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D E C I S I O N

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Skandinaviska Enskilda Banken AB
via the Chairman of the Board of Directors
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FI Ref.19-8698
Notification No. 1

Remark and administrative fine

Finansinspektionen's decision (to be announced on 25 June 2020 at 3:00 p.m.)

1. Finansinspektionen is issuing Skandinaviska Enskilda Banken AB (502032-9081) a remark.

   (Chapter 15, section 1 of the Banking and Financing Business Act [2004:297])

2. Skandinaviska Enskilda Banken AB shall pay an administrative fine of SEK 1,000,000,000.

   (Chapter 15, section 7 of the Banking and Financing Business Act)

To appeal the decision, see *Appendix 1*.

Summary

Skandinaviska Enskilda Banken AB (SEB AB or the bank) is a joint stock banking company authorised to conduct banking business in accordance with the Banking and Financing Business Act (2004:297).

Finansinspektionen has investigated SEB AB's compliance with the rules for governance and control with regard to anti-money laundering measures in the bank's subsidiaries in Estonia, Latvia and Lithuania. The investigation covers the period 2015–Q1 2019.

Finansinspektionen has not investigated the compliance of the Baltic subsidiaries with the local anti-money laundering regulations. Neither does the investigation bring up the matter of whether money laundering has occurred in the Baltic subsidiary banks and in such case to what extent.

Finansinspektionen makes the assessment that deficiencies in the Baltic subsidiary banks may result in risks for SEB AB at both group level and institution level and that the bank must manage such risks.

Non-resident customers in parts of the Baltic operations have represented a significant share of the subsidiary banks' business volumes, particularly in terms of deposits. The volumes decreased during the period under investigation. A large proportion of the volumes from non-resident customers come from customers the subsidiary banks themselves have classified as high risk. For the category resident customers with non-resident beneficial owners, the Estonian subsidiary bank did not have information about beneficial owners in a searchable data field prior to 2016, which has made it difficult to analyse the exposures to non-resident beneficial owners. However, it is clear that a significant proportion of the transaction volumes in this category also come from customers the subsidiary banks themselves have classified as high risk, particularly in the Estonian subsidiary bank.

Parts of the operations in SEB AB's subsidiary banks have been exposed to an elevated risk of money laundering, not only due to the general increase in the risk level from their geographical location but also due to the composition of the subsidiary banks' customer relationships. It has therefore been of particular importance to design appropriate measures to combat money laundering.

Finansinspektionen's investigation shows that SEB AB has not had sufficient governance and control of the Baltic subsidiary banks with regard to the anti-money laundering work. SEB AB has not identified and managed the elevated compliance and reputational risks that some of the non-resident customers and resident customers with non-resident beneficial owners imposed on the group. SEB AB repeatedly received information about deficiencies in some of the central pillars of the work to combat money laundering in the Baltic subsidiary banks but did not take sufficient action. The investigation furthermore shows that the subsidiary banks have not had sufficient resources in their work to combat money laundering. SEB AB has thereby not fulfilled the requirements imposed upon it.

The deficiencies have been of such a nature that Finansinspektionen assesses there to be grounds on which to intervene against SEB AB. The observed violations are not negligible, but neither are they so serious that there is cause for Finansinspektionen to consider withdrawing the bank's authorisation or issuing the bank a warning. Finansinspektionen is therefore issuing SEB AB a remark that will be accompanied with an administrative fine of SEK 1,000,000,000.

Contents

1 Background

1.1 The bank, the Group and its operations

Skandinaviska Enskilda Banken AB (SEB AB, the bank or the parent bank) is a joint stock banking company authorised to conduct banking business in accordance with the Banking and Financing Business Act (2004:297). The bank conducts its business in a matrix organisation with five divisions, of which the Baltic division is one.

SEB AB is also the parent bank in both the SEB Group and the bank's consolidated situation.[1] The SEB Group is a full-range bank for both private and corporate customers in Sweden, Estonia, Latvia, and Lithuania. In Norway, Denmark, Finland, Germany and the UK, the Group's customers are corporate and institutional customers.

In November 1998, SEB AB acquired minority stakes in Eesti Ühispank, Estonia, and Latvijas Unibanka, Latvia, and began strategic discussions with Vilniaus Bankas, Lithuania. It was then in conjunction with SEB AB's acquisition of all shares in these banks in 2002 that the SEB Group became one of the dominant actors also on the banking markets in the three Baltic countries. The operations in the three Baltic countries are managed through three wholly owned subsidiaries: AS SEB Pank in Estonia, AS SEB banka in Latvia, and AB SEB bankas in Lithuania (the Baltic subsidiary banks). In this decision, SEB AB and the Baltic subsidiary banks are referred to collectively as *the group*. The operations in the Baltic subsidiary banks constitute *the Baltic division*, which is the SEB Group's third-largest business area.[2] The Baltic division represented 13 per cent of the Group's earnings in 2019.

The SEB Group is the second-largest universal bank in the Baltic countries. In 2019, the subsidiary banks' market shares for lending to the public were 28 per cent in Estonia, 19 per cent in Latvia, and 29 per cent in Lithuania. The market shares for lending to corporates were 27 per cent in Estonia, 24 per cent in Latvia, and 35 per cent in Lithuania.

1.2 The case

Finansinspektionen opened an investigation on 15 April 2019 into SEB AB's governance and control of anti-money laundering measures in the Baltic subsidiaries.

[1] The SEB Group consists of SEB AB and its subsidiaries, while the consolidated situation consists of SEB AB and the firms that must be consolidated in accordance with the rules in the Capital Requirements Regulation.
[2] Refers to 2019.

The investigation has not considered the compliance of the Baltic subsidiaries with local anti-money laundering regulations since the respective supervisory authorities in Estonia, Latvia and Lithuania are responsible for this supervision. The investigation also has not considered if and to what extent money laundering has occurred in the Baltic subsidiaries or if there are any grounds to suspect that money laundering has occurred. Such matters do not fall within Finansinspektionen's area of responsibility, and the authority cannot investigate such matters in other countries.

The investigation originally covered the period 2007–Q1 2019. This period was then limited to 2015–Q1 2019 (the period under investigation). The assessment Finansinspektionen makes in this decision, in other words, applies only to the latter period.

As part of the investigation, Finansinspektionen conducted an onsite visit at SEB AB. This visit started on 13 May 2019 and ended on 20 June 2019. Finansinspektionen also carried out investigation actions at the bank after the onsite visit had been concluded. Finansinspektionen also conducted interviews on a total of seven occasions with representatives from the bank's control functions, management and Board of Directors.

Finansinspektionen sent two verification letters[3] to SEB AB, one on 15 July 2019 and one on 16 July 2019. The first referred to the bank's governance and control of anti-money laundering measures in the Baltic subsidiary banks. The second requested verification of data that Finansinspektionen had requested and received as part of the investigation. The bank replied to the verification letters on 2 September 2019.

On 24 January 2020, Finansinspektionen sent a request for statement to SEB AB. The bank was thus given the opportunity to submit a statement regarding Finansinspektionen's observations and preliminary assessments and its considerations to intervene against the bank. SEB AB submitted its statement on 24 February 2020. Finansinspektionen thereafter gathered additional material from the bank and gave the bank another opportunity to reply on certain issues.

The investigation is one of several supervisory activities conducted as a cooperation between the supervisory authorities in Sweden, Estonia, Latvia and Lithuania.

Finansinspektionen has not investigated the governance, risk management, and control of measures to combat terrorist financing. Finansinspektionen has also not investigated compliance with the EU's sanctions regulations.

[3] A verification letter is a written document that Finansinspektionen sends to a firm under investigation to verify facts.

2 Applicable provisions

Chapter 6, section 2 of the Banking and Financing Business Act states that a credit institution shall identify, measure, steer, internally report and maintain control over the risks associated with its business. The institution shall ensure that it has satisfactory internal control.

Chapter 3, section 4 of the Special Supervision of Credit Institutions and Securities Companies Act (2014:968) (the Supervision Act) states that a parent undertaking or subsidiary that is subject to supervision under the act must meet the requirements set out in Chapter 6, section 2, first paragraph of the Banking and Financing Business Act at a group or subgroup level.

Chapter 1, section 1, fourth paragraph of Finansinspektionen's regulations and general guidelines (FFFS 2014:1) regarding governance, risk management and control at credit institutions (FFFS 2014:1) states that the regulations, in accordance with that set out in Chapter 3, section 4 of the Supervision Act, shall be applied at the group or subgroup level.

Chapter 6, section 3 of FFFS 2014:1 states that a control function shall have the resources required and access to the information needed to discharge its tasks. Such a function shall have staff with the required knowledge and powers for discharging their duties.

Chapter 6, section 6, points 1 and 2 of FFFS 2014:1 state that a control function shall be independent, and to be considered as such it shall be organisationally separated from the functions and areas it will monitor and control. The staff must not perform any tasks that are included in the operations they are to monitor and control.

Chapter 6, section 7 of FFFS 2014:1 states that a control function shall regularly, at least once a year, report on material deficiencies and risks to the board of directors, the risk committee if such has been appointed, and the managing director. The reports shall follow up on previously reported deficiencies and risks and describe each new identified material deficiency and risk. The report shall also include a consequence analysis and a recommendation for measures. The board of directors, risk committee and managing director shall, as soon as possible, take appropriate measures ensuing from the control function's report.

3 Points of departure

3.1 Risk-based approach in the anti-money laundering regulatory framework

SEB AB falls under the term "undertaking" in the Anti-Money Laundering and Counter-Terrorist Financing Act (2017:630) (the Anti-Money Laundering Act)

and the term “undertaking” in Finansinspektionen’s regulations (FFFS 2017:11) regarding measures against money laundering and terrorist financing. In order to simplify the presentation, the following provisions that apply under the anti-money laundering regulatory framework are presented as applying to a bank, even if they also apply to other undertakings and firms.

Money laundering is a criminal activity where perpetrators misuse banks and other financial firms to move illicit proceeds, thus making the proceeds available for consumption and investments.

The anti-money laundering regulatory framework aims to prevent the misuse of financial operations for money laundering and terrorist financing and make it difficult for criminals to exploit the financial system for such activities. A bank must appropriately manage risks related to money laundering and terrorist financing. A failure to do so could not only make it possible for criminals to launder money but also negatively impact the confidence both Swedish consumers and actors in other countries doing business with or via Swedish financial institutions have in the bank itself and, by extension, the entire Swedish financial market. This in turn could have a negative impact on Sweden’s reputation. The regulatory framework uses a risk-based approach, which means that banks must take measures that are proportionate to the risks of money laundering and terrorist financing to which they are exposed.

In order for a bank to be able to manage its risks, it must assess how the products and services provided by the business could be misused for money laundering and terrorist financing and how large the risk is that this would actually occur (general risk assessment). In their assessments, the banks must consider in particular their customers, distribution channels, and any geographical risk factors. Each bank must identify, understand, and assess the risks associated with the operations being misused for money laundering or terrorist financing. The general risk assessment must be designed such that it can serve as a basis for the bank’s procedures, guidelines and other measures to combat money laundering. An insufficient risk assessment has a negative impact on how a bank prioritises its resources and designs its procedures for, for example, customer due diligence and transaction monitoring. These different steps are therefore linked to one another, so deficiencies in one could lead to deficiencies in another. In addition to its general risk assessment, that bank must also assess the risk associated with individual customers and the business relationship (the customer’s risk profile).

In order to have good knowledge about their customers, banks must implement measures to perform customer due diligence when establishing a business relationship. The term *business relationship* refers to a commercial relationship that is expected at the time it is established to have a certain permanence, but it can also arise through the actual actions of the parties. A bank may not establish or maintain a business relationship or carry out a single transaction if the bank does not have sufficient knowledge about the customer to be able to

manage the risk of money laundering that can be associated with the relationship. If there is a high risk of money laundering or terrorist financing, the bank must apply enhanced measures in its customer due diligence. The documents obtained and the information about the measures taken to achieve customer due diligence must be stored securely at the banks.

Banks must also monitor their business relationships and transactions in order to be able to identify activities and transactions that can be suspected to constitute money laundering or terrorist financing. If suspicions remain following more in-depth analysis, the information about all of the circumstances that could indicate money laundering or terrorist financing must be submitted without delay to the Financial Intelligence Unit of the Swedish Police, which is responsible for intelligence activities in this area.

3.2 Risks

3.2.1 Several risk-related terms

The risk that is regulated by the Anti-Money Laundering Act is the risk that the bank will be misused for money laundering. This risk is also called *money laundering risk*. In order to combat money laundering, acts and regulations require financial firms, among others, to assess, mitigate and monitor their money laundering risks.

The banks are required to identify, measure, govern, internally report and exercise control over the risks associated with their business according to Chapter 6, section 2 of the Banking and Financing Business Act. Risk refers to the probability that an undesired event will occur (Bill 2002/03:139 p. 278). For a bank, risk in general terms can be said to be the possibility of incurring financial losses.

Deficiencies in a bank's anti-money laundering work can lead to *compliance risks*. These risks are associated with the bank not complying with applicable regulations and any resulting consequences, for example sanctions and other penalties from authorities such as a ban on conducting certain activities or withdrawn authorisation for all or parts of the business. Banks must manage the compliance risks through their risk management systems (see more in section 3.3).

Another example of such a risk is *reputational risk*. Reputational risk refers to a risk that can be assumed to lead to a drop in confidence in the bank and, by extension, financial damages. If reputational risk is realised, in other words if the bank's good reputation is actually damaged, this can, for example, cause the bank's share price to fall or the bank to lose customers, partners and staff and find it difficult to replace them. Reputational risk can also affect the bank's operations or parts of them. Depending on its causes, reputational risk could make the bank's funding more expensive and, in a worst-case scenario, the

bank may find it difficult to raise any funds in the market. A bank that is being misused or is suspected of being misused for money laundering runs the risk of customers and other stakeholders, as well as the general public, losing confidence in it. Such a scenario could arise without a concrete suspicion that the bank is being misused for money laundering; the money laundering risk could rise simply if there is evidence of deficiencies in the bank's anti-money laundering work. The bank must manage reputational risk within its risk management system in the same way as it manages all other risks associated with its business.

There is often a link between compliance risks and reputational risks in that a bank that is non-compliant and becomes the object of an investigation, and perhaps an intervention, by an authority also suffers a loss of reputation.

3.2.2 Money laundering risks

Article 8(1) of the EU's fourth anti-money laundering directive[4] (the Fourth Anti-Money Laundering Directive) states in part that banks should take appropriate steps to identify and assess the risks of money laundering and terrorist financing. The banks should take into account risk factors relating to their customers, countries or geographic areas, products, services, transactions or distribution channels. These measures should be proportionate to the nature and size of the undertaking. In Sweden, the provision has been implemented through Chapter 2, section 1 of the Anti-Money Laundering Act.

