram is welcomed).
10. The name and address of a person who may be contacted in connection with this notification.

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

Place, Date

Place, Date

Signature

Signature

Name in print and position

Name in print and position

Appendix 2

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

Electronic money institutions which intend to establish a branch within the EEA should answer all of the questions below. Where an electronic money institution intends to offer or provide services without establishing a branch, so-called cross-border operations, questions 1, 2 and 3 and, where appropriate, 6 and 9 should be answered. This notification will be sent by Finansinspektionen to the relevant supervisory authority in the country of operations.

1. State complete business name and address of the head office in Sweden.
2. State the country to which the establishment relates.
3. State the business name under which operations will be conducted in the country of operations, complete address as well as telephone and fax number of the place of operations of the country of the branch.
4. State the name and personal ID 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. The description should be as detailed as possible.
7. State whether any operations will be conducted which are not stated in appendix 3.
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 (an organisational diagram is welcomed).
10. The name and address of a person who may be contacted in connection with this notification.

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

Place, Date

Place, Date

Signature

Signature

Name in print and position

Name in print and position

List of services

1. Receipt of deposits and other repayable funds from the public.
2. Lending¹
3. Financial leasing
4. Payment services
5. Issuance and administration of means of payment (e.g. credit cards, travellers cheques and bank drafts)
6. Guarantees and commitments
7. Trading for own account or for account 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) negotiable securities.
8. Participation in the issuance of securities and provision of services in connection with 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.

¹ Includes, *inter alia*, consumer credits, mortgage loans, factoring with or without recourse and financing of commercial loans (including forfaiting).