COUNTRY COMPARATIVE GUIDES 2023

The Legal 500 Country Comparative Guides

Sweden

BANKING & FINANCE

Contributor

Wigge & Partners

Lisa Antman

Partner | lisa.antman@wiggepartners.se

Andreas Malmberg

Partner | andreas.malmberg@wiggepartners.se

Klara Larsson

Associate | klara.larsson@wiggepartners.se

Jonathan Riddersholm

Associate | jonathan.riddersholm@wiggepartners.se

Andreas Becker

Associate | andreas.becker@wiggepartners.se

This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Sweden.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

SWEDEN
BANKING & FINANCE

1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

There are several authorities in Sweden which are involved in the banking regulation, supervision and resolution:

i. the Swedish Financial Supervisory Authority (Sw. *Finansinspektionen*) (the "**SFSA**");
ii. the Swedish Central Bank (Sw. *Riksbanken*) (the "**Riksbank**");
iii. the Ministry of Finance (Sw. *Finansdepartementet*);
iv. the Swedish National Debt Office (Sw. *Riksgälden*) (the "**Debt Office**"); and
v. the Swedish Consumer Agency (Sw. *Konsumentverket*).

The SFSA

The SFSA is the Swedish government authority responsible for monitoring the financial market. It supervises banks and financial institutions that conduct various forms of financial operations. The supervision of the SFSA ultimately focuses on stability of the financial system, risk management, governance, control and whether practices such as "good consumer protection" are followed. It also publishes rules for financial institutions, monitors the compliance with the rules and analyses risks that could lead to instability in the financial system. The SFSA supervises on an institute level (the micro perspective) and on a system level (the macro perspective).

The SFSA has a close collaboration with other supervisory authorities within the European Union (the "**EU**")/European Economic Area (the "**EEA**") as well as with the European Central Bank (the "**ECB**"). On 30 January 2023, the SFSA announced that it had strengthened its cooperation further with the ECB, by entering into a memorandum of understanding with, *inter alia*, the ECB, regarding cooperation on the area of bank supervision, with the purpose to ease an effective supervisory cooperation and information sharing.

The Riksbank

The Riksbank has pursuant to the Swedish Central Bank Act (2022:1568) (Sw. *lag om Sveriges riksbank*) a supervisory function in relation to settlement-, payment- and clearing systems and other activities that are of particular importance for the financial infrastructure in Sweden, such as maintaining a system for bank deposits and settlement of payments, and the Riksbank shall supervise the development of the payment market in Sweden. Despite this supervisory function, the primarily function of the Riksbank is the responsibility for the stimulation of the economy by, *inter alia*, keeping the inflation in Sweden in terms of the consumer price index with a fixed interest rate (CPIF) around two per cent per year.

The Ministry of Finance and the Debt Office

The Swedish Ministry of Finance is responsible for drawing up laws and regulations for financial institutions and banks and the financial system in general. The Debt Office is the central government financial manager with the objective to minimise the costs of central government financial management. It is responsible for providing banking services for the central government, raising loans and managing central government debt, providing state guarantees and loans, securing the financing of nuclear waste management and managing government support for banks. It is also responsible for the Swedish deposit insurance and investor protection schemes.

The Swedish Consumer Agency

The Swedish Consumer Agency is the government agency in Sweden responsible for safeguarding consumer interests. It has many functions, one of which is to supervise companies in Sweden that shall comply with the Consumer Credit Act (2010:1846) (Sw. *Konsumentkreditlagen*). This law applies to, *inter alia*, credits that a company provides or offers to a consumer.

The European System of Financial Supervision

The European system in respect of supervision of the financial sector within the EU consists of three supervisory authorities: the European Securities and Markets Authority (the "**ESMA**"), the European Banking Authority (the "**EBA**") and the European Insurance and Occupational Pensions Authority (the "**EIOPA**"). The system also includes the European Systemic Risk Board (the "**ESRB**") and the Joint Committee of the European Supervisory Authorities. Whilst the national supervisory authorities such as the SFSA remain in charge of supervising individual banks, the objective of the European supervisory is to improve the effectiveness of the internal European market by ensuring appropriate, efficient and harmonised European regulation and supervision.

2. Which type of activities trigger the requirement of a banking licence?

The general prerequisites for conducting banking business in Sweden are set out in the Banking and Financing Business Act (2004:297) (Sw. *lagen om bank- och finansieringsrörelse*) (the "**BFA**") and the Banking and Financing Business Ordinance (2004:329) (Sw. *förordning om bank- och finansieringsrörelse*). Pursuant to the BFA, banking business is defined as business including:

i. payment services via general payment systems; and
ii. receipt of funds which, following notice of termination, are available to the creditor within 30 days.