Regional money laundering risks

Banks and other firms subject to the anti-money laundering regulations have a responsibility to identify and manage the money laundering risks to which they are exposed. Several Swedish banks are large in the Nordic region and the Baltic countries, and Sweden is a regional financial hub. The Financial Action Task Force (FATF)[5] highlights this in particular as a vulnerability for money laundering risks.[6] This means that both Swedish authorities and firms must understand and take into account the regional money laundering risks in Sweden and its neighbouring countries.

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[4] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

[5] The Financial Action Task Force (FATF) is an intergovernmental body that aims to establish international standards and promote the implementation of legal, legislative and operational measures to combat money laundering, terrorist financing and other related threats to the integrity of the international financial system.

[6] FATF, Anti-money laundering and counter-terrorist financing measures, Mutual Evaluation Report Sweden, April 2017.

The Baltic countries, much like Sweden and many other countries, are exposed to money laundering risks linked to other countries. This applies in particular to exposures attributable to neighbouring countries in the region, including the members of the Commonwealth of Independent States (CIS)[7], which according to the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) are vulnerable to economic crime, e.g. corruption. For example, MONEYVAL's evaluation of Latvia asserts that Latvia's geographical location and the country's membership in the EU combined with the Latvian financial firms' ability to offer services in Russian make it particularly attractive for non-resident customers from neighbouring countries in the region.[8] According to MONEYVAL's evaluation of Estonia from 2014, risk assessments from the Estonian supervisory authority and the Estonian Financial Intelligence Unit highlight that financial firms conducting business with customers from certain neighbouring countries are considered to pose one of the largest money laundering risks in the country.[9]

Non-resident customers could mean greater money laundering risk

Both the Fourth Anti-Money Laundering Directive and the European supervisory authorities' joint guidelines for risk factors[10] (the joint guidelines for risk factors) provide examples of risk-enhancing factors that banks must take into account within the framework of the risk assessment. Countries that have significant corruption or other crime, as well as countries that are subject to sanctions, embargoes, or similar measures, are included as situations that potentially entail an elevated risk.[11] Business relationships with no personal contact, customers who do not reside in the country, and customers who live in or receive money from operations in jurisdictions associated with an elevated risk of money laundering are additional factors that can increase the risk.[12]

Article 13 of the Fourth Anti-Money Laundering Directive states that banks must take measures to comply with the requirements on customer due diligence, in part by determining the purpose of the business relationship. In Sweden, the provision has been implemented through Chapter 3, section 12 of the Anti-Money Laundering Act. This is particularly relevant for non-resident customers who do not have a clear link to the banks' local markets since they, as mentioned, can represent an elevated risk of money laundering. *Non-*

[7] The Commonwealth of Independent States mainly consists of the previous Soviet republics.
[8] MONEYVAL, 2018, Fifth Round Mutual Evaluation Report, Anti-money laundering and counter-terrorist financing measures, Latvia, p. 8.
[9] MONEYVAL, 2014, Report on Fourth Assessment Visit, Anti-Money Laundering and Combating the Financing of Terrorism, Estonia, pp. 9, 18 and 105.
[10] Joint Guidelines under Articles 17 and 18(4) of Directive (EU) 2015/849 on simplified and enhanced due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions, 2018-01-04.
[11] See Article 18(3) and Annex III(3)(b) and (c) of the Anti-Money Laundering Directive.
[12] The joint guidelines for risk factors, pp. 104, 147 and 148.

resident customers refers here to private individuals who reside in, or firms registered in, a different country than where the bank is established.

Just like non-resident customers, *resident customers with non-resident beneficial owners* can also constitute an elevated risk of money laundering. Through local establishment in the country where the bank relationship is desired, it can appear like a non-resident customer is a resident. When a beneficial owner in another country exercises control over the firm, through direct ownership or a chain of firms, the firm represents a risk similar to if the firm had been registered in the same country as the beneficial owner. According to the FATF, criminal activities commonly register, own and operate firms in several different countries, thus complicating transparency and control.[13]

Large volumes can mean elevated money laundering risk

The joint guidelines for risk factors also state that the large volumes of transactions and business relationships at banks that provide banking services to private individuals and small and medium-sized firms make the operations vulnerable for money laundering. The large volume of transactions and business relationships can make it particularly challenging to identify risks for money laundering that are related to individual business relationships and detect suspicious transactions. The guidelines furthermore state that unusually large volumes or transaction values can increase the risk of money laundering.[14]

3.3 The parent bank and money laundering risks in a subsidiary

3.3.1 The parent bank's responsibility to govern its subsidiary banks

According to Chapter 6, section 2, first paragraph of the Banking and Financing Business Act, a credit institution shall identify, measure, steer, internally report and maintain control over the risks associated with its business. The institution must also ensure that it has satisfactory internal control.

As described in section 3.2.1, a risk can be said to be the probability that an undesirable event occurs, and for a credit institution a general risk can be said to be the danger of financial loss. With this definition of risk, there are many risks in a credit institution's operations that it can focus on. The preparatory works for the Banking and Financing Business Act state that the business rules should aim to limit total risk-taking and that the main ambition of the rules should be that the institutions build up functional systems for risk management. This means identifying which risks are present, directing the business's development, and actively taking advantage of risk-mitigating opportunities. A

[13] FATF Guidance "Transparency and Beneficial Ownership", p. 6, October 2014.
[14] The joint guidelines for risk factors, Chapter 2, points 96–98 and others.

fundamental component of a good risk management system is functional information channels (Bill 2002/03:139 p. 278).

The provision in Chapter 6, section 2, first paragraph of the Banking and Financing Business Act provides the framework that is then in several respects specified in more detail in FFFS 2014:1. These regulations contain provisions regarding, for example,

- general organisational requirements (Chapter 2),
- the responsibility of the board of directors and the managing director (Chapter 3),
- risk management and risk reporting (Chapter 5),
- independent control functions and their reporting obligations and the board of directors' and the managing director's obligation to take measures ensuing from the control functions' report (Chapter 6), and
- an independent compliance function (Chapter 8).

Chapter 3, section 4 of the Supervision Act states that parent undertakings or subsidiaries that are subject to supervision under the act must meet the requirements set out in Chapter 6, section 2, first paragraph of the Banking and Financing Business Act at group or subgroup level. Correspondingly, Chapter 1, section 1, fourth paragraph of FFFS 2014:1 states that the regulations, in accordance with that set out in Chapter 3, section 4 of the Supervision Act, must be applied at group or subgroup level.

Section 1.1 specifies that SEB AB is the parent bank in both the SEB Group and the bank's consolidated situation (the group). The parent bank and the Baltic subsidiary banks, of which the parent bank owns 100 per cent, are part of both the Group and the consolidated situation. Since Chapter 6, section 2, first paragraph of the Banking and Financing Business Act and FFFS 2014:1 apply at group level, the parent bank has a responsibility for the risk management at the so-called group level, including governance and control. The parent bank is also responsible for ensuring that the bank and the Group are organised as required for the bank to be able on an ongoing basis to govern and exercise control over the risks the bank is or can be exposed to at group level through ownership of the subsidiary banks.

Finansinspektionen considers suspicions of, or the occurrence of, deficiencies in anti-money laundering work in a subsidiary to potentially give rise to compliance and reputational risks that the parent bank must manage pursuant to Chapter 6, section 2 of the Banking and Financing Business Act. This responsibility entails, for example, that the parent bank must identify the risks in the subsidiary banks and ensure that the subsidiary banks take measures to manage their risks and deficiencies. If the parent bank receives reports about deficiencies and risks in the subsidiary banks, the parent bank must react and may not remain passive. For example, if the parent bank establishes a Group-wide control function, the reporting channels must be clear and effective, and the control function's reports on, for example, deficiencies in the subsidiary

bank must be handled by the board of directors and the managing director of the parent bank.

SEB AB has primarily asserted the following with regard to the application of Chapter 6, section 2, first paragraph of the Banking and Financing Business Act, the regulations in FFFS 2014:1, and Chapter 3, section 4 of the Supervision Act. The preparatory works state that Chapter 6, section 2 of the Banking and Financing Business Act provides a framework, which means the individual institutions have an opportunity and an obligation to design risk management systems that are adapted to the needs of the individual business. The provision is a type of general clause that reasonably cannot serve as a basis for penalty in accordance with the principle of legality and must be supplemented through rules in other regulations. Finansinspektionen was given authorisation and has used this authorisation to issue FFFS 2014:1, which concretises and specifies the more detailed content of the framework provision set out in Chapter 6, section 2 of the Banking and Financing Business Act. There is very limited possibility for asserting that the general provision has been violated without also having violated one of the regulations. Given such conditions, there cannot be a matter of imposing a penalty for breaching a framework provision since it has the character of a general clause.

Finansinspektionen states in this matter that the preparatory works for Chapter 6, section 2 of the Banking and Financing Business Act clearly state that the provision constitutes independent grounds for intervention (see Bill 2002/03:139 p. 530).

SEB AB has furthermore asserted that Chapter 3, section 4 of the Supervision Act is an implementation of Article 109(2) of the Capital Requirements Directive[15], which aims to create conditions for supervision through the implementation of uniform and well-integrated governance forms, processes and procedures in the companies in a consolidated situation. The directive provision does not state, in other words, that parent companies shall ensure that its subsidiaries fulfil the requirements of the directive but rather that this responsibility rests on each individual company that is part of the consolidated situation.

SEB AB takes the position, in summary, that the Swedish regulatory framework does not set out any specific requirements regarding the parent bank's board of directors and CEO, under which a parent bank is responsible for managing risks that arise in a subsidiary bank.

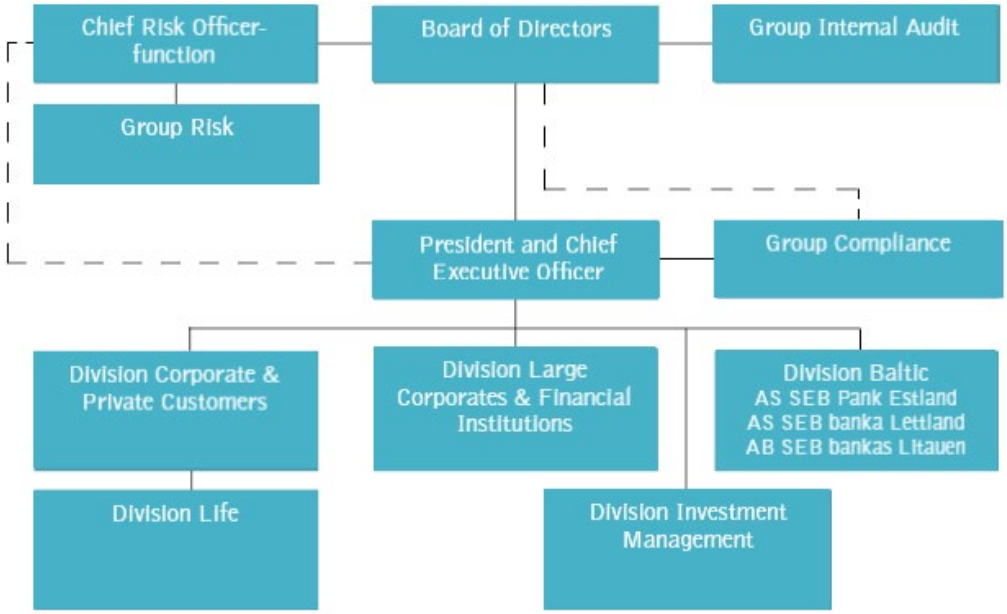
In addition, SEB AB considers the rules of banking and financing law to be influenced by the limitations resulting from applicable company law. A

[15] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

responsibility for ensuring that a subsidiary fulfils certain requirements cannot be imposed upon a parent company unless the parent company has an unobstructed right to decide in matters related to the ongoing management of subsidiaries. SEB AB does not have such a right in relation to the subsidiary banks. Any obligations belonging to SEB AB with regard to the management of the subsidiary banks are limited by the possibilities that SEB AB, in its role as an owner, has for exercising control over the subsidiary banks. As a shareholder in the subsidiary banks, SEB AB has the possibility of, among other things, choosing the subsidiary banks' Boards of Directors. In addition, SEB AB can issue general directives for how the subsidiary banks' operations should be conducted. However, the Boards of Directors of the subsidiary banks are independent in relation to SEB AB in the meaning that each Board member is individually responsible for observing the laws and rules that apply to the company in question. SEB AB has neither an unobstructed right to or the possibility to control how the subsidiary banks are managed.

As indicated by SEB AB, the subsidiary banks are independent legal entities in relation to the parent bank and have their own Boards of Directors and management teams, which naturally have a responsibility to protect not only the interests of the parent bank but also other interests such as those of creditors, the fact that the parent and the subsidiary banks are active on different markets, and that they are subject to the supervision of different authorities. However, it is Finansinspektionen's assessment that a parent undertaking's responsibility is particularly important in wholly owned groups since the parent undertaking's interests in such cases should normally be the same as the subsidiary's interests, and risks and deficiencies in a subsidiary can have an impact on the parent undertaking. It is obvious in any case that the parent bank and a subsidiary bank cannot have conflicting interests when it comes to combating money laundering and terrorist financing. A parent undertaking bears a responsibility in relation to its subsidiaries within the same group, particularly in matters that are important for determining the financial circumstances within the subsidiaries, which is also supported by legal precedence (see the Supreme Administrative Court's ruling in case HFD 2013 ref. 74).

The SEB Group's legal structure consists of a large number of legal entities, including the three Baltic subsidiary banks. The SEB Group's operations are organised in a matrix. There are five divisions. The Baltic subsidiary banks constitute the Baltic division. SEB AB controls its Baltic subsidiary banks in the Baltic division through the matrix organisation. The bank has stated that in the aftermath of the financial crisis it had intensified the bank's work to ensure the implementation of the bank's risk culture in the Baltic subsidiary banks and the decision was made to establish the Baltic division. The aim was thus to strengthen the group's governance and risk management of the Baltic operations. Relevant parts of SEB AB's matrix organisation are presented in simplified form in the following image.



Note: A dashed reporting line means that the function is not directly positioned below the Board of Directors or the CEO but reports to them.

SEB AB has asserted that the bank considers it to be very important to have well-functioning governance and control of the subsidiary banks. This is a fundamental condition for being able to conduct business in the manner the bank would like and maintain the confidence of customers, employees, shareholders, authorities and other stakeholders. The bank considers the functional structure at the division level in the Baltic division to significantly facilitate the work to identify risks and enhance the functional coordination within both the various business areas and the control functions. The structure also contributes specifically to the work to prevent money laundering. The bank has presented the benefits of having a functional/matrix control at the division level from an anti-money laundering perspective since it enables an understanding of the total risk in the Baltic division. Furthermore, according to the bank, it strengthens the subsidiary banks in their efforts to take effective and joint actions to mitigate the risks.

