

22 August 2018

## D E C I S I O N

Nordea Bank AB  
Attn: Chair of the Board  
Smålandsgatan 17  
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FI Ref. 18-5975



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### **Authorisation to execute merger plan**

**Finansinspektionen's decision (to be announced 23 August 2018 at 8:00 a.m.)**

Finansinspektionen grants Nordea Bank AB, CIN 516406-0120, authorisation to execute the merger plan prepared with its subsidiary, Nordea Bank Abp, Finnish CIN 2858394-9, under which Nordea Bank AB is absorbed by Nordea Bank Abp.

*(Chapter 10, section 20 of the Banking and Finance Business Act [2004:297])*

### **Summary**

Nordea Bank AB has submitted an application for authorisation to execute a merger plan. Nordea Bank AB, among other roles, is currently the parent company to the Finnish limited liability company Nordea Bank Abp, which has received authorisation from the European Central Bank to conduct banking and securities business in Finland. According to the merger plan, Nordea Bank AB's assets and liabilities will be taken over by Nordea Bank Abp through a "reverse cross-border merger" in the form of an absorption.

As a result of the merger, Nordea Bank Abp will become the parent company in the Nordea group. After the execution of the merger, Nordea Bank AB's operations, to the extent they originate from Sweden, will be conducted by Nordea Bank Abp through a branch in Sweden. Nordea Bank Abp will also conduct operations subject to authorisation through four subsidiaries in Sweden.

Finansinspektionen shall deny an application to execute a merger plan if, for example, the merger cannot be deemed to be compatible with the interests of the depositors or other creditors (interest of creditors) (Sw. *borgenärsintresset*). An application shall also be denied if this is warranted by public interest.

With regard to the interest of the depositors or other creditors, Finansinspektionen makes the assessment that the governance of the Nordea group will largely remain unchanged after the merger, with the exception that certain group functions will most likely be moved to Finland.

If Nordea Bank Abp would be subject to lower capital and liquidity requirements after the merger, this could result in weakened resilience and reduced resolution capacity in the Swedish banking system. Therefore, a key starting point in Finansinspektionen's assessment of this application has been that the Nordea group's capital and liquidity requirements should be retained. The amount of capital the group is holding is important in the assessment of both the interests of depositors and other creditors and the public interest since Nordea Bank Abp will conduct financial operations in Sweden that are systemically important.

Finansinspektionen has held an extensive dialogue with the European Central Bank regarding this matter. Finansinspektionen has thereby gained a good understanding of how the European Central Bank views and works with setting capital requirements for systemically important banks.

Finansinspektionen makes the assessment that even though there are some differences in the design of the capital and liquidity requirements applied by Finansinspektionen in comparison to the European Central Bank, the overall future capital requirement in EUR and the liquidity requirement for Nordea Bank Abp will remain unchanged in the short term.

Based on Finansinspektionen's dialogue with the European Central Bank regarding this matter, and given the expectation that future changes in both the regulations and their application will in the long run lead to more uniform capital requirements, Finansinspektionen makes the assessment that the European Central Bank will ensure that the Nordea group has a capital requirement in EUR, in the long run, that is in parity with today's level, assuming that the level of risk remains the same.

With regard to the interests of the depositors and other creditors, Finansinspektionen draws the conclusion that the financial circumstances of Nordea Bank AB and Nordea Bank Abp are such that an execution of the merger will not result in a need for additional security or protection for creditors. The financial circumstances of the merged companies in general are also not such that the merger should be deemed non-compatible with the interests of the depositors or other creditors. There are therefore no grounds on which to deny the application due to the interests of depositors and other creditors.

With regard to public interest, Finansinspektionen makes the assessment that the risks in Nordea Bank Abp's newly established branch in Sweden will not change significantly as a result of the execution of the planned merger. Given that Nordea Bank Abp's legal domicile will be Finland, the overall supervisory responsibility for the Nordea group, including the newly established Swedish branch, will be transferred to the Finnish supervisory authority and the European Central Bank, which is responsible for the supervision of large banks in the EU's banking union. Finansinspektionen therefore makes the assessment that Swedish authorities will face decreased possibilities for preventing and managing risks in the Nordea group through regulation and supervision. Swedish authorities' possibilities for managing a crisis in Nordea through recovery and resolution will also be reduced as a result of the merger.

Finansinspektionen will also going forward be a member of the supervisory college for Nordea Bank Abp and thus participate in the joint decisions regarding the Nordea group's capital and liquidity requirements and in the assessment of the recovery plan for Nordea Bank Abp.

However, the merger also decreases Finansinspektionen's responsibility for, as well as its influence over, the supervision of the NordeagGroup and Nordea's Swedish operations, although Finansinspektionen will still have supervision responsibility and the possibility of intervening against the Swedish subsidiaries. Furthermore, Finansinspektionen will have supervision responsibility for the branch in terms of national regulations related to money laundering and consumer protection. Given that Nordea Bank Abp's operations will continue to be systemically important in Sweden, there is still a need to participate in the supervision of the Nordea group and the branch.

Finansinspektionen has held an extensive dialogue with the European Central