Further, there are special regulations for certain financial activities, *inter alia*, for savings banks in the Savings Banks Act (1987:619) (Sw. *Sparbankslag*), for members' banks in the Members' Banks Act (1995:1570) (Sw. *lag om medlemsbanker*), for financial institutions and entities handling currencies exchanges in the Currency Exchange and Other Financial Activities Act (1996:1006) (Sw. *lagen om valutaväxling och annan finansiell verksamhet*), for mortgage institutions in the Mortgage Business Act (2016:1024) (Sw. *lag om verksamhet med bostadskrediter*) and for consumer credit institutions in the Certain Consumer Credit-related Activities Act (2014:275) (Sw. *lag om viss verksamhet med konsumentkrediter*). However, banks may often on the basis of the banking license, carry out such activities as are regulated in the special laws, and thus do not always need a separate license.

3. Does your regulatory regime know different licenses for different banking services?

There are various authorisation and/or registration options depending on whether the bank is conducting banking business, financing business, payment services, business within issuing electronic money, deposit activities, issuing or brokering loans to consumers, currency traders or other financial activities etc. As previously mentioned, a bank may often on the basis of a banking license, carry out other activities which might be regulated by special laws, and thus do not always need a separate license.

4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

A banking authorisation issued by the SFSA permits the carrying out of financing activities naturally connected therewith, including e.g., payment services and issuance of e-money. However, in order to operate as a securities company and carry out ancillary services in connection therewith, including e.g., carrying out dealer broker activities (such as trade in financial instruments for own account or on behalf of customers), a bank would in addition need a license under the Swedish Securities Market Act (2007:528) (Sw. *lag om värdepappersmarknaden*).

5. Is there a "sandbox" or "license light" for specific activities?

No, Sweden has not incorporated any banking "sandbox" or "license light" regime and the provisions are in general substantially the same irrespective of the complexity or size of the banking institution. However, if a company is not conducting banking business, but rather e.g., financing business or payment services, a banking license may not be necessary and the company may instead have the possibility to operate under, *inter alia*, a payment service provider license or a license for financing business. It may however be noted that the SFSA classifies Swedish banks on an annual basis in accordance with EBA´s guidelines, on a scale from one to four, where one means that the bank is a systematically important bank and four means a smaller, non-complex bank. The category one banks are subject to supervision to a larger extent than category two banks and so on.

6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

The regulatory landscape for crypto currencies can be described as unclear, and the crypto market is almost unregulated within the EU. This has led to some EU member states adopting regulation on a national level. In Sweden, the legislator has not yet adopted any specific crypto currency law or regulations with regards to specifically crypto currencies and thus, there are no explicit restrictions in respect of issuance or custody of crypto currencies, save for the following rules that, *inter alia*, have to be considered if a company deals with activities related to crypto:

i. companies that conduct activities related to services with crypto currencies must consider anti-money laundering rules. To secure this, an entity intending to engage in currency exchange, *inter alia,* activities consisting of exchange between virtual currencies and traditional currencies (e.g. Bitcoin to SEK), exchange between virtual currencies (e.g. Bitcoin to Ether) or transfer of virtual currencies (e.g. between different so called "wallets") shall be registered with the SFSA pursuant to the Act (1996:1006) on Currency Exchange and Other Financial Activities. This obligation does, however, not apply to legal entities which conduct banking or financing business, since they are already obligated to comply with Money Laundering and Terrorist Financing (Prevention) Act (2017:630) (Sw. *lag om åtgärder mot penningtvätt och finansiering av terrorism*); and
ii. EU´s Markets in Financial Instruments Directive (MiFID) and EU´s Markets in Financial Instruments Regulation (MiFIR), implemented in Sweden via the Swedish Securities Market Act may also be applicable if the crypto asset qualifies as a "financial instrument".

Currently, there are almost no Swedish banks that offer crypto currencies such as bitcoin as an investment option, and instead, purchase of crypto currency is taking place on crypto exchanges or via brokers. The reasons are, *inter alia*, that trade in crypto currencies is not always transparent and it is therefore difficult for banks to fulfil their obligations to prevent financial crime and money laundering. Further, the lack of regulation and in particular, consumer protection, is another reason. The pricing of crypto currencies is also highly fluctuating, and investors have limited insight into how the market develops and what drives the price. For investors seeking exposure to crypto currencies, there are listed instruments tracking crypto currencies.

Coming EU legislation

In September 2020, the European Commission presented a draft law for crypto-assets within the EU called the regulation on markets in crypto-assets (the "**MiCA**"). The MiCA is expected to ensure improved and harmonised regulation on the market for crypto currencies and other types of crypto assets such as stablecoin. The MiCA will cover both crypto asset issuers and crypto asset service providers. The background to the regulation is, among other things, that many crypto assets are not covered by any regulation within the EU, for example in terms of consumer and investor protection.