The bank also has stated that the Boards of Directors of the subsidiary banks, in other words the Supervisory Boards and the Management Boards, consist of members appointed by SEB AB as the sole shareholder. According to the bank, two independent Board members now sit on the Supervisory Boards. The subsidiary banks also each have their own CEO appointed by the Board of each bank. The appointment of Board members and the CEO in each bank requires varying degrees of advance approval from the Board of Directors or the CEO of SEB AB. Board members in both the Supervisory Board and the Management Board/ in the Baltic subsidiary banks are nominated by the CEO of SEB AB and then elected at the Annual General Meeting of each bank.

The head of the Baltic division is part of Group management[16] and reports to the CEO of the parent bank. During the period under investigation, the head of the division was also the chair of the Supervisory Board in each Baltic subsidiary bank.

The provisions set out in FFFS 2014:1 on how banks should organise their operations are based on the principles of three so-called lines of defence that were developed by the Committee of Sponsoring Organizations of the Treadway Commissions (COSO).[17] *The first line of defence* is composed of the business activities where the day-to-day risk management is performed, i.e. the first line of defence owns and manages risks. *The second line of defence* should be independent and comprises the risk control function and the compliance function, which should, for example, conduct oversight of, control and report on the bank's risks and how the bank complies with internal and external regulations. *The third line of defence* consists of an independent internal audit function that reports directly to the board of directors, and, among other things, must conduct regular audits of both management's and the bank's internal controls, the work of the control functions, and the bank's risk management. The internal audit function's work also aims to contribute to consistent improvements within the organisation.

SEB AB has established joint and Group-wide control functions. The risk control function and the compliance function are the second line of defence, and the internal audit function is the third line of defence. Each of these functions also has a separate head for the Baltic operations and a Baltic reporting level where matters from each subsidiary bank are reported.

During the period under investigation, the head of the compliance function reported regularly on a quarterly basis directly to the CEO and the Board's Audit and Compliance Committee and on a yearly basis to the Board's Risk and Capital Committee and the Board of SEB AB. The compliance function has also had local functions in each subsidiary bank that reported directly to the head of the compliance function at the Group level and the head of the compliance function for the Baltic division. The local compliance function was also required to report to the local CEO.

The internal audit function reports directly to the bank's Board of Directors. During the period under investigation, the head of the internal audit function reported regularly on a quarterly basis to the Board's Audit and Compliance Committee and on a yearly basis to the Board's Risk and Capital Committee and the Board of SEB AB.

Furthermore, the group's governance instruction ("Instruction on Internal Governance for the SEB Group") states that the Baltic subsidiary banks must

[16] SEB AB also calls this the Group Executive Committee.
[17] See Decision Memorandum, FI Ref. 11-5610, particularly pp. 10 and 41.

follow relevant laws and the Group's internal instructions and policies. The instruction also states that the CEO of SEB AB is responsible for the daily management of the SEB Group in accordance with directives from the Board of Directors. The CEO of SEB AB must also ensure that the organisation and the administration of the SEB Group is appropriate and is responsible for managing all of the SEB Group's risks in accordance with instructions from the Board of Directors and the risk tolerance.

SEB AB's CEO named in December 2017 a specially appointed executive[18] with a Group-wide responsibility. This executive also was included in Group management. In November 2017, the CEO of SEB AB decided on a new Group-wide organisation for the first line of defence for the work to combat money laundering, and the implementation began in 2018. The specially appointed executive can delegate some tasks to the operational head of a Group-wide anti-money laundering function ("Group AML/KYC Office"). The function is tasked with supporting and coordinating the Group's anti-money laundering work.

Finansinspektionen furthermore notes that at least some Group-wide resource matters are decided by SEB AB. As presented in more detail in section 4.2.3, the bank has stated that the head of the compliance function at group level and the bank's specially appointed executive held a joint presentation in December 2018 for SEB's Group management and brought up at that time the new needs observed with regard to anti-money laundering resources in both the first and second lines of defence in the Group, including the new need in the Baltic division. The CEO of SEB AB decided at the meeting to approve the proposal for new anti-money laundering resources within both the first and second lines of defence.

SEB AB has chosen to have and exercise the ultimate responsibility for compliance by establishing a matrix organisation that basically does not allow the subsidiary banks any possibility in practice to combat money laundering effectively on their own. Both the head of the compliance function and the head of the internal audit function have also reported directly to both the CEO and the Board of Directors of SEB AB on deficiencies in the Baltic subsidiary banks' work to combat anti-money laundering. Given this background, Finansinspektionen notes in summary that deficiencies in the subsidiary banks can lead to compliance and reputational risks at group level, which the parent bank is responsible for managing in order to meet the requirement on internal governance and control set out in Chapter 6, section 2, of the Banking and Financing Business Act, in conjunction with Chapter 3, section 4 of the Supervision Act, and in accordance with the applicable provisions in FFFS 2014:1, which according to Chapter 1, section 1, fourth paragraph of the same

[18] *Specially appointed executive* refers to a person who, according to Chapter 6, section 2, first paragraph, point 1 of the Anti-Money Laundering Act, is appointed to be responsible for the bank implementing the measures required under the act and the regulations issued pursuant to it.

regulations shall be applied at group level or sub-group level. To the extent that SEB AB would actually be hindered by company law to maintain the required effective governance and control, the solution is not for the bank to disregard the requirements imposed by law but rather to choose some other form of organisation or association that would give the bank the possibility of ensuring that it is not in violation of the regulations. Finansinspektionen rejects SEB AB's assertion that the scope of responsibility for regulatory violations in the subsidiary banks is so narrow that this in reality would mean that the SEB Group cannot effectively combat money laundering.

In the following, where the assessment is made that SEB AB has not fulfilled its obligation to manage the risks in this way, Finansinspektionen expresses this by stating that the bank has not fulfilled at the group level the requirements set out in applicable provisions.

3.3.2 Parent bank's obligation to manage risks at the institutional level

In addition to the risks that must be managed at the group level in accordance with that set out above, risks in a subsidiary bank can also lead to risks in the parent bank at the institution level. The risks in the parent bank can arise in different ways. Realised compliance and reputational risks in the subsidiary bank can affect, for example, the subsidiary bank's value or earnings and thus the parent bank's balance sheet and profit and loss statement. Furthermore, the risks in the subsidiary bank can result directly in compliance and reputational risks in the parent bank. The parent bank must manage both of these types of risks according to Chapter 6, section 2 of the Banking and Financing Business Act in accordance with applicable provisions in FFFS 2014:1. In the following, where the assessment is made that SEB AB has not complied with these provisions, Finansinspektionen expresses this by stating that the bank has not fulfilled at the institution level the requirements set out in applicable provisions.

4 Governance and control

4.1 Exposures to risks linked to certain groups of customers and transactions

As part of its investigation, Finansinspektionen received information (data) about the Baltic subsidiary banks' operations, including information about the subsidiary banks' exposures and transaction volumes for various customer groups. In the following, Finansinspektionen also presents data from prior to the period under investigation. This data is only used to provide a background and does not serve as a basis for Finansinspektionen's assessments. As outlined in more detail in section 4.1.4, Finansinspektionen, based on the data, makes the assessment that parts of the operations in SEB AB's Baltic subsidiary banks have been exposed to an elevated risk of money laundering.

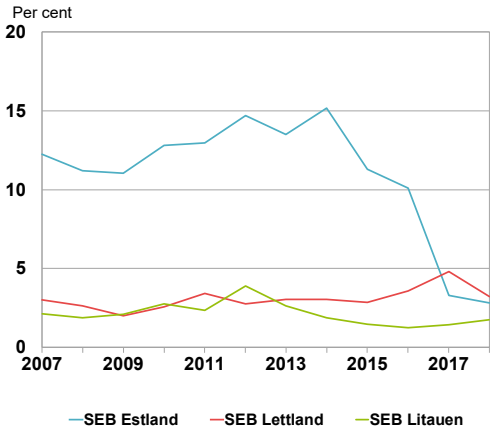
4.1.1 Subsidiary banks' exposures to non-resident customers

At the end of 2018, the number of customers in Lithuania amounted to just over 0.9 million, and there were 0.6 and 0.7 million customers in Estonia and Latvia, respectively. Most of these customers were resident private and corporate customers. Non-resident customers (i.e. private individuals residing in, or firms registered in, a country other than each subsidiary bank's respective home market) represented only about 1–2 per cent of all private and corporate customers during the years 2007–2018.

Even though the non-resident customers represented a small share of the total number of customers, they represented a significant share of the deposits and transaction volumes in the Estonian subsidiary bank during the period under investigation (see Diagrams 1 and 2). Among non-resident customers, corporate customers represented the largest share of the transaction volumes, on average more than 90 per cent of the total volumes for non-resident customers.

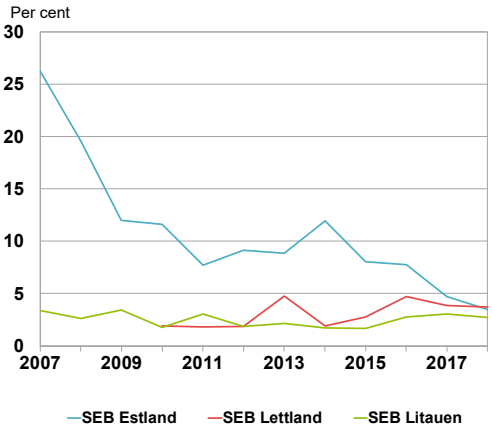
As presented in section 3.2.2, non-resident customers and resident customers with non-resident beneficial owners may represent an elevated risk of money laundering, as do large volumes of transactions and business relationships and high-value transactions. At the same time, it is also natural for there to be fully legitimate reasons for a non-resident customer or a resident customer with non-resident beneficial owners to conduct business transactions through local banks. Firms conducting legitimate business and executing business-related transactions are also in all likelihood included in the data on customers and transaction volumes.

Diagram 1. Non-resident customers' share of total deposits.



Note: Refers to data as per the end of December.

Diagram 2. Non-resident customers' share of total transaction volumes.



Note: Refers to data as per the end of December.

In the Estonian subsidiary bank, non-resident customers represented at the most 11 per cent of the total deposits during the period under investigation. In 2007, they also represented one-fourth of the subsidiary bank's total transaction volumes. This percentage then gradually fell, but in 2015 and 2016 this customer group still represented approximately 8 per cent of the transaction volumes. During the period 2007–2018, this customer group's transactions with countries that SEB itself classified as having a high risk of money laundering (primarily Cyprus and Russia) also gradually declined. This share was on average 26 per cent in 2007–2014 and around 14 per cent in 2015–2017. In 2018, only 4 per cent of non-resident customers' transaction volumes went directly to or came directly from high-risk countries.[19]

The non-resident customers' share of the bank's operations has not been as dominant in the Latvian and Lithuanian subsidiary banks. The non-resident customers in Latvia and Lithuania during the period under investigation represented at the most 1–5 per cent of the banks' total deposit and transaction volumes.

4.1.2 Significant proportion of transaction volumes attributable to non-resident customers come from customers classified as high risk

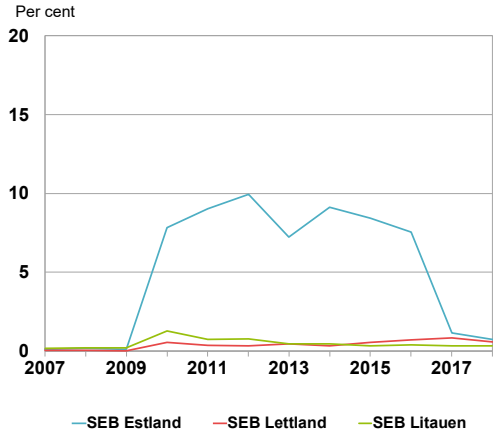
A significant proportion of the transaction volumes from the Estonian subsidiary bank's non-resident customers comes from customers the subsidiary bank itself has classified as having a high risk of money laundering. Finansinspektionen has used the subsidiary banks' own definitions of what constitutes a high risk of money laundering, and these definitions have differed depending on the period and subsidiary bank in question. This section,

[19] Finansinspektionen received data for the ten largest counterparty countries for the period 2007–2018, which includes Cyprus and Russia. These countries are included in the category of countries the bank has classified as high risk.

therefore, does not attempt to provide an exact representation of the data but rather aims to provide a general overview to assess whether there were any risk factors that SEB AB should have considered in particular.

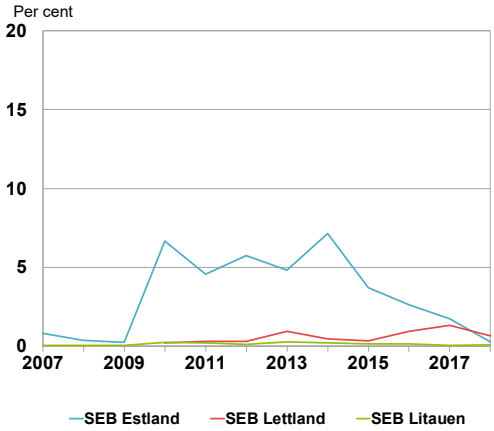
In the Estonian subsidiary bank during the period under investigation, at the most 75 per cent of the deposit volumes from non-resident customers were linked to customers the bank classified as high risk. These customers represented around 0.5 per cent of the subsidiary bank's total number of customers but during the period under investigation represented at the most around 8 per cent of the subsidiary bank's total deposits (Diagram 3). Then non-resident customers classified as high risk also represented at the most 7 per cent of the Estonian subsidiary bank's total transaction volumes in 2014. This exposure to non-resident customers in the Estonian subsidiary bank, which was largely linked to customers classified as high risk, gradually declined over the period 2015–2018 (Diagram 4).

Diagram 3. Percentage of total deposits linked to non-resident customers classified as high risk.



Note: Refers to data as per the end of December.

Diagram 4. Percentage of total transaction volumes linked to non-resident customers classified as high risk.



Note: Refers to data as per the end of December.

4.1.3 Resident customers with non-resident beneficial owners

Just like non-resident customers, resident customers with a non-resident beneficial owner can be associated with elevated risks of money laundering, although this customer group undeniably also conducts legitimate business. The potential risks are related to the beneficial owners' geographical domicile and the nature of the business. SEB AB has stated that the Estonian subsidiary bank does not have machine-readable data for the customers' beneficial owners for the years 2007–2015. For the Latvian and Lithuanian subsidiary banks, this data is missing for the years 2007–2009. For the periods in question, the subsidiary banks historically documented and saved the information on paper, and it is only in recent years that this information has been entered into searchable data fields. Therefore, aggregate data Finansinspektionen received regarding resident customers with non-resident beneficial owners is only

available for the years 2016–2018 for the subsidiary bank in Estonia and for the years 2010–2018 for the subsidiary banks in Latvia and Lithuania.

All three subsidiary banks have had significant exposures, in terms of transaction volumes, to the customer group resident corporates with at least one non-resident beneficial owner. These corporate customers represented 15–18 per cent of the total transaction volumes in all three subsidiary banks in 2018.

Some of these volumes can be attributed to customers that the subsidiary banks classified as high risk. In the Estonian subsidiary bank, these customers represented 20–25 per cent of the transaction volumes for resident customers with non-resident beneficial owners during the period 2016–2018. For the Latvian and Lithuanian subsidiary banks, the corresponding share was between 7 and 18 per cent during the period 2015–2018.

As a percentage of the total business, resident corporates with a non-resident beneficial owner that were classified as high risk represented less than 5 per cent of each subsidiary bank's total transactions during all of the years for which the bank could provide data.

4.1.4 Finansinspektionen's assessment of the risk exposure based on aggregate data

The description of non-resident customers and their respective shares of deposits and transaction volumes shows that, at least in parts of the Baltic operations, non-resident customers represent a significant portion of the subsidiary banks' business volumes, particularly with regard to deposits. The volumes decreased during the period under investigation. A large proportion of the volumes from non-resident customers come from customers the subsidiary banks themselves have classified as high risk. For the category resident customers with non-resident beneficial owners, the Estonian subsidiary bank has not had information about beneficial owners in a searchable data field prior to 2016. This has made it difficult for SEB AB to analyse the exposures to non-resident beneficial owners. However, it is clear that a significant proportion of the transaction volumes in this customer category also come from customers the subsidiary banks themselves have classified as high risk, particularly in the Estonian subsidiary bank.

A significant share of the transaction volumes from customers with foreign ties (in other words non-resident corporate customers and resident corporate customers with non-resident beneficial owners) comes from customers that the subsidiary banks themselves have classified as having a high risk of money laundering. Given this, Finansinspektionen considers parts of the operations of SEB AB's subsidiary banks to have been exposed to an elevated risk of money laundering. This is not only due to the general increase in the risk level from their geographical location but also due to the composition of the subsidiary

banks' customer relationships. Subsequently, it has been of key importance for the SEB Group to design appropriate anti-money laundering measures.

SEB AB does not agree with Finansinspektionen's description and view of the subsidiary banks' risk exposures. The bank takes the position that both data and the bank's own assessment show that the exposure to money laundering risk has been significantly lower than what Finansinspektionen asserts. As support for this assessment, the bank cites internal investigations that were conducted in the fall of 2018 and the spring of 2019, a supplementary analysis and a so-called outlier analysis to identify deviations.

In the autumn of 2018, SEB Group initiated in-house internal investigations at both the Baltic level and the group level. According to SEB AB, the investigations were carried out in two phases during the autumn of 2018 and the spring of 2019 and focused primarily on the period 2008–2015. The purpose of the Baltic internal investigation (the internal investigation) was, according to the bank, primarily to answer two questions: if, and where relevant to what extent, the Baltic subsidiary banks had had business similar to Danske Bank's Estonian business with non-resident customers and if, and where relevant to what extent, the Baltic subsidiary banks had been exposed to flows with low transparency[20] from Danske Bank's Estonian business. The objective was to be able to handle the reputational risk that followed from the reports in the media about Danske Bank, which according to the bank had nothing to do with the SEB Group.

SEB AB has stated that the internal investigation initially focused on the Estonian business but that it soon was expanded to also include the Latvian and Lithuanian operations. The investigation included transactions conducted by non-resident corporate customers in Estonia, Latvia and Lithuania and transactions that had gone to or from Danske Bank's Estonian branch. In the spring of 2019, the investigation was expanded to also include, for example, all transactions above a certain threshold to and from Danske Bank's Latvian and Lithuanian branches, a number of other banks' Baltic operations, and the verification of the customer base against a list of 2,000 people the bank had compiled from known money laundering cases.

The internal investigations primarily targeted non-resident customers and did not include in particular resident customers with non-resident beneficial

[20] When the bank carried out the internal investigations, customers were assigned a so-called "degree of transparency" of OK, Medium, or Low. *OK transparency* was assigned to customers who had "real business through SEB". *Medium transparency customers* are customers where evidence of real business existed but where the flows through SEB, according to the bank, have not been transparent enough. *Low transparency* is defined as customers where the bank has not been able to clearly connect the customer's transaction flows to a real business. According to the bank, low transparency is not the same as suspected money laundering, but historically these customers have often been the subject of suspicion reports to a financial intelligence unit.

owners. SEB AB has stated that 48 per cent of the transactions from this customer group were still included in the internal investigations.

SEB AB takes the position that the internal investigations and other conducted analyses support the assertion that resident customers with non-resident beneficial owners have a lower risk of money laundering than non-resident customers. According to the bank, this strengthens the view that the risk of money laundering for resident corporates with non-resident beneficial owners was relatively low compared to the risk of non-resident corporates. SEB AB has stated that the outlier analysis covered the period 2010–2018. The analysis included, according to the bank, Estonian customers that had an aggregate transaction volume of more than EUR 1 million during the period 2008–2018.

Finansinspektionen makes the assessment, however, that the bank's internal investigation and the other analyses carried out by the bank contain several indications of risk in the subsidiary banks' operations. For example, almost half of the payments from another country that were made to non-resident customers in the Estonian subsidiary bank went to customers the bank had classified as low or medium transparency customers. In addition, 27 per cent of incoming payment volumes to these customers came from Russia and Cyprus. Finansinspektionen considers there to be a risk that SEB AB's focus on what the bank calls low transparency customers underestimates the risks that the regulations and the bank's risk classification system identify. The breakdown of customers into different degrees of transparency has been developed specifically for the internal investigation and is not linked to the bank's risk classification system.

The bank's own conclusions from the internal investigation state, in part, that the bank often has had a limited understanding of customers classified as low or medium transparency customers in the Estonian subsidiary bank, the customer due diligence process has not included mandatory questions about where the customer's assets come from, and the bank has in retrospect found examples of beneficial owners in the bank's customer documentation that does not match the person the bank perceives to be the customer's actual beneficial owner. The bank also has not had systemic support for being able to identify corporates that are linked to the same beneficial owners, and this type of mapping was therefore done manually in conjunction with the internal investigation.

As a whole, Finansinspektionen considers its assessment that the money laundering risk has been elevated not to have been changed by SEB AB's arguments in this part.

4.2 Governance and control of the Baltic subsidiary banks

As presented in section 3.2 and 4.1, there have been known money laundering risks in the region in general, and in the SEB Group's Baltic operations in particular. During the years 2015–2018, the Baltic subsidiary banks had a

relatively small share of non-resident customers and resident customers with non-resident beneficial owners in relation to the total number of customers. However, the non-resident customers in primarily the Estonian subsidiary bank represented a significant share of the total deposits and transaction volumes, and this has largely been attributable to non-resident high-risk customers. These shares have gradually declined during the period under investigation. In terms of the transaction volumes attributable to resident corporates with a non-resident beneficial owner, the level of exposure has been more stable during the period for which there is data.

All else equal, such exposures in the subsidiary banks increase the risk of money laundering, even if the individual customers do not necessarily entail a high risk of money laundering. Customers that the subsidiary banks themselves have classified as high risk also represented a significant share of the deposits and transactions volumes of non-resident customers and resident customers with non-resident beneficial owners, primarily in the Estonian subsidiary bank.

Banks may have customers, products and services that are classified as having a high risk of money laundering, but this places high demands on the risk management. For a bank with greater exposure to potential money laundering risks, any deficiencies in its work to combat money laundering could have more severe consequences than for a bank with a lower risk exposure. It is therefore particularly important for a bank with such a risk exposure to take measures to analyse and manage the risk of being misused for money laundering and have effective procedures and processes for risk identification, risk management and control.

The anti-money laundering regulatory framework rests on three central pillars: risk assessment, customer due diligence, and monitoring and reporting. According to the framework, banks must assess, mitigate and monitor their risks. They must also work actively to identify and report suspicious activity. In order to govern and exercise control over the risks that the parent bank is or can be exposed to at the group level through its ownership of subsidiary banks, the parent bank must ensure, for example, that there are clear reporting channels, procedures for rectifying any deficiencies, resources and expertise, systems, and a clear distribution of roles and responsibility.

Deficiencies in a subsidiary bank, as described in section 3.3.1, can give rise to compliance and reputational risks at the group level. The parent bank is responsible for managing these risks and fulfilling the requirement on internal governance and control set forth in Chapter 6, section 2 of the Banking and Financing Business Act, in conjunction with Chapter 3, section 4 of the Supervision Act, and in accordance with applicable provisions in FFFS 2014:1, together with Chapter 1, section 1, fourth paragraph of the same regulations. The same section also describes how risks in a subsidiary bank can also give rise to elevated risks in the parent bank at the institutional level and that the parent bank must manage these risks.

4.2.1 Deficient identification of compliance and reputational risks

Observations

Indications of risks from correspondent banks and in Danske Bank

The issue of money laundering risks in the Baltic countries has been highlighted in various ways before and during the period under investigation. For example, SEB AB received information about money laundering risks in the Baltic countries from external parties, in part through the reports mentioned in section 3.2.2. and from correspondent banks and the media.

The compliance function reported at the local and Baltic level, for example in 2015 and 2016, that there were signals from correspondent banks about concerns regarding money laundering and compliance risks. One bank terminated its correspondent bank relationship with SEB AB's subsidiary banks in Estonia and Latvia due to money laundering-related risks in the region at the beginning of 2017, which is stated in part in the report from the compliance function at the Baltic level in Q1 2017. In the spring of 2017, the media reported suspected money laundering in Danske Bank's branch in Estonia. The Danish supervisory authority thus investigated the matter, and in September 2018 the so-called Bruun & Hjejle report was published that showed widespread suspicions of money laundering in Danske Bank's Estonian branch during the period 2007–2015.

SEB AB agrees that there have been indications of money laundering risks in the Baltic region. However, the bank has asserted that the correspondent banks' concerns were not related specifically to SEB. The decisions by some correspondent banks to leave the region were also not attributable to the SEB Group or the subsidiary banks.

The bank's general risk assessment, etc.

A bank shall conduct a general risk assessment to assess the risk of money laundering. It shall in part consider existing customers and distribution channels, existing products and services offered, and existing geographic risk factors. The risk assessment must be designed such that it can serve as a basis for the undertaking's procedures, guidelines and other measures to combat money laundering and terrorist financing.

According to the bank's instruction for measures to combat money laundering that was in effect between 13 November 2014 and 19 November 2017, the compliance function was responsible for the process to assess the risk of money laundering. The instruction specified three main categories of risks related to customers, countries and products. According to the instruction, the

money laundering risks in the bank's various business activities must be identified and assessed, and the conclusions documented, at least yearly.

According to the bank, the assessment of the risk of money laundering was conducted using a number of pre-identified scenarios to which the risk level was linked. The assessments were documented in a working tool that was used by the compliance function.

In 2017, SEB prepared a new instruction for measures to combat money laundering that was adopted on 20 November 2017. According to this instruction, the responsibility for the general risk assessment process was transferred to the specially appointed executive in the first line of defence. After the change, the general risk assessment was documented in a separate document. The first consolidated general risk assessment during the period under investigation is dated December 2017.

In the consolidated general risk assessment for the group in 2018, which is dated August 2018, the risk associated with non-resident customers is described in more detail than in earlier risk assessments. The consolidated risk assessment in 2018 states that the aggregate residual risk of being used for money laundering and terrorist financing in the Baltic countries is assessed to be medium. It also says that the Baltic countries' proximity to the high-risk countries Russia and Belarus resulted in a customer stock in the Baltic operations that consists of a higher share of customers from these high-risk countries and a greater risk for the bank being exposed to cases of large-scale money laundering. Furthermore, the risk assessment states that this, in turn, requires extra measures to mitigate the elevated risk and that all three subsidiary banks at the end of 2017 adopted the Baltic strategy for non-resident customers[21] (see the separate section below).

Both the compliance function and the internal audit function identified improvement areas and deficiencies in the general risk assessment in 2017. The internal audit function at the Baltic level identified that the local general risk assessment was not comprehensive enough and had not been fully adapted to a local perspective. The internal audit function also reported in 2018 on deficiencies in the process for the general risk assessment at the group level. For example, the manner in which divisions and the business units reported their risk assessments was not uniform.

The bank has asserted that the internal audit function audited the general risk assessment for 2017 at both the Baltic and group levels and that the observations from these audits were rectified and closed during the preparation of the general risk assessment for 2018.

[21] The bank refers to this strategy using different names, but it is often called the "Baltic non-resident strategy".

The bank's Baltic strategy for non-resident customers

During the period under investigation, the Baltic division had a strategy for non-resident customers. The strategy, which was in effect until 2017, states criteria for accepting a company as a customer and that the Baltic subsidiary banks' target groups are non-resident customers who have a clear link to the local country. The strategy specifies that it does not include resident corporate customers with a non-resident owner. The strategy was revised in the autumn of 2017.

The revised Baltic strategy was adopted by the Baltic division management team in September 2017 and thereafter by the Baltic subsidiary banks in October and November 2017. The strategy was expanded to include various high-risk customers in addition to non-resident customers. The updated strategy contains a definition of *non-resident customer from a high-risk country*, which includes in part

- a legal person registered in a high-risk country, and
- a legal person registered in Estonia, Latvia, Lithuania or any other country that is not associated with a high risk but at least one of the beneficial owners resides in a high-risk country.

The strategy does not define a non-resident customer and neither do the bank's instructions for anti-money laundering measures nor the general risk assessment at group level or for each individual Baltic country. The bank stated that resident customers with a non-resident beneficial owner are generally not considered to be non-resident customers.

The bank's control functions reported on the Baltic strategy on various occasions during the period under investigation. Reports from the internal audit function at the Baltic level and group level in Q2 2016 state, for example, that the strategy does not include resident corporates with a non-resident beneficial owner or other high-risk customers and that the strategy has not been established in a policy document, which has meant that it has not be regularly revised or updated.

SEB AB has stated that the Baltic strategy for non-resident customers is a measure to mitigate the risks. This is evident, among other things, in the presentation the head of the Baltic division gave at the Board meeting on 14 June 2017. Furthermore, the bank has asserted that neither SEB AB nor the subsidiary banks have had a business plan for actively approaching non-resident customers in the Baltic countries. In the autumn of 2016 and in 2017, the bank updated the Baltic strategy. The objective of enhancing the strategy was, in part, to further minimise the risks, ensure that the Baltic rules were consistent with the group's rules, further focus on the link to the local country, and ensure that the rules were applied to the entire customer portfolio and that resident businesses with non-resident beneficial owners were classified as

customers that required enhanced customer due diligence measures if the owner came from a high-risk country.