International standards addressing various aspects of crypto assets

Various international bodies have developed standards that touch on some aspects of crypto assets and which all aim to limit the risks with crypto currencies. For example, in October 2020, the Committee on Payments and Market Infrastructures (CPMI) and the International Organisation of Securities Commissions (IOSCO) published a consultation report on stablecoins containing guidance for how the Principles for Financial Market Infrastructures (PFMI) should be applied to systemically important stablecoin arrangements. Further, the Financial Stability Board (the "**FSB**"), an international body that monitors and makes recommendations about the global financial system, has also adopted recommendations for global stablecoin arrangements.

7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?

Crypto currencies largely lack the regulation that national currencies have, also as regards to consumer protection, such as deposit insurance (Sw. *insättningsgaranti*).

Based on the Funds Accounting Act (1944:181) (Sw. *lag om redovisningsmedel*), banks shall separate funds of which they are obligated to account for on behalf of customers. In preparatory work, funds are defined as money, but can also, analogously, apply to other fungible assets. Such assets may be, e.g., crypto currencies. It can also be argued that there is a general legal principle to separate client funds. This legal matter is, however, in lack of legal guidance, unclear. Pursuant to the MiCA, new rules will be introduced regarding segregation of funds in respect of crypto currencies (see

the new article 33 in the MiCA).

8. If crypto assets are held by the licensed entity, what are the related capital requirements (risk weights, etc.)?

There are no specific capital requirements for crypto assets. However, pursuant to the MiCA, new rules will be introduced regarding obligations to have reserve assets (see the new article 32 in the MiCA).

For further information regarding the general capital requirements for banks, see question 14.

9. What is the general application process for bank licenses and what is the average timing?

Banking activities may as a general rule, only be conducted following the granting of an authorisation by the SFSA. The applicant must prepare an application which shall be filed with the SFSA. The application shall include the information that is set out in applicable acts and SFSA´s regulations (for example the SFSA regulation (FFFS 2011:50) regarding application for authorisation to conduct banking or financing business). The following information will, *inter alia*, be required from the applicant:

i. factual background information relating to the applicant;
ii. details of the intended activities;
iii. details about certain individuals in management positions; and
iv. financial statements.

If the applicant intends to also provide advice regarding financial matters, additional guidelines adopted by the SFSA shall be considered. Each bank applicant must pay a fee of SEK 850,000 in conjunction with the application for a banking license.

The SFSA shall make a decision regarding the application within six months provided that the application is complete, and the fee is paid, but if the SFSA requires supplemental information from the bank applicant, the application process may be extended until the SFSA has received all information for the application to be processed.

10. Is mere cross-border activity permissible? If yes, what are the requirements?

Cross-border activity within the EU/EEA

The freedom of establishment and the freedom to provide services guarantee free mobility of businesses and professionals within the EU, also with regards to banking activities. The main rule is thus that a foreign bank authorised to conduct banking business in a member state of the EU/EEA is entitled to conduct cross-border business in Sweden.

Pursuant to Chapter 4 of the BFA an EU/EEA credit institution (the definition of credit institution includes banks) may conduct business in Sweden through a branch placed in Sweden. A credit institution may also provide banking services in Sweden from its EU/EEA home country without establishing a branch in Sweden.

Via a branch

A credit institution domiciled in an EU/EEA country, wishing to run a branch in Sweden, shall first inform the supervisory authority in its home country where the credit institution has its banking license. The homeland supervisory authority then assesses whether the information is complete and correct and notifies the SFSA that the credit institution intends to conduct business in Sweden. The foreign credit institution may commence financial activities via the branch two months after the SFSA has received from a supervisory authority in the institution's home state, a notification containing the following information:

i. the programme for the intended activities in Sweden containing, *inter alia*, the organisation of the branch;
ii. the branch's postal address and management; and
iii. the credit institution's own funds and solvency ratio.

Without establishing a branch

A credit institution domiciled in an EU/EEA country may also commence financial activities in Sweden without establishing a branch if the SFSA receives a notification with information regarding the services which the institution intends to provide in Sweden from the supervisory authority in the institution's home state.

Cross-border activity from outside of the EU/EEA

Credit institutions domiciled in a country outside of the EU/EEA that intends to conduct activities in Sweden must have a branch established in Sweden and must apply for authorisation with the SFSA, pursuant to the

BFA Chapter 4 Section 4, or establish a Swedish subsidiary to provide their services in Sweden. Chapter 3 of the SFSA´s regulation (FFFS 2011:50) regarding applications for authorisation to conduct banking and financing business sets out information regarding, *inter alia*, the content of an application from the credit institution domiciled in the non-EU/EEA country.

11. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

An authorisation to conduct banking activities may be granted to Swedish limited liability companies (Sw. *aktiebolag*), co-operative associations (Sw. *ekonomiska föreningar*) and savings banks (Sw. *sparbanker*) pursuant to the BFA, Chapter 3, Section 1. Swedish limited liability companies are often the legal entity used for banking activities.