Termination of customer relationships

The data obtained from the bank shows that a total of approximately 4,500 non-resident customer relationships were terminated on anti-money laundering grounds in the Estonian and Lithuanian subsidiary banks in 2017 and 2018. This means that, of the total number of non-resident customer relationships that were terminated during the period under investigation expressly on anti-money laundering grounds, more than 80 per cent of the cases in the Estonian bank were terminated in 2018. Likewise, the Lithuanian subsidiary bank terminated in 2017–2018 more than 80 per cent of the customer relationships that were terminated during the entire period under investigation.

SEB AB has asserted that presenting only customers terminated on anti-money laundering grounds would be partly misleading since the resulting description is then much too limited. The bank has explained this, in part, by noting that the documentation does not always state why a customer relationship was terminated and that it also does not take into account that some customers chose to terminate the relationship themselves after the bank raised its information and documentation requirements. The figures the bank provides in its response include the total number of terminated customer relationships, i.e. also customer relationships that were terminated for reasons not linked to money laundering. In 2015–2018, the Estonian subsidiary bank terminated customer relationships with just over 600 non-resident corporate customers, of which most of them in 2016 and 2017. The subsidiary bank also terminated relationships with a large number of non-resident private customers, primarily in 2015 and 2018. At the aggregate level, however, the transaction volumes from these customers are limited, and they therefore have a small impact on the aggregate developments in the transaction volumes of the non-resident customer portfolio. In total, more than 13,000 customers were terminated during the period 2015–2018, of which around half were customers that the Estonian subsidiary bank classified as having a high risk of money laundering.

Furthermore, the bank stated that the Latvian and Lithuanian subsidiary banks, during the years 2015–2018, terminated fewer customer relationships than the Estonian subsidiary bank: around 5,000 customers in each subsidiary bank. In the Latvian subsidiary bank, most were private customers who had been classified as having a high risk of money laundering.

As part of the internal investigation SEB AB conducted in the autumn of 2018, and which primarily referred to the period 2008–2015, 99 customers were identified in the Estonian subsidiary bank that together had incoming cross-border low-transparency volumes of EUR 3.9 billion. According to SEB AB, many of these customer relationships had been terminated at various times up through 2016/2017. As part of the expanded investigation that was conducted in the spring of 2019, additional customers were identified who carried out

low-transparency transactions. Some of these were existing customers at the time of the investigation. According to the bank, an additional 59 customers were terminated in the Estonian subsidiary bank due to the investigation.

Reporting of the risk of money laundering in the Baltic subsidiary banks

The bank's instructions for measures to combat money laundering that were in effect from 13 November 2014 to 19 November 2017 state that the head of the compliance function should regularly inform the CEO of SEB AB and the Board's Audit and Compliance Committee at the bank on the management of money laundering risks and the work to combat money laundering risk in the group. The instructions also state that the compliance function at group level should report at least quarterly on the money laundering risk and at least once a year compile a report on its assessment of money laundering risks and that this report could be integrated with the compliance function's yearly plan.

Finansinspektionen has not received any ongoing reporting from the compliance function to the CEO of SEB AB and the Board's Audit and Compliance Committee on the money laundering risk in the bank in general or specifically for the Baltic subsidiary banks. Finansinspektionen has also not been able to identify any report that clearly presents assessments of money laundering risks either as part of the compliance function's yearly plan or as a separate report, even though it is stated in the bank's instructions that such a report should exist.

The bank has asserted that the regular reporting from the compliance function to the CEO and the Board's Audit and Compliance Committee has occurred as part of the compliance function's quarterly and annual reports. The bank has also asserted that the reporting responsibility assigned to the compliance function according to the instructions that applied until 2017 referred to the compliance risk for money laundering and not the risk of being used for money laundering.

According to the new instruction for measures to combat money laundering that was adopted on 20 November 2017, the operational side was assigned the responsibility for reporting on money laundering risks. The new instruction states that the persons responsible for the work to combat money laundering within the business activities in the bank's different divisions and subsidiaries should regularly report to the specially appointed executive not only identified money laundering risks but also measures to combat money laundering risks. The specially appointed executive would in turn, among other tasks, compile the different divisions' risk assessment into a consolidated assessment and report regularly to the CEO of SEB AB on the risk that the group is exposed to money laundering and terrorist financing and measures to combat these risks. The updated instruction that was adopted in November 2018 states that the specially appointed executive must also present on a yearly basis the

consolidated general risk assessment for SEB AB's Group AML Board for work to combat money laundering at group level.

Finansinspektionen has not received as part of the investigation any reporting from the persons responsible for the work to combat money laundering in the business activities of any of the Baltic subsidiary banks or in the Baltic division to the specially appointed executive. The bank has confirmed that there has not been any recurring, documented reporting from the persons responsible for the work to combat money laundering in the business activities to the specially appointed executive due to ongoing development during the period under investigation of the new governance model for the work to combat money laundering. With regard to the reporting from the specially appointed executive to the CEO of SEB AB, Finansinspektionen has received reports that are related to the work to combat money laundering. Finansinspektionen notes, however, that the information about money laundering risks in the Baltic subsidiary banks was reported first in October 2018 in conjunction with the start of the internal investigation.

Finansinspektionen's assessment

As presented in section 4.1.4, Finansinspektionen makes the assessment that there has been an elevated risk of money laundering in the SEB Group's Baltic operations. This applies primarily to exposures in Estonia. With regard to resident customers with non-resident beneficial owners, however, there have been significant exposures in Latvia and Lithuania as well. This assessment is also supported by the bank's own conclusions from the general risk assessment for 2018, which is dated August 2018. This assessment states that there is an elevated risk of large-scale money laundering. The assessment was based on the Baltic countries' proximity to the high-risk countries Russia and Belarus, which resulted in a customer stock in the Baltic operations that consisted of a larger share of customers from these high-risk countries. The bank has stated that, since the general risk assessment identified elevated risks, extra measures to mitigate the risks have been taken.

For a bank with greater exposure to money laundering risks, any deficiencies in its work to combat money laundering could have more severe consequences than for a bank with a lower risk exposure. The larger the volume of high-risk transactions, the greater the risk that money laundering transactions will occur. It is therefore particularly important for a bank with such a risk exposure to take measures to adequately identify the risks of being misused for money laundering. The size of SEB AB's Baltic subsidiary banks on their respective home markets and the regional money laundering risks make it particularly important to maintain appropriate money laundering prevention measures.

If a bank does not identify and manage the money laundering risks to which it is exposed, this in turn could result in increased compliance and reputational risks for the bank. When a bank, like in the case in question, is part of a group,

these risks also increase at group level. Chapter 6, section 2, first paragraph of the Banking and Financing Business Act also applies at the group level according to Chapter 3, section 4 of the Supervision Act. As Finansinspektionen found above in section 3.3 on the parent company's responsibility, this means that SEB AB is responsible for identifying and managing the risks. The question is, therefore, given the observations made by Finansinspektionen in the investigation, whether SEB AB can be considered to have identified and managed the risks of money laundering.

The general risk assessment and the so-called Baltic strategy have been important tools for the SEB Group to, in part, combat money laundering. Prior to December 2017, there was no general risk assessment at a *consolidated* level. The risk assessments were only conducted at a local level before this and were not reported to the parent bank. Finansinspektionen makes the assessment that the general risk assessments that existed up through the end of 2017 did not give the parent bank's management a comprehensive overview of the risk of money laundering in the Baltic subsidiary banks. Finansinspektionen's review also shows that the general risk assessment first in 2018 clearly started to mention the risks associated with non-resident customers and that prior to this the risks associated with resident customers with non-resident beneficial owners were not mentioned at all. As accounted for above, the bank's own control functions reported on a number of deficiencies in the scope of and process for the general risk assessment.

Finansinspektionen considers the Baltic strategy for non-resident customers that was in place prior to 2017 not to be a sufficient measure for ensuring that the bank adequately identified the elevated money laundering risk. The strategy did not consider resident customers with non-resident beneficial owners or other high-risk customers. The strategy was not updated or revised on a regular basis, either. Even the revised strategy from 2017 shows deficiencies with regard to which customers could require each bank to take enhanced customer due diligence measures. The bank's strategy only considers resident customers with non-resident beneficial owners if the owners are residing in a high-risk country. Given that resident customers with non-resident beneficial owners can result in elevated risk just like non-resident customers even if the beneficial owner is not residing in a high-risk country, Finansinspektionen considers this not to be sufficient.

In section 4.1.4, Finansinspektionen describes SEB AB's internal investigations and other analyses and accounts there for its view of them. Finansinspektionen can furthermore state that the bank, prior to the autumn of 2018, had not conducted any in-depth investigations to identify the risk that it was being misused for money laundering in the Baltic subsidiary banks even though the banking business in the Baltic countries had been associated with elevated risk of money laundering during the entire period under investigation. These are, in other words, risks that the bank had been exposed to but that it first made an effort to identify at the end of the period under investigation. The same applies to the other analyses the bank has cited. These were done too late

to be able to serve as a basis for an assessment that the bank, during the period under investigation, had adequately identified the risks of money laundering in the Baltic countries. Finansinspektionen does not consider the analyses to be enough of a basis for saying it was correct for the internal investigations to focus on non-resident customers.

The bank's internal investigations were conducted at a late stage, also given that there had been multiple examples of indications from external parties, for example correspondent banks, that the risks in the Baltic countries were elevated. One example is the reports that were present at an early stage in the period under investigation about correspondent banks terminating their relationships with the Baltic subsidiary banks. Despite this, the SEB Group did not conduct any in-depth investigation into its own exposure to being misused for money laundering in the Baltic subsidiary banks.

In terms of resident customers with non-resident beneficial owners, section 4.1 shows that the exposure to these owners did not fall gradually during the period under investigation like it did for non-resident customers. Data for the period 2016–2018 shows that the exposure to this customer group has been significant in all three Baltic countries. Finansinspektionen makes the assessment that resident customers with non-resident beneficial owners can constitute a similar risk of money laundering as it does for non-resident customers. Finansinspektionen has also noted that neither the general risk assessment nor the Baltic strategy have given this customer group enough attention. Given this background, Finansinspektionen makes the assessment that SEB AB has not ensured that it adequately identified the risks associated with this customer group.

With regard to the termination of customer relationships, SEB AB has stated that it is partly misleading to only look at customer relationships that have been terminated on anti-money laundering grounds since this would not include all relevant customer relationships. Finansinspektionen notes, however, that the investigation shows that a large number of customer relationships were terminated on anti-money laundering grounds towards the end of the period under investigation. In other words, they were customers that the bank considered to constitute an elevated risk of money laundering. Even if the investigation shows that the risk exposure gradually decreased and it is not possible to disregard the bank's objection that early in the period under investigation it had terminated customer relationships on anti-money laundering grounds, Finansinspektionen still makes the assessment, given the background that the risk exposure has still been elevated for a large portion of the period under investigation, that the exposure has not been sufficiently identified and that measures that aim to terminate customer relationships to a significant extent were taken late.

The investigation has shown that the risk of money laundering in the Baltic subsidiary banks has not been regularly reported to either the management or

the Board of Directors of the parent bank. Furthermore, Finansinspektionen has not received a single document showing that the management or the Board of Directors of the parent bank has requested such information. Even if the bank's new instructions for measures to combat money laundering, which were adopted at the end of 2017, clarified the reporting responsibility for money laundering risks, it had not yet been implemented in the operations by the end of the period under investigation. The bank has not been able to show upon request any reporting from the persons responsible for the work to combat money laundering within the business activities of the Baltic division to the specially appointed executive in the manner specified in the new instructions. Reporting from the specially appointed executive to the CEO of SEB AB on money laundering risks in the Baltic subsidiary banks did not occur until October 2018, which is when the bank started its internal investigation. This provides additional support to the assessment that SEB AB's efforts to identify the risks of money laundering in the Baltic subsidiary banks has been insufficient.

In summary, Finansinspektionen notes that the aggregate data the authority requested from the bank shows that the exposure to customer groups that typically results in an elevated risk of money laundering has been significant, but it fell substantially during the period under investigation. There has been cause early in the period under investigation for the SEB Group, due to events that gave indications of elevated regional money laundering risks in the Baltic countries, to consider in particular if it had cause to pay attention to these risks in relation to its own operations. The SEB Group has taken some measures during the period under investigation. The Group terminated customer relationships during the period and conducted internal investigations.

However, SEB AB should have conducted a thorough review of its risks of money laundering in the Baltic countries much earlier in the period under investigation. The bank has not reacted with sufficient force to external signals of elevated risk of money laundering in the Baltic countries. Furthermore, during the period of investigation, SEB AB produced a consolidated general risk assessment and a revised Baltic strategy for non-resident customers. Most of these measures were taken in 2017 and 2018 or later. The bank should have improved its general risk assessment and its Baltic strategy much earlier, particularly given that the risk exposure was higher at the beginning of the period under investigation than it was in 2017 and 2018. Finansinspektionen makes the assessment that the bank has not had adequate tools for identifying the risks of money laundering, at least during the early part of the period under investigation. The bank has also not had a sufficient focus on resident customers with non-resident beneficial owners. Furthermore, Finansinspektionen makes the assessment that the reporting of the risks of money laundering in the Baltic subsidiary banks to the parent bank has been insufficient. Finansinspektionen's opinion, in other words, is that important measures were taken too late and with limited reach.

Finansinspektionen thus finds that SEB AB has not sufficiently identified and managed the elevated money laundering risks in the Baltic subsidiary banks' exposure to non-resident customers and resident customers with non-resident beneficial owners. This has led to SEB AB also not identifying and managing the elevated compliance and reputational risks that some of these customers and transactions have introduced to the group. Finansinspektionen therefore finds that, at group level, SEB AB has not met the requirements set out in Chapter 6, section 2, first paragraph of the Banking and Financing Business Act, in conjunction with Chapter 3, section 4 of the Supervision Act, to identify, measure, govern, internally report and exercise control over the risks with which its business is associated.

The lack of identification and management of the risks associated with non-resident customers, resident customers with non-resident beneficial owners, and transactions in the Baltic subsidiary banks has also meant that SEB AB has exposed itself to a risk of non-compliance with regulations as well as a risk it would jeopardise its good reputation. Finansinspektionen therefore finds that SEB AB also failed in its compliance at institution level in accordance with Chapter 6, section 2, first paragraph of the Banking and Financing Business Act.

4.2.2 SEB AB did not take sufficient measures

Observations

Reporting from the bank's control functions

High residual compliance risk within the money laundering area

The yearly reports for 2015–2018 from the compliance function at group level describe the bank's process for risk assessment of compliance risk. These reports state that the function analyses each risk scenario in the risk assessment in two dimensions: inherent risk and residual risk. First, the inherent risk is assessed. The inherent risk is the bank's assessment of how serious the impact is assessed to be if the risk is realised due to the bank not following certain regulatory requirements and the probability of it being realised. In this assessment, the bank considers in part external factors such as local conditions and focus from supervisory authorities. The residual risk is the risk that remains after considering the controls that SEB has to mitigate the risks of the bank not complying with regulatory requirements. The controls include processes, procedures and instructions. Depending on whether the controls are i) satisfactory, ii) in need of improvement, or iii) non-satisfactory, the residual risk is assessed to be low, medium or high.

During the entire period under investigation, the compliance function reported to the CEO and the Board of SEB AB that it considered the money laundering area to be an area with high residual risk. The compliance function makes this assessment for both the entire group and the Baltic division.

At the end of the period under investigation, the yearly report for 2018 from the compliance function at group level states that the money laundering area is still considered to have high residual risk. The report states that the compliance function has identified that the quality of customer due diligence documentation to still be poor. Information about the purpose and nature of business relationships and the follow-up of business relationships need to be improved. The customer due diligence information must also be improved to be on such a granular level so that deviating customer behaviour can be detected. The report also states that the scenarios for transaction monitoring must be developed, that the number of alerts that need to be investigated is increasing, and that this requires more resources. The function's report for Q1 2019 also states that the risk of money laundering remained high despite extensive efforts in the entire group to improve the knowledge about monitoring and customer due diligence. The report also states that SEB AB, at the end of the previous year, decided to substantially increase anti-money laundering resources within both the compliance function and the business activities, which resulted in several initiatives during the quarter. Furthermore, the ongoing work to improve the framework and customer due diligence processes continued.

The report for Q3 2018 from the risk control function also states that the bank is breaching the tolerance set by the Board's Risk and Capital Committee for total compliance risk. The risk tolerance was set at low, and in Q3 2018 it was assessed to be medium. The minutes from a meeting of the Board's Risk and Capital Committee on 24 January 2019 show that the change in the risk level in Q3 only related to anti-money laundering measures and that the assessment was still relevant. Also, according to the minutes, the head of the compliance function at group level asserted that the function did not see a need for the Board to react at that point in time.

SEB AB has stated that the bank has directed extensive resources to improving processes, awareness and knowledge. According to the bank, important measures included the new strategy for how high-risk customers should be handled (*the Baltic strategy for non-resident customers*) and the establishment of special customer due diligence units to manage ongoing follow-up of high-risk customers. The bank has also taken extensive measures to update customer due diligence for existing customers.

SEB AB has furthermore stated that the residual risk resulting from deficient compliance is a result of both factors the bank can influence itself, such as the scope of deficiencies (which can be mitigated by rectifying the deficiencies), and factors the bank cannot influence, for example which sanctions legislators or other standard-setting bodies have decided should be the result of non-compliance with a rule or which reputation risk is associated with a violation of the relevant regulation. The impact on the bank's reputation in relation to deficiencies in compliance varies over time if, for example, the market, rating institutions, customers, the media and the public place more importance on a

certain topic than they did before. Since these circumstances are part of the actual risk method the bank uses in its assessment, this can result in the residual risk being high for a certain risk area for a longer period of time despite the deficiencies being rectified on an ongoing basis and the processes improved within the operations. This is what has happened with the work to combat money laundering. SEB AB has furthermore highlighted that the fact that a risk area is assessed to have high residual risk gives the bank a signal that the area should be given a lot of focus within the business and that the business must continue to develop its compliance in the area.

When it comes to the overall assessment of the compliance risk, the bank has primarily asserted the following: The head of the compliance function at group level conducts a qualitative assessment of the areas that the function's yearly risk assessment has assessed to be high in relation to other areas within the bank. If a single high-risk area or a combination of high-risk areas can be considered to result in a greater impact than that which is defined as "low" in relation to the tolerance, the tolerance is considered to have been breached. It is this qualitative assessment that serves as a basis for the level of the total compliance risk in relation to the decided tolerance. In Q3 2018, the compliance function made the assessment that the risk level had exceeded the risk tolerance.

Compliance with customer due diligence regulatory framework

Finansinspektionen has received documentation showing that the compliance control function at group level and the internal audit control function at group level repeatedly during the period under investigation reported on deficiencies, risks and what the bank calls "improvement areas" in its compliance with customer due diligence rules. This includes, for example, deficient processes when establishing and following up business relationships, documentation, and the quality of customer due diligence, including the beneficial owner.

The following are some examples taken from the reports. In all quarterly reports for 2015, the compliance function at group level monitored the money laundering area, which is one of the areas that is assessed to have the highest residual risk for the group as a whole. The reports from 2015 state that the function is focusing on the area to be able to bring the risk down to an acceptable level. The reports furthermore state that many divisions have focused on, for example, monitoring and measures for documenting customer due diligence, the beneficial owner, and measures for customer due diligence.

SEB AB has asserted that the reporting for 2015 does not specifically refer to the Baltic operations. The money laundering area was identified as high risk by most countries and divisions primarily due to pending regulatory changes in the form of the Fourth Anti-Money Laundering Directive and continued focus from supervisory authorities.

In Q2 2016, the internal audit function at group level reported that a Baltic audit showed that the work to combat money laundering needed to be improved, particularly with regard to identifying and applying enhanced customer due diligence measures for high-risk customers. In Q1 2018, the internal audit function at group level reported on an audit of the work to combat money laundering and stated in part that the quality of the customer due diligence data had improved since 2016 but that more improvements were required in all three Baltic countries. The function reported in Q3 2018 on a new audit of the Baltic subsidiary banks. This report states that both the SEB group and the Baltic subsidiary banks had strengthened and centralised the organisation to meet the existing requirements. The report also stated that even if significant advancement had been made in recent years, the conclusion was that the quality of the controls to reduce the risk of money laundering needed to be further strengthened to meet the enhanced requirements.

SEB AB has stated that the bank, at the end of 2016, initiated a group-wide project to implement the Fourth Anti-Money Laundering Directive and handle many of the activities regarding customer due diligence that had been identified from relevant high-risk areas. SEB asserts that the new Group-wide organisation for the work to combat money laundering in the first line of defence strengthened the work within the bank to prevent money laundering.

Transaction monitoring

Of the reports that Finansinspektionen has received, both the compliance function at group level and the internal audit function at group level repeatedly report during the period under investigation on deficiencies and risks within the transaction monitoring in the Baltic subsidiary banks. The reports state in part that on several occasions a large number of alerts that had been generated by the bank's automated transaction monitoring system had not been reviewed on time and deficiencies in terms of scenarios.

The following are some examples from the reports. The compliance function's yearly report for 2015 states that the ongoing monitoring in the transaction monitoring system is assessed to have a high residual risk within many areas of the Group. This is because of limited scenarios or the actual alerts that the system generates. The internal audit function reported in Q2 2016 on deficiencies in the control of data delivered to the transaction monitoring system and control procedures that do not give enough assurance that all suspicious transaction alerts are handled on time. The compliance function reported in Q4 2016 that the backlog of unresolved alerts continued to be a challenge for the Baltic countries. The yearly report for 2016 states that several parts of the Group had reported deficiencies related to the scenarios not fully covering the risk. The compliance function stated in its yearly report for 2017 that new scenarios and a revision of existing scenarios were needed for the transaction monitoring. In 2018, the internal audit function reported on two audits that once again showed that there were backlogs of unresolved alerts.

The report for Q1 2018 stated that the unresolved alerts that were identified in 2016 had been processed in May 2017, but that at the time of the audit in Q4 2017 there was once again an increase in the lag in alert resolution in the three Baltic subsidiary banks. The Latvian and Lithuanian subsidiary banks processed their unresolved alerts during the period under investigation.

The report for Q3 2018 furthermore states with regard to an audit of group processes that the compliance function needs to strengthen its resources in transaction monitoring to be able to ensure that the bank is reacting on time to suspicious transactions linked to money laundering. The report also states that the compliance function had already strengthened its resources and its capacity for developing scenario models by establishing an IT group in Riga.

SEB AB has stated that the point of departure is for the work to investigate alerts from the transaction monitoring system to normally be carried out immediately. However, SEB AB can never guarantee that there will never be cases of temporary backlogs of unresolved alerts during certain periods. Furthermore, SEB AB says that the bank is working to handle the backlogs of unresolved alerts as they arise and is taking measures that are more permanent in nature, such as new recruitment. SEB AB has also stated that the bank, from January 2016 to Q1 2019, has introduced 36 new scenarios in the Baltic countries.

Assessments from the internal audit function

The internal audit function's assessments grade the observations based on their severity using a four-point scale: low, medium, significant, or critical. Significant means that the governance, risk management or controls are not effective enough to reduce the risk and require attention from management as well as improvements. The function then provides a summarised assessment of the audited area where it weighs the number of observations and the extent to which the function considers the internal controls to address the risks. This is done on a three-point scale: red, yellow and green. If an area is considered yellow, this means that there are one or more significant issues that require measures to prevent significant potential losses or damage to the bank's reputation. During the audit conducted by the internal audit function in Q2 2016 and which is described above, the area was graded as in-between yellow and red. In its two audits in 2018, the function graded the audited areas as yellow.

Observations from investigations by Baltic supervisory authorities

The supervisory authorities in Latvia, Lithuania and Estonia have noted some deficiencies in the subsidiary banks' work to combat money laundering.

On 20 December 2019, the Latvian supervisory authority announced it had signed an administrative agreement with SEB AB's Latvian subsidiary bank.

According to the agreement, the Latvian subsidiary bank would pay an administrative fee of approximately EUR 670,000 for violations of the provisions on anti-money laundering work and an administrative fee of approximately EUR 1,120,000 for violations of international sanctions. The money laundering-related deficiencies that are mentioned in the administrative agreement are based on an onsite investigation that was conducted from 21 September 2017 to 3 November 2017.

According to the Latvian supervisory authority, the Latvian subsidiary bank's internal control systems needed further improvement. The main deficiencies were related to the fact that the bank, on a number of limited occasions, had not made sure that it documented underlying information about the customer's business, thus verifying that the customer's transactions would not be considered suspicious. In addition, the bank, on a limited number of occasions, had not clarified or documented the customer's beneficial owners.

On 17 June 2020, the supervisory authority in Lithuania announced that it had identified in its investigation into the activities of SEB AB's Lithuanian subsidiary bank in 2019 several minor deficiencies regarding ongoing monitoring if business relationships. The supervisory authority issued an obligation to the subsidiary bank to eliminate all established shortcomings.

On 25 June 2020, the Estonian supervisory authority announced a precept and a fine for SEB AB's Estonian subsidiary bank. The supervisory authority's decision was based on an onsite investigation conducted between 26 August and 27 September 2019.

In its investigation, the Estonian supervisory authority noted certain deficiencies in the Estonian subsidiary bank's compliance with the anti-money laundering regulatory framework. There were deficiencies in the quality of the information the bank had gathered in its customer due diligence process, including information about the customers' beneficial owners. Furthermore, the subsidiary bank in some cases had not carried out sufficient customer due diligence measures and had not had clear enough instructions regarding the customer due diligence information that should be gathered on the purpose and nature of the business relationships when new customer relationships are established.

The Estonian supervisory authority has also made the assessment that the Estonian subsidiary bank's monitoring system was not sophisticated enough in relation to the size and complexity of the bank. For example, monitoring scenarios in the system did not consider the bank's own risk indicators.

Finansinspektionen's assessment

Finansinspektionen notes that the compliance function reported to management and the Board of SEB AB during the entire period under investigation its

assessment that the money laundering area has had a high residual risk when it comes to deficient compliance. The compliance function has made this assessment for both the group and the Baltic division. According to SEB AB's own definition, the bank has considered in the assessment of the residual risk its internal controls in the form of processes, procedures and internal rules, i.e. that, despite the measures the bank is taking to reduce the inherent risk, the residual risk is considered to be high. SEB AB has asserted that the bank, in its assessment of the inherent risk, takes into consideration external factors that the bank cannot influence itself, such as certain areas that supervisory authorities, the market, rating institutions, customers, the media, and the public may have in focus. SEB AB has stated that the bank has taken measures on an ongoing basis to mitigate the compliance risk within the money laundering area. Despite this, the risk control function's report for Q3 2018 states that the bank for the first time has breached the tolerance the Board's Risk and Capital Committee had set for total compliance risk. The minutes from a meeting of the Board's Risk and Capital Committee show that the change in the risk level in Q3 only related to anti-money laundering measures and that the assessment was still relevant in January 2019.

Finansinspektionen furthermore notes that two of SEB AB's control functions – the compliance function and the internal audit function – reported repeatedly during the period under investigation on compliance problems in central and significant processes and areas in the work to prevent money laundering. This applies to measures and processes to achieve customer due diligence, including the determination of beneficial owners and transaction monitoring. The functions have reported these deficiencies at the local, Baltic and group levels to differing extents. In contrast to what SEB AB has asserted, Finansinspektionen finds it to be clear that there were recurring reports of problems within primarily the same areas, i.e. customer due diligence and transaction monitoring in the Baltic operations. With regard to the reports of high residual risk in the money laundering area, SEB AB has asserted that this was not specifically related to the Baltic operations. Finansinspektionen notes, however, that the overall reporting does not exclude the Baltic operations.

Finansinspektionen notes that the internal audit function, in its report on audits conducted of the Baltic operations within the area of money laundering, has made the general assessment that the audited areas should be assigned the grade of yellow in both 2016 and 2018. This means that the function has made the assessment that there are one or more significant issues that require measures to prevent significant potential losses or damage to the bank's reputation. According to Finansinspektionen, this is another indication that each subsidiary bank's work on anti-money laundering measures needs to be strengthened. Even if the internal audit function's assessment is not alarming, it is a signal that the CEO and the Board of Directors need to react.

According to SEB AB, it is correct that the control functions have reported in several reports on improvement areas and deficiencies. However, according to the bank, identifying areas for development and improvement is not the same

as the Board of Directors and the CEO of SEB AB not having lived up to the requirements set forth in the regulatory framework. Recurring reports about one area, according to the bank, are not unusual. All observations that Finansinspektionen presents from the internal audit function's reports are, according to the bank, resolved and closed. The observations have in most cases been closed in conjunction with an estimated time of completion.

Furthermore, SEB AB has stated that the internal audit function, in every yearly report for the period 2015–2019, has documented, and in conjunction with this verbally reported to SEB AB's Board of Directors, that the bank's management is taking the measures required to manage reported risks and deficiencies. SEB AB also highlights that the Board of Directors, as presented in the minutes from the Board meetings, on certain occasions have requested confirmation from the head of the internal audit function on whether there has been a need for the Board to react due to the function's report. On all of these occasions, the head of the internal audit function has confirmed that there has not been any such need. The bank has said that given this background there has not been any cause for the Board to intervene with more measures than what the business have already taken.