A banking company, which is a limited liability company, shall upon commencement of the business, have an initial capital which, at the time of the decision regarding the authorisation, corresponds to not less than five million euro, pursuant to the BFA, Chapter 3, Section 5.

12. What are the organizational requirements for banks, including with respect to corporate governance?

Organisational requirements

Rules regarding organisational requirements for banks are set out in Chapter 6 of the BFA and further in SFSA´s regulation (FFFS 2014:1). The activities shall be organised, *inter alia*, as described below:

i. the organisation and activities shall be structured in such a manner that the bank's structure, connections to other undertakings, and financial position may be reviewed and assessed;
ii. it shall be a clear distinction between the different roles of the employees and divisions within the bank so that the SFSA is able to in an efficient manner supervise the bank;
iii. there shall be internal control mechanisms in place which shall relate to IT systems and processes;
iv. employees must have competence in order to deal with their tasks;
v. information must be stored for at least five years; and
vi. no person is permitted to handle a transaction alone throughout the entire process of the transaction.

Corporate governance

The activities of a bank shall be conducted in such a manner that the banks´ ability to perform its obligations is not jeopardised, and banks shall identify, measure, control, internally report and verify the risks associated with the activities. A bank shall further have:

i. recovery plans/group recovery plans and a risk strategy in place;
ii. IT systems and routines to protect confidentiality, assurance and availability;
iii. internal rules for governance of the organisation and such rules shall be adjusted taking into account the nature, scope and complexity of the business; and
iv. a bank shall ensure that satisfactory internal controls are in place.

The board and the managing director shall regularly evaluate whether the bank controls and manages its risks in an efficient and effective manner.

13. Do any restrictions on remuneration policies apply?

Pursuant to the BFA and SFSA´s regulations, there are several restrictions on the flexibility of granting remuneration to employees within banks. Below follows some examples:

i. variable compensation to employees within banks may not exceed the fixed compensation if the employee´s position or total compensation level entails that the relevant person has a material impact on the bank's risk profile;
ii. banks must ensure that the total variable compensation to employees does not limit the ability to maintain a sufficient capital base;
iii. a bank is not permitted to provide a guaranteed variable remuneration, save for in conjunction with new employments and if there are special reasons for it. Such compensation must also be limited to the first year of the employment;
iv. a bank shall provide information on its website on how the bank meets the requirements regarding

compensation policies;

v. if a bank grants variable compensation to employees, the bank shall ensure that there is an appropriate proportion between the fixed and variable parts of the remuneration;
vi. a bank shall ensure that at least 40 per cent of the variable compensation to an employee whose duties have a significant impact on the risk profile of the bank, is deferred for at least four years before the compensation is paid to the employee. When determining the period for the postponement of the compensation, the bank should consider the business cycle of the bank, risks entailed by the business activities, the employee's responsibilities and duties as well as the size of the variable remuneration;
vii. banks shall ensure that at least 50 per cent of any variable compensation employees whose duties have a significant impact on the risk profile of the bank, consists of shares in the bank (or other equivalent instruments);
viii. a bank must have a remuneration policy in place covering all employees in the bank and which shall be updated and reviewed regularly. The policy shall be compatible with and stimulate a sound and an efficient risk management. The board is responsible for adopting the policy and the policy shall set out, *inter alia*, the following:

- principles for determining fixed and variable remuneration;
- remuneration levels to the executive management and employees who have an overall responsibility for the control functions;
- measures to follow up the compensation policy; and
- information regarding how large the variable compensation may be at most compared to the fixed proportion of the compensation, for all categories of employees who can receive variable remuneration (and exceptions to these conditions shall be approved by the board in each individual case).

These rules are generally applicable, but exemptions may apply on a case-by-case basis. The requirements may also be firmer for institutes that are of a systematically importance.

14. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

Yes, the Basel III framework has been implemented in Sweden, primarily via EU regulation. The EU has implemented the Basel III framework with regards to regulatory capital requirements through EU´s Capital Requirements Regulation (the "**CRR**") and EU´s Capital Requirements Directive (the "**CRD**"). The CRR is directly applicable in Sweden, and the CRD has been implemented into Swedish law primarily through the Credit Institutions and Securities Companies Special Supervision Act (2014:968) (Sw. *lag om särskild tillsyn över kreditinstitut och värdepappersbolag*), (the "**Special Supervision Act**"), the Capital Buffers Act (2014:966) (Sw. *lag om kapitalbuffertar*) and the SFSA´s regulations.

The SFSA has further the option of setting requirements for, *inter alia*, additional buffers – system risk buffers and buffers for systemically important institutions. The SFSA has decided that the three largest Swedish banks must have a total systemic risk premium of five per cent of Common Equity Tier 1 capital.

Initial capital required varies depending on the category of the institution, in accordance with the below thresholds:

i. not less than five million EUR; credit institutions (such as banks) and members' banks and a credit market companies; and
ii. not less than one million EUR; savings banks.