As presented above, Finansinspektionen makes the assessment that the control functions have repeatedly reported on problems in primarily the same areas. Finansinspektionen notes that this has also occurred despite the measures that repeatedly are said to have been taken or will be taken.

When signals about problems related to compliance are recurring in this way, it is Finansinspektionen's position that this shows that the bank's control functions and the rest of the organisation have not been able to rectify the deficiencies. In such a situation, the Board of Directors and the CEO of a bank cannot constantly be satisfied with announcements that measures have been taken or that the problems are being addressed, regardless of whether the head of the internal audit function has said that measures from the Board are not needed. Instead, the Board of the Directors and the CEO must ask themselves the question why the bank, despite all the measures, does not appear to be able to rectify the problems and mitigate the risks and take the measures needed to achieve this. This applies in particular to the residual risk for non-compliance that had been reported as high for a long period of time.

Finansinspektionen notes that investigations by the supervisory authorities in Estonia, Latvia and Lithuania have identified regulatory violations by each Baltic subsidiary bank and resulted in interventions by the supervisory authorities. The regulatory violations determined by the Baltic authorities have included, for example, insufficient customer due diligence measures, including determination of beneficial owners, and problems with insufficient attention being given to certain customers. These areas are the same ones the bank's own control functions have reported on an ongoing basis as being problematic during the period under investigation. The Baltic supervisory authorities' decisions were announced after the end of the period under investigation, and

the Estonian and Lithuanian investigations primarily targeted a period after the period under investigation in this matter. With this reservation, Finansinspektionen notes that the decisions indicate that SEB AB has not rectified all deficiencies the bank's control functions had highlighted earlier.

In summary, Finansinspektionen makes the assessment that it is clear that the Board of Directors and the CEO of SEB AB, given that the residual compliance risk in the money laundering area has been reported as high for a long period of time and that reports repeatedly noted problems in the compliance with the anti-money laundering regulatory framework, did not take appropriate measures as a result of the reports they received from the control functions. SEB AB, therefore, has not fulfilled the requirements at either group level or institution level set out in Chapter 6, section 7 of FFFS 2014:1 and – with regard to the group level – Chapter 1, section 1, fourth paragraph of the same regulations.

4.2.3 Resources and independence of the compliance function

Observations

SEB AB has chosen to place transaction monitoring in the compliance function. According to SEB AB, transaction monitoring has been placed in the second line of defence for many years; in Sweden since 2008.

From the documentation Finansinspektionen received, it is noted that the resource situation in the compliance function has been reported regularly.

The compliance function at group level reported in 2016 that there were limited resources for regulatory projects such as the Fourth Anti-Money Laundering Directive. It also said that the limited resources would affect timely implementation of the directive. The bank has said that the limited resources primarily referred to the first line of defence and the project management for the project to implement the Fourth Anti-Money Laundering Directive.

The internal audit function at Baltic level reported in 2016 that dependence on key staff in the money laundering area was a significant challenge that required attention. This observation, like other observations from the internal audit function that are mentioned below, have been resolved and closed according to SEB AB.

Between Q4 2016 and Q3 2017, the internal audit function, the compliance function and the first line of defence's risk in the Baltic countries issued joint quarterly reports to the Baltic Audit and Compliance Committee. The reports for Q4 2016 and Q1 2017 state that the operations in the Baltic countries had a resource situation that was below that of their competitors. The reports for Q2 and Q3 2017 state that the staffing level in the work to combat money laundering was critically low given the increase in the scope of activities. The

report for Q4 2016, for example, also states that the increase in the backlog of unresolved alerts is due to a greater number of alerts and limited resources.

SEB AB has asserted that Finansinspektionen's observation is partly misleading. This form of reporting, according to the bank, was done during a period when there was a lot of intense work to prepare for the implementation of the Fourth Anti-Money Laundering Directive, additional requirements in Latvia, the Baltic strategy for high-risk customers and transaction monitoring.

With regard to the report from Q4 2016, the bank stated that measures were taken since an additional 1.2 FTEs were employed for the monitoring work in Latvia and that the compliance function, in addition to temporary work groups, had regularly employed new people for the work to combat money laundering in order to meet the increase in the work load during the period. The number of FTEs dedicated to anti-money laundering work more than doubled in the Baltic countries from 2016, according to the bank. Since the problems with unresolved alerts were recurring during the period, according to the bank the recruitment gradually intensified.

With regard to the report from Q1 2017, SEB AB asserted that measures were taken since an additional two people were recruited to the compliance function in Latvia. With regard to the report from Q2 2017, the bank asserted that measures were taken since an additional four people were recruited to the centralised team in Riga. The bank stated that it had employed more people on an ongoing basis for the transaction monitoring during the period when Finansinspektionen had observed unresolved alerts.

The compliance function reported also in Q4 2017 at Baltic level that staffing was critically low given the increased scope of activities. With regard to this report, the bank asserted that the staffing level also refers to the first line of defence, where in accordance with the new organisation for the anti-money laundering work special roles had been appointed to be responsible for the anti-money laundering work.

The minutes from a meeting in January 2018 of the Board's Audit and Compliance Committee state that the head of the compliance function, when asked by the Committee, confirmed that the function had sufficient resources.

The internal audit function at group level reported in Q3 2018 that the compliance function needed to strengthen its resources within the monitoring process for money laundering.

The report the compliance function at Baltic level submitted for Q4 2018 states that there was a lack of resources in both the first and second lines of defence for anti-money laundering work. The bank has primarily asserted that the workload was high due to, for example, new regulations, and that the compliance function mapped the resources needed as a result of the report.

In December 2018, the bank's specially appointed executive reported together with the head of the compliance function at group level to SEB AB's CEO the new needs that were observed in terms of money laundering resources in both the first and second lines of defence in the Group, including the new need in the Baltic division.

The report states that the SEB Group has significantly fewer FTEs for transaction monitoring than other comparable banks. The report also states that the SEB Group submitted significantly fewer suspicious transaction reports than other banks. However, the contents of the report do not specify whether this refers to the Swedish parent bank or the group as a whole. SEB AB has primarily asserted that the information about resources in other banks as reported to the CEO by the specially appointed executive cannot serve as grounds for any observations or conclusions since the information is very uncertain.

The minutes recorded at a meeting of Group management on 17 December 2018 at which the specially appointed executive's report was presented show that the CEO of SEB AB decided to approve the proposal submitted in the report. The proposal entailed an increase in resources for the compliance function of 35 people and an increase in the employees who worked with transaction monitoring from 45 to 70 FTEs, which would mean an increase of 55 per cent. At the same time, it was proposed that five people be employed for the work to develop scenarios, which according to the report brought the total number of FTEs working with this to 5.5.

SEB AB has furthermore said that the number of FTEs dedicated to the anti-money laundering work in the compliance function were distributed among the subsidiary banks as follows.

AML	2014	2015	2016	2017	2018	31.03.2019	2019
Baltic subsidiaries	12	10	11	18	20	30	54
Estonia	*3*	*3*	*3*	*3*	*4,3*	*9*	*16*
Latvia	*4*	*4*	*5*	*9,5*	*9,3*	*15*	*22*
Lithuania	*5*	*3*	*3*	*5,5*	*6,3*	*6*	*16*

Since the transaction monitoring was carried out by the compliance function, Finansinspektionen asked the bank to account for how many of the FTEs mentioned above within the compliance function worked with transaction monitoring.

Transaction monitoring	2014	2015	2016	2017	2018	31.03.2019	2019
Baltic subsidiaries	10	9	10	17	18	26	49
Estonia	*3*	*3*	*3*	*3*	*4,3*	*9*	*15*
Latvia	*4*	*4*	*5*	*9*	*8,3*	*12*	*19*
Lithuania	*3*	*2*	*2*	*5*	*5,3*	*5*	*15*

Through the end of December 2018, there had been between 1 and 2 FTEs in total in the compliance function in the Baltic subsidiary banks that had been dedicated to the work to combat money laundering and that did not work with transaction monitoring.

Finansinspektionen's assessment

Finansinspektionen notes that the compliance function and the internal audit function at Baltic and group levels during the period 2016–2018 reported on several occasions a lack of resources for the work to combat money laundering.

SEB AB has primarily asserted that resources were continuously added as a result of the control functions' reporting. The bank also stated that, during the period under investigation, it almost tripled the number of FTEs in the compliance function in the Baltic subsidiary banks and more than doubled the number of resources in the compliance function at group level. According to the bank, there has not been any reason for the Board to take additional measures. In addition, the Board's Audit and Compliance Committee asked the head of the compliance function and the head of the internal audit function if it was their assessment that they had sufficient resources, to which they confirmed that they have had. SEB AB has asserted that given what the bank knows now about the regulatory development and the increased focus on money laundering that occurred during the period from authorities, investors and the public, the bank notes that in retrospect it would have been better to have assigned resources more quickly.

SEB AB has asserted that it was continuously allocating resources, but despite this Finansinspektionen notes that reports about limited resources were recurring. The specially appointed executive reported as late as in December 2018 that the bank's resources were well below that of other large banks in terms of transaction monitoring. The bank has asserted that the specially appointed executive's report on the resources at the bank, compared to the situation in some other banks, is affected by so many uncertainty factors that it cannot serve as a basis for any observations or conclusions. Finansinspektionen notes, though, that the specially appointed executive has assigned the information in this report such importance as to report the figures regarding the situation in other banks to the CEO and Group management. In addition, SEB AB's CEO, in part based on these figures, thereafter made the decision to sharply increase the resources allocated to the compliance function.

There have also been sharp increases in the resources dedicated to the compliance function for work to combat money laundering. Since the beginning of the period under investigation, resources have increased several hundred per cent. Finansinspektionen makes the assessment that it was not external factors that increased the need for resources to this extent, but rather, given the recurring reporting, that the resources have been insufficient during the period under investigation and primarily in 2016, 2017 and part of 2018.

Another circumstance that sticks out is that even at the end of December 2018 there were between one and two FTEs in total in the compliance function that were dedicated to the anti-money laundering work in the Baltic subsidiary banks and that did not work with transaction monitoring. The sharp increase in resources at the end of 2018 also shows that the information provided to the Board's Audit and Compliance Committee in January 2018 with all probability did not give a comprehensive overview of the need for resources.

That which SEB AB has asserted about the limited resources being related to the new and extensive rules that were introduced during the period does not release the bank from its responsibility. According to Finansinspektionen, factors such as new regulations must be taken into consideration when allocating resources to the compliance function.

Chapter 6, section 3 of FFFS 2014:1 states that a control function shall have the resources required and access to the information needed to discharge its tasks.

It is not possible to specify in absolute figures what constitutes sufficient resources for the first line of defence or the compliance function at a bank. This varies depending on the type of bank and how it has chosen to organise itself. An assessment must therefore be based on, among other things, the bank's size and type of business.

It is SEB AB that has allocated the resources for the lines of defence. SEB AB has chosen not to strengthen the compliance function's resources sufficiently or fast enough even though there was an obvious need and despite multiple reports. Finansinspektionen has noted that SEB AB did not sufficiently identify or manage the elevated money laundering risks (see section 4.2.1). It is not a far reach to link this to the situation that SEB AB did not allocate sufficient resources for the compliance control that is particularly important when the bank's operations in the Baltic countries are characterised by an elevated money laundering risk. Given this background, Finansinspektionen finds that SEB AB did not fulfil at group level for the compliance function the requirements set out in Chapter 6, section 3 of FFFS 2014:1 in accordance with Chapter 1, section 1, fourth paragraph of the same regulations.

Finansinspektionen further notes that SEB AB has organisationally placed the transaction monitoring in the second line of defence in the compliance function. The bank's assessment is that the transaction monitoring pursuant to FFFS 2014:1 should be placed in the second line of defence and that, according to the bank, it is thereby natural that there are not three lines of defence when it comes to control of transaction monitoring. SEB AB has also asserted that it is incredibly important that there is an independent function that investigates and decides on what should be reported and reports to the Financial Intelligence Unit. The organisational structure that SEB AB has chosen is, according to the bank, common within the industry, particularly internationally.

Chapter 6, section 6, points 1 and 2 of FFFS 2014:1 state that a control function shall be independent, and to be considered as such it shall be organisationally separate from the functions and areas it will monitor and control. The staff must not perform any tasks that are included in the operations they are to monitor and control. Finansinspektionen notes that FFFS 2014:1 does not specify any requirement on that the transaction monitoring shall be carried out by a function in the second line of defence. Transaction monitoring does not aim to monitor and verify if the transactions that are carried out comply with the regulations but rather to identify activities and transactions that can constitute suspected money laundering or terrorist financing. If the task is carried out in the compliance function, there must be independent controls of this to the extent laid forth by the regulations. The requirement on the bank to work with three lines of defence also includes the transaction monitoring. Furthermore, Finansinspektionen notes that the compliance function in the Baltic division and at group level from 2015 to 2017 controlled and monitored tasks that the function itself has carried out since it reported on deficiencies in transaction monitoring. Given this, Finansinspektionen makes the assessment that SEB AB has not had a compliance function that was independent since it carried out tasks that are included in the operations it will monitor and control, in this case transaction monitoring. Finansinspektionen therefore finds that SEB AB at group level did not ensure that the compliance function met the requirement on independence set out in Chapter 6, section 6 of FFFS 2014:1 in accordance with Chapter 1, section 1, fourth paragraph of the same regulations.

5 Consideration of intervention

5.1 Applicable provisions

Finansinspektionen, in accordance with Chapter 15, section 1 of the Banking and Financing Business Act, shall intervene if a credit institution fails to fulfil its obligations set out in the act, other regulations that govern the institution's operations, or internal instructions based on regulations that govern the institution's operations. Finansinspektionen can intervene by ordering an institution to implement measures that will rectify a certain situation or by issuing the institution a remark. If the infringement is serious, the authorisation of the credit institution shall be withdrawn or, if sufficient, a warning issued.

Chapter 15, section 1b, first paragraph of the Banking and Financing Business Act states that when determining the sanction, Finansinspektionen shall take into consideration the gravity of the infringement and its duration. Special consideration shall be given to the nature of the infringement, the tangible and potential effects of the infringement on the financial system, the losses incurred and the degree of responsibility.

According to Chapter 15, section 1b, second paragraph of the Banking and Financing Business Act, Finansinspektionen may refrain from intervening if the infringement is negligible or excusable, if the credit institution rectifies the

matter or if any other authority has taken action against the institution and such action is deemed sufficient.

According to Chapter 15, section 1c, first paragraph of the Banking and Financing Business Act, in addition to that set out in section 1b, as an aggravating circumstance, consideration shall be given to previous infringement by the credit institution. In conjunction with this determination, particular weight should be attached to whether the infringements are similar in nature and the time which has elapsed between the various infringements.