15. Are there any requirements with respect to the leverage ratio?

Yes, during 2021, a leverage ratio requirement for banks was introduced in Sweden, being three per cent. This requirement is based on the Basel III Framework. The leverage ratio differs from other capital requirements

since it does not take into consideration the underlying risks in the assets of the bank. In addition to the binding requirement, the SFSA can establish a Pillar 2 guidance requirement on a leverage ratio buffer, which in practice is a supplement to the minimum requirement. According to the rules for the Pillar 2 guidance, the SFSA must communicate to the affected banks what is considered a suitable level for each bank's own funds to cover.

16. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

Liquidity requirements, including liquidity coverage ratio and stable net financing ratio, are set out in the Regulation EU/2015/61 with regard to liquidity coverage requirement for credit institutions, the CRR, the CRD, as well as in the SFSA´s regulation (FFFS 2010:7) on handling liquidity risks (the "**LCR Regulation**" and the "**NSFR Regulation**" respectively). The regulations are based on, among other things, the Basel Committee's principles on the management and supervision of liquidity risks.

Swedish banks are obliged to comply with and fulfil the LCR and NSFR Regulations which focus on how banks' assets and liabilities mature in each of two given time buckets. The LCR Regulation is directly applicable in Sweden and fully replaces the SFSA´s regulation (FFFS 2012:6). Pursuant to these rules, there is a liquidity requirement of 100 per cent LCR, which means that a bank shall have enough liquid assets to handle real and simulated cash outflows during a stressed period of 30 days. Article 8.6 of the LCR Regulation sets a general requirement that the currency composition of the liquidity buffer must be in line with the net outflows per currency. If there is an imbalance in the relationship between the currency composition of the liquidity buffer and the net outflows in individual currencies, the SFSA may require a bank to limit the imbalance by setting limits on the percentage of liquid assets in a currency that a bank can credit to cover liquidity outflows in another currency.

The NSFR requirement means that a bank shall have sufficient stable financing to cover its financing requirements in a one-year perspective under both normal and stressed circumstances. The NSFR requirement is 100 per cent.

17. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

Banks shall submit annual reports (on a yearly basis) and interim reports (at least once during a financial year that includes more than ten months) pursuant to Act (1995:1559) on Annual Reports in Credit Institutions and Securities Companies (Sw. *lag om årsredovisning i kreditinstitut och värdepappersbolag*) and Annual Reports Act (1995:1554) (Sw. *årsredovisningslagen*). The Swedish Companies Registration office (Sw. *Bolagsverket*) (the "**SCRO**") is responsible for registration of annual reports which shall be registered in the SCRO´s register. Annual reports filed with the SCRO are publicly available.

Many of the larger Swedish banks are admitted to trading on a stock exchange and pursuant to stock exchange rules, companies have to publish reports on their websites every quarter.

Further, a bank shall have in place internal rules and routines on accounting that makes it possible to submit financial reports to the SFSA that represent a fair picture of the financial position of the bank. These reports shall comply with applicable laws and regulations on accounting principles (GAAP).

18. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

The CRD and CRR provide for measures relating to consolidated supervision. The CRR lays down rules which, *inter alia*, require banks to provide reports with data on a consolidated basis relating to liquidity, own-funds, eligible liabilities, capital requirements, leverage, solvency ratios, large exposure limits and arrangements concerning exposures to transferred credit risks. Pursuant to the CRR, consolidated supervision of a parent company within the EU and its subsidiaries is possible provided that certain conditions are met. A parent company and its subsidiaries have to implement appropriate organisational structures and internal control mechanisms in order to ensure that the data required for consolidated supervision is correctly processed and forwarded to the supervisory authority.

Further, pursuant to Chapter 4, Section 1 in the Special Supervision Act, the SFSA supervises the group level requirements as set out in Chapter 3 in the Special Supervision Act. A group level supervision is triggered if, *inter alia,* the parent company is a credit institution or a securities company and the subsidiary is a credit institution. The group level rules require, *inter alia*, a parent company to ensure that the requirements

regarding equity ratio and risk management set forth in the BFA are satisfied on a consolidated basis, in accordance with the provisions of Articles 18-24 of the CRR.

Where the SFSA is responsible for the consolidated supervision on a group level, the SFSA shall submit a report, containing a risk assessment of the consolidated situation, to the other relevant supervisory authority within the EU/EEA. The SFSA shall further, pursuant to Chapter 4, Section 5 in the Special Supervision Act, within four months from the date on which the SFSA has submitted the report, attempt to reach an agreement with the other relevant supervisory authority involved regarding which decision that should be taken with respect to:

i. the specific liquidity requirement in Chapter 2, Section 2 in the Special Supervision Act; and
ii. whether the own funds on a consolidated basis are sufficient taking into consideration the financial situation and the risk profile and regarding the level of own funds required under Chapter 2, Section 1, and 1 c in the Special Supervision Act, on an individual basis or consolidated basis.