According to Chapter 15, section 1c, second paragraph of the Banking and Financing Business Act, as a mitigating factor, consideration shall be given as to whether the institution to a significant extent through active cooperation facilitated Finansinspektionen's investigation and quickly terminated the infringement after it was reported to or identified by Finansinspektionen.

According to Chapter 15, section 7 of the Banking and Financing Business Act, Finansinspektionen may combine a remark or warning with an administrative fine.

Chapter 15, section 8 of the Banking and Financing Business Act specifies the limits for the size of the administrative fine. According to the wording that was in effect prior to 1 August 2017, the administrative fine shall be set at the most to

1. ten per cent of the credit institution's turnover the immediately preceding financial year,
2. two times the profit recorded by the institution as a result of the infringement, if the amount can be determined, or
3. two times the costs avoided by the institution as a result of the infringement, if the amount can be determined.

On 1 August 2017, the provision was amended through a new, alternative ceiling for the administrative fine that was added in addition to points 1–3 above, namely an amount corresponding to EUR 5 million.

A new amendment to the provision entered into force on 2 August 2017. Point 1 above was then amended to state that the administrative fine shall be determined to be at the most ten per cent of the credit institution's turnover or, where applicable, corresponding turnover at the Group level, for the immediately preceding financial year. The other points were not amended in any way that is now of interest.

The transition provisions to the amendments in Chapter 15, section 8 of the Banking and Financing Business Act mentioned above state that older provisions apply to infringements that took place prior to the entry into force of each regulatory amendment.

Chapter 15, section 8 of the Banking and Financing Business Act furthermore states that the administrative fine may not be set at less than SEK 5,000. The fine may also not be of such a size that the institution subsequently does not meet the requirements set out in Chapter 6, section 1 of the Banking and Financing Business Act, i.e. that the fine not be so large that the institution risks not being able to meet its obligations.

When the fine is determined, according to Chapter 15, section 9 of the Banking and Financing Business Act, special consideration shall be given to such circumstances as those set out in sections 1b and 1c and to the institution's financial position, and, if it is possible to determine, to the profit that the institution earned as a result of the infringement.

5.2 SEB AB's opinion

SEB AB has asserted that the bank considers Finansinspektionen not to have grounds for intervention against the bank pursuant to Chapter 15, section 1 of the Banking and Financing Business Act.

SEB AB has stated during the investigation that the bank, over a period of several years, has implemented a number of activities in the money laundering area to rectify deficiencies and improvement areas identified by the bank, and that the total deficiencies therefore decreased despite multiple expansions to the regulatory requirements. According to the bank, important measures include the Baltic strategy for non-resident customers and the establishment of separate customer due diligence units for managing the ongoing follow-up of high-risk customers. The bank also stated that it took extensive measures to update due diligence on existing customers. The transaction monitoring to a large extent has also been centralised to increase the quality and new scenarios for the monitoring are developed regularly.

According to SEB AB, the new organisational structure for money laundering has made it possible for the bank to develop the operations to be more orderly and coordinated within the group with the aim of creating better possibilities to achieve desired effects from the measures the operations are taking and to harmonise the customer due diligence process globally. In December 2018, the CEO made a decision that additional resources should be allocated within this area. Through these additional resources, in both the first and second lines of defences, several initiatives could be started in Q1 2019. The work includes both improvement in data quality and the strengthening of the bank's tools to manage risks related to money laundering. The development work within SEB also continued after the period under investigation.

SEB AB has also stated that the bank's forward-looking improvement work in the area of money laundering today primarily consists of five primary areas, of which one is a programme for screening and transaction monitoring. The bank's CEO decided on the programme, which was formalised during the spring and summer of 2019.

5.3 Assessment of the violations

Finansinspektionen's investigation shows that there have been deficiencies in SEB AB's governance and control of anti-money laundering measures in the Baltic subsidiary banks. As a result of the identified deficiencies, SEB AB has failed in its obligations pursuant to the Banking and Financing Business Act and FFFS 2014:1.

The violations cannot be considered negligible or excusable. Finansinspektionen does not consider the measures SEB AB currently has taken, and plans to take, to rectify the deficiencies to provide grounds for the authority to refrain from intervening against the bank. No other authorities have taken sufficient measures against SEB AB due to the violations, either. Finansinspektionen considers that as a whole the identified violations have been of such a nature that there are grounds to intervene against SEB AB.

5.4 Choice of intervention

In its choice of intervention, Finansinspektionen shall take into account the severity of the violations and their duration. Special consideration must be given to the nature of the violations, their tangible and potential effects on the financial system, losses incurred and the degree of responsibility.

In terms of how long the violations occurred, Finansinspektionen notes that the deficiencies, to varying extents, have existed during the entire period under investigation, or in other words just over four years. Given the context, this must be viewed as a relatively long period of time. It is an aggravating circumstance that the deficiencies occurred for so long, particularly since they were reported to both the CEO and the Board of SEB AB, and since this reporting, together with reports that the residual compliance risk in the money laundering area was assessed to be high, should have been perceived as alarming. At the same time, it must be considered that in the parts of the Baltic operations where the exposure to non-resident customers was the highest at the beginning of the period under investigation, it has also decreased significantly over time. SEB AB has also taken other measures during the period under investigation by, for example, adopting a consolidated risk assessment and a revised Baltic strategy for non-resident customers. Even if Finansinspektionen has made the assessment that these measures were implemented too late and were insufficient to rectify the problem, they have meant that the scope of the deficiencies has been largest at the beginning of the period under investigation.

In terms of the nature of violations, Finansinspektionen considers the deficiencies in the governance and control on their own in some cases to potentially have such a major impact on a bank's possibilities to live up to the requirement to combat money laundering that the violations must be viewed as serious. In the current case, however, Finansinspektionen considers the deficiencies not to have been of such a nature.

The violations in this case have not had any concrete effects on the financial system. However, they have had potential effects. The deficiencies in governance and control of the operations in the Baltic subsidiary banks exposed both SEB AB and the subsidiary banks to risks. Furthermore, the deficiencies could have resulted in the financial system being misused to a greater extent for money laundering and terrorist financing. They could also lead to a loss of confidence in the system.

With regard to "the degree of responsibility", the preparatory works state that this provides Finansinspektionen with an opportunity to recognise whether there were mitigating circumstances in that a violation was the result of behaviour which, due to special circumstances, could be considered to be less reprehensible than otherwise (Bill 2013/14:228 p. 240). There are no such circumstances in this case.

Overall, Finansinspektionen makes the assessment that the violations cannot be considered serious in the meaning set out in Chapter 15, section 1, second paragraph of the Banking and Financing Business Act. It is therefore not relevant to assess recalling SEB AB's authorisation or issuing the bank a warning. Finansinspektionen is therefore issuing SEB AB a remark, which will be accompanied with an administrative fine.

Finansinspektionen must first determine the highest possible amount for the fine (the "ceiling" for the administrative fine). It has not been possible to determine the profit attributable to SEB AB, or the costs the bank avoided, as a result of the regulatory violations. A ceiling for the administrative fine determined by the bank's, or the Group's, turnover (see below) will exceed an amount corresponding to EUR 5 million. The ceiling for the administrative fine will therefore be based on turnover.

As presented in section 5.1, one of the calculation principles for setting the highest amount for an administrative fine was changed through a legislative amendment that went into force on 2 August 2017. While the administrative fine was previously allowed to amount to at the most ten per cent of the bank's turnover in the immediately preceding financial year, it may now, where relevant, amount to at the most ten per cent of the corresponding turnover at the group level. Because SEB AB is part of a group, the new wording of the provision is applicable.

The transition provisions for the legislative amendment specify, however, that older provisions apply to violations that occurred prior to the entry into force of the amendment.

If the violation had ceased before the entry into force, the ceiling for the administrative fine would have been determined by the previous wording of Chapter 15, section 8 of the Banking and Financing Business Act. When, as in this case, a violation occurs over a long period of time and an amendment to a law enters into force during this time that makes it possible to decide on a

stricter sanction than what was previously possible, it must be decided how the sanction will be determined given the amendment to the law.

Finansinspektionen has stated in a previous decision that if the violation began immediately before or ended immediately after the entry into force of the legislative amendment, there can be grounds to use the regulations that applied during the greatest part of the period in question to determine the size of the administrative fine (Finansinspektionen's Decision on 13 September 2016 in FI Ref. 15-13887). In the same decision, Finansinspektionen found that the starting point in other cases should be to use how much of the violation occurred before and after the legislative amendment to determine an intended ceiling for the administrative fine.

In the current case, the violations have been ongoing throughout the entire period under investigation, in other words from 2015 to Q1 2019. The span of the violations prior to the legislative amendment in August 2017 is somewhat longer than after the amendment. However, the difference is not larger than that Finansinspektionen finds that it is reasonable to set a ceiling at the average of the highest administrative fines in accordance with both applicable provisions.

SEB AB's turnover amounted in 2019 to SEK 66.93 billion, and the corresponding turnover at the group level amounted to SEK 72.63 billion. The ceiling for the administrative fine according to the older provisions therefore amounts to SEK 6.69 billion and according to the new provisions to SEK 7.26 billion. The average of these amounts is SEK 6.97 billion, which Finansinspektionen finds is the ceiling for the administrative fine.

The size of the administrative fine can be seen as a gradation of the violations. When Finansinspektionen determines the size of the administrative fine, the authority must give special consideration to such circumstances that must also be considered when choosing the sanction and to the bank's financial position and, if it can be determined, the profit the institution made as result of the violation. As presented above, Finansinspektionen has not been able to determine the size of such a profit.

An aggravating circumstance that Finansinspektionen must consider is whether the bank has previously conducted a violation.

Finansinspektionen has decided to issue a sanction to SEB AB on a few previous occasions. Most recently was the decision decided in 20 June 2017 that was related to the bank having reported transactions incorrectly to Finansinspektionen for a relatively long period of time.[22] In the decision, Finansinspektionen furthermore found that the bank´s controls had been neither appropriate nor sufficient, and the bank therefore had not met the requirement

[22] FI Ref. 16-4646.

on satisfactory internal control in the part of the operations related to transaction reporting. Finansinspektionen issued SEB AB a remark, which was accompanied by an administrative fine of SEK 12 million.

Finansinspektionen notes that it has only been three years since the most recent sanction decision against SEB AB was announced. Even if that decision in part related to internal control, it cannot be considered a related violation. Finansinspektionen therefore considers that the previous violation should only be viewed to a limited extent as an aggravating circumstance.

With regard to the other earlier sanction decisions against SEB AB, Finansinspektionen makes the assessment that, given what the violations were about and the time that has passed since they took place – most recently 2011 – there is no cause to consider them when the size of the administrative fine is decided.

Finansinspektionen shall consider as mitigating circumstances if a bank significantly has facilitated Finansinspektionen's investigation through active cooperation and quickly rectified the infringement following its notification to or identification by Finansinspektionen. In order for cooperation to be considered, according to the preparatory works (Bill 2013/14:228 p. 241), the bank, on its own initiative, must have provided important information that Finansinspektionen itself does not already have at its disposal or can easily find.

It is Finansinspektionen's opinion that SEB AB's cooperation during the investigation has not been more active than what is reasonably expected from a company that is under supervision. It has thus not been such that SEB AB can be considered to have significantly facilitated Finansinspektionen's investigation through an active cooperation and this should therefore in general not be considered a mitigating circumstance.

Neither has SEB AB, given the scope and complexity of necessary measures, been able to quickly cease the violation since it was reported to or identified by Finansinspektionen. Otherwise, Finansinspektionen has outlined earlier in this decision its assessment of the violations. The circumstances that were presented as grounds for the choice of the sanction are also those that should be taken into consideration when determining the size of the administrative fine.

As presented earlier, the bank, during the period under investigation, has taken measures that led to the deficiencies at the end of the period under investigation were significantly smaller than at the beginning. This should be considered a mitigating circumstance. This means that the administrative fine can be set at a lower amount.

Finansinspektionen sets the administrative fine at SEK 1,000,000,000. This administrative fine is not large enough to prevent SEB AB from meeting its solvency and liquidity requirements in accordance with Chapter 6, section 1 of

the Banking and Financing Business Act. The provision set out in Chapter 15, section 8, third paragraph of the Banking and Financing Business Act, which states that administrative fine may not be of such a size that the bank will subsequently not be able to meet the requirements set out in Chapter 6, section 1 of the same act, therefore does not affect the size of the fine.

The administrative fine shall be paid to the Government and is invoiced by Finansinspektionen after the decision enters into force.

FINANSINSPEKTIONEN

Sven-Erik Österberg
Chairman of the Board of Directors

Per Håkansson
Senior Advisor to the Director General

Markus Ribbing
Senior Advisor

A decision in this matter was made by the Board of Directors of Finansinspektionen (Sven-Erik Österberg, Chair, Maria Bredberg Pettersson, Peter Englund, Astri Muren, Stefan Nyström, Mats Walberg, Charlotte Zackari and Erik Thedéen, Director General) following a presentation by Senior Advisor to the Director General Per Håkansson and Senior Advisor Markus Ribbing. Department Director Åsa Thalén and Legal Counsellor Niclas Silfverduk also participated in the final proceedings in the matter.

Appendices
Appendix 1 – How to appeal

Copy: SEB AB's CEO

N O T I F I C A T I O N R E C E I P T

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finansinspektionen@fi.se
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FI Ref. 19-8698
Notification No. 1

Remark and administrative fine

Document:

Decision regarding a remark and administrative fine for Skandinaviska Enskilda Banken AB announced on **25 June 2020**

I have received the document on this date.

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DATE

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SIGNATURE

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NAME IN BLOCK CAPITALS

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NEW ADDRESS (IF APPLICABLE)

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This receipt must be returned to Finansinspektionen **immediately**. If the receipt is not returned, the notification may be issued in another manner, e.g. via a court officer.

If you use the enclosed envelope, there is no charge for returning the receipt.

Do not forget to **specify the date of receipt**.

Appendix 1

How to appeal

It is possible to appeal the decision if you consider it to be erroneous by writing to the Administrative Court. Address the appeal to the Administrative Court in Stockholm, but send the appeal to Finansinspektionen, Box 7821, 103 97 Stockholm or finansinspektionen@fi.se.

Specify the following in the appeal:

- Name, personal ID number or corporate ID number, postal address, email address and telephone number
- The decision you are appealing against and the case number
- What change you would like and why you believe the decision should be changed.

If you engage an agent, specify the name, postal address, email address and telephone number of the agent.

Finansinspektionen must receive the appeal within three weeks from the day you received the decision.

If the appeal was received on time, Finansinspektionen will assess whether the decision will be changed and then send the appeal, the documents in the appealed matter and the new decision, if relevant, to the Administrative Court in Stockholm.