Where a company fails to fulfil the requirements of, *inter alia*, the Special Supervision Act, the SFSA shall order the company to limit its activities in any respect within a certain time, to reduce the risks, or take any other measures necessary to rectify the situation.

Similar requirements for investment firm groups are set out in Chapter 4a of the Special Supervision Act.

The consequences of the consolidated supervision may be that:

i. the SFSA is enabled to have a meta perspective of the financial situation of a group; and
ii. the SFSA may monitor and supervise how the banks act and identify banks that attempt to escape from financial compliance requirements by transferring activities into, *inter alia*, subsidiaries.

19. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

Any legal or natural person wishing to acquire, directly or indirectly, qualified shares in a Swedish credit institution (which include banks) shall prior to the acquisition obtain the SFSA´s approval via an owner assessment (Sw. *ägarprövning*). Shares are defined as qualified if the shares represent ten per cent or more of the shares or voting rights of the bank, or if the acquisition otherwise enables the acquirer to exercise a significant influence over the management in the bank. The owner assessment obligation also applies when an acquisition results in a shareholder passing the thresholds 20, 30, or 50 per cent of the voting rights or capital. The SFSA will process the owner assessment within 60 days from the date on which it received a complete application, and the application fee was paid.

Changes in shareholdings shall further, if certain thresholds are passed, be reported to the SFSA (Sw. *flaggning*). The regulation on notifying the SFSA is based on the EU's Transparency Directive. The notification obligation applies when shareholders acquire or dispose of shares in a listed company and thereby reach, exceed or fall below the 5, 10, 15, 20, 25, 30, 50, 66 2/3 and 90 per cent thresholds for voting rights or number of shares in the company. Notifications shall be submitted via the SFSA's digital Reporting Portal. A shareholder shall, pursuant to the rules on notifying the SFSA, in conjunction with a triggering transaction, also notify the relevant company. Thereafter the SFSA will publish the information.

Further, pursuant to Section 10 in SFSA's regulation (FFFS 2009:3), the appointment of a chairman, any board member, deputy board member, or the CEO shall be notified with the SFSA via an owner management assessment (Sw. *ledningsprövning*). The SFSA shall also be informed when the number of board members decrease.

20. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

An application to acquire qualified shares (as defined above) in a Swedish credit institution shall be assessed by the SFSA in order for the SFSA to ensure that the acquisition is financially sound, and the acquirer is appropriate. The assessment shall be based on the acquirer's reputation, capital levels, and any potential connections with money laundering and financing of terrorism. The SFSA will in connection with the assessment, obtain information from, *inter alia*, the Swedish National Police Board (Sw. *Rikspolisstyrelsen*), the SCRO, the Swedish Tax Agency (Sw. *Skatteverket*), and the Swedish Enforcement Authority (Sw. *Kronofogdemyndigheten*).

The SFSA will also require receiving a business plan in case of that the acquirer, as a result of the acquisition,

will obtain majority control over the shares or voting rights, or have the right to appoint or dismiss a majority of an institution's board members. The business plan shall contain, *inter alia*, a three-year financial forecast for the credit institution and the group to which it belongs.

Pursuant to anti-money laundering legislation, companies, including banks, must report ultimate beneficial owners (Sw. *verkliga huvudmän*) to the SFSA. However, an exemption exists where the company´s shares are admitted to trading on a stock exchange.

21. Are there specific restrictions on foreign shareholdings in banks?

The SFSA´s regulation regarding ownership and management assessment (Sw. *ägar- och ledningsprövningar*) applies to any legal or natural person wishing to acquire qualified shares (as defined above) in a Swedish credit institution, irrespective of the nationality of the acquirer. The SFSA will obtain information from relevant authorities in the foreign citizen's jurisdiction for the assessment of the application.

As mentioned above, many of the Swedish banks are listed companies, which means that anyone may acquire a share in such bank on the open market via the stock exchange on which the share is traded. In relation to private companies, the new Protective Security Act (2018:585) (Sw. *Säkerhetsskyddslagen*) may hinder foreign holders to acquire companies that conduct security sensitive activities. Also, see question 20 regarding the requirement to provide a business plan under certain circumstances.

22. Is there a special regime for domestic and/or globally systemically important banks?

There are rules in Sweden for systematically important banks, *inter alia*, in accordance with the CRD. The three major banks in Sweden, Skandinaviska Enskilda Banken, Handelsbanken and Swedbank are systemically important in Sweden through their predominant position on the financial market, their complex business models and their extensive cross-border activities and these are subject to more detailed supervision. In February 2022, following the SFSA's biennial review of the systemic risk buffer in accordance with the CRD, the SFSA decided that these aforementioned three banks shall continue to maintain a systemic risk buffer of three per cent at group level.

Furthermore, banks that are considered systemically important, i.e., critical for the basic functions of the financial system or whose liquidation could lead to serious disturbances in the financial system, are also monitored by the Debt Office, which identifies systemically important banks in Sweden and plans for resolution with regards to such banks. Nine Swedish banks currently conduct systemically important activities pursuant to the Debt Office´s assessment and therefore shall be subject to resolution in the event of a crisis. The Debt Office regularly analyses the institutions' activities and their importance for the financial system. The analysis is summarised in so-called resolution plans, which show how each individual bank should be handled in a possible crisis.

23. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

Where a bank has violated its obligations under the banking regulations, other statutory instruments which govern the institution's activities, the articles of association, by-laws or regulations, or internal instructions based on statutory instruments governing the institution's activities, the SFSA is obliged to intervene. In case of violation, the SFSA have, *inter alia*, the following tools:

i. the SFSA may issue an order (Sw. *föreläggande*), an injunction (Sw. *förbud*) against executing resolutions or an adverse remark (Sw. *varning*);
ii. where the relevant infringement is deemed serious, the license of the bank shall be revoked or, if sufficient, a warning shall be issued;
iii. a decision regarding a revocation of the license may be combined with an injunction (Sw. *förbud*) against continuing the activities; and
iv. in some cases, the SFSA may decide that the institution must pay a punitive fine (Sw. *sanktionsavgift*).

24. What is the resolution regime for banks?

The key regulation in Sweden with respect to the resolution regime is the Resolution Act (2015:1016) (Sw. *lag om resolution*) ("**Resolution Act**"), and the framework is mainly relevant in a crisis situation. The Debt Office is the resolution authority. The Resolution Act contains requirements for, *inter alia*, the

establishment of recovery and resolution plans and the Resolution Act also gives the Debt Office a right to require a credit institution (which includes banks) to eliminate any obstacles that are preventing the resolution in question. The resolution regime allows, *inter alia*, the authority to implement different measures when the authority considers that a failure of the institution has become likely and poses a threat to public interests. The resolution options are, *inter alia*, as follows for the authority:

i. it may transfer the business to a bridge institution;
ii. it may sale/divest the business to a purchaser that is not a bridge institution; and
iii. it may transfer assets in the business to an asset management vehicle.

For further information regarding the Swedish resolution regime, see question 26.

25. How are client's assets and cash deposits protected?

Swedish deposit insurance scheme

Pursuant to the Swedish Deposit Insurance Scheme Act (1995:1571) on deposit guarantee (Sw. *lagen om insättningsgaranti*) which is based on EU´s Deposit Guarantee Scheme Directive, assets of clients are reimbursed by the Swedish state if a bank in Sweden in which a client has money becomes bankrupt. The deposit insurance scheme covers funds up to an aggregate amount of EUR 100,000 per person and institution. The deposit insurance applies to all private persons, companies and other legal entities, however not including financial institutions and public and local authorities. Further, the guarantee has certain restrictions such as that it does not apply to savings in the form of securities funds, securities, insurance plans or individual pension savings plans.

If an account is covered by the deposit insurance and subject to the above mentioned maximum amount, the bank customer is entitled to compensation equal to the deposited amount, including interest, up to the date on which the institution was declared in default. If a bank account is opened in two or more person's names, each person is counted for separately and the compensation will not be affected if the customer has debts to the bank, i.e., no set-off will be made.

Assets

Banks and financial institutions have an obligation pursuant to Swedish law to keep their own assets strictly separated from those of its clients. Therefore, if a bank or a financial institution enters into bankruptcy, the client in question is entitled to receive its assets. If the bank has failed to keep the assets separated or is nevertheless unable to return the assets to the client, the client is entitled to receive compensation for lost securities up to a maximum value of SEK 250,000. This protection covers the securities and money that banks, and financial institutions handle when they perform investment services such as the purchase, sale or holding (deposit) of securities (e.g., shares, bonds or derivative instruments).

26. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered? Does it apply in situations of a mere liquidity crisis (breach of LCR etc.)?

Yes, there is a bail-in tool in bank resolution in Sweden. During 2014, the EU adopted the Bank Recovery and Resolution Directive (the "**BRRD**") which contains tools that allow authorities to intervene when banks face financial difficulty, such as the bail-in tool. In Sweden, the BRRD has primarily been implemented through the Resolution Act and the SFSA´s regulation (FFFS 2016:6) on recovery plans. The bail in tool authorises the resolution authority, which in Sweden is the Debt Office, to in combination with other measures, write down a bank's claims to absorb losses or to recapitalise the bank by converting liabilities to equity according to a specific order of priority.

Triggers for a resolution (bail in)

According to Chapter 3, Section 10 of the Resolution Act, the Debt Office shall, when drawing up a resolution plan for a bank, assess if it is feasible and credible to either restructure or liquidate the bank under normal insolvency proceedings or resolve it through a resolution in a way that does not have any significant adverse effect on the financial system in the EU/EEA. The content of, and procedure for, this assessment are regulated in more detail in the Resolution Ordinance (2015:1034) (Sw. *förordning om resolution*) and in the EU Delegated Regulation 2016/1075.

Pursuant to Chapter 8 Section 5 in the Resolution Act, the Debt Office shall take a resolution action provided that *all* of the following conditions are fulfilled:

i. the SFSA has determined that the institution fails or that it is likely that the institution will fail, *inter alia*, if the bank is in breach of its capital requirements or the bank is unable to pay its obligations as they fall due or requires

government funding);
ii. there are no alternative measures that would remedy or prevent default in the institution within a reasonable time; and
iii. the resolution is necessary considering public interests.

A resolution shall be deemed to be in the public interest, *inter alia*, if winding up of the institute through bankruptcy or liquidation would not achieve the objectives to the same extent.

Liabilities covered

In order for the bail-in tool to be effective, banks musts, when entering into resolution, have sufficient levels of capital and debt instruments enabling the resolution authority to bail-in, and for example, there are requirements on sufficient of minimum amounts of loss-absorbing capacity. There are also rules which specify the types of debt instruments that a resolution authority can use for bail-in and which it cannot. There are certain debt claims that for various reasons (operational or political) are deemed inappropriate to bail-in, and only certain claims can be subject to a write-down (these are known as *eligible liabilities)*. Pursuant to the BRRD, the following liability classes are exempt from bail-in and will thus neither be written down nor converted to equity:

i. interbank deposits with original maturities of less than seven days;
ii. secured liabilities; and
iii. certain other minor classes of liability such as obligations to employees and accounts payable.

27. Is there a requirement for banks to hold gone concern capital ("TLAC")? Does the regime differentiate between different types of banks?

The FSB has published, in consultation with the Basel Committee, the international standard for total loss-absorbing capacity (the "**TLAC**") which is applicable to systemically important banks, and the TLAC has further been implemented within the EU via revised rules on capital requirements, liquidity and resolution in, *inter alia*, CRR II, CRD IV, CRD V and BRRD II.

The TLAC regulation requires, *inter alia*, Global Systemically Important Institutions (G-SIIs) to hold an adequate amount of highly loss absorbing (bail-in able) capital and debt instruments available that can be "bailed-in" (written down or converted into equity to absorb losses and recapitalize) in the event of a resolution. In the CRR II, a minimum TLAC is mandatory for all G-SIIs. Starting from 2022, the minimum required TLAC will be 18 % of RWA and 6.75 % of total exposure for G-SIIs. Sweden does not currently have any G-SIIs.

28. In your view, what are the recent trends in bank regulation in your jurisdiction?

The transition to a sustainable and green society in whole means changes in several areas, *inter alia*, the shift to a sustainable economy and financial market. A vast majority of the Swedish banks are already part of this green movement, *inter alia*, many banks offer sustainable financial products to customers and banks must consider, analyse, and manage the different risks associated with investments that are not green or sustainable. Going forward and as part of the green trend we may expect national and EU legislation, motivated by ESG and climate arguments.

Through the new taxonomy regulation, the EU has established a common classification system (taxonomy) to be used to assess whether economic activities are sustainable. The purpose of the EU's taxonomy is to help investors identify and compare environmentally sustainable investments and to avoid so-called greenwashing

29. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

Challenges to financial stability

Currently, a great risk in the financial system in Sweden according to the Riksbank, is the Swedish banks' exposure to the highly indebted commercial property sector. Also, a relatively high level of indebtedness in relation to private households makes the financial system vulnerable. The current development in respect of interest rates, rising inflation, the war in Ukraine and the economic development at large, entails an increased risk for credit losses among Swedish banks and thus poses challenges for the stability of the financial system in Sweden and globally. These circumstances mean that both foreign as well as Swedish authorities with financial stability responsibilities have to monitor developments closely and be prepared to initiate actions if the financial situation so requires.

The increased risks of cyber attacks

The financial sector in Sweden has over the past decade experienced a huge digitalisation revolution, which has led to many advantages. Due to the digitalisation, we

have also seen an increasing risk of cyber-attacks occurring in the banking sector. The risk of cyber-attacks is a great threat to the success of the financial sector in Sweden and globally. The risks of attacks place increased demands on the banks' information security, and it is, *inter alia*, important that boards and executive management of banks are involved in the information security work. The Riksbank has emphasised that it is important to rapidly strengthen the ability to prevent, detect and manage cyber risks in the banking sector.

Contributors

Lisa Antman
Partner
lisa.antman@wiggepartners.se

Andreas Malmberg
Partner
andreas.malmberg@wiggepartners.se

Klara Larsson
Associate
klara.larsson@wiggepartners.se

Jonathan Riddersholm
Associate
jonathan.riddersholm@wiggepartners.se

Andreas Becker
Associate
andreas.becker@wiggepartners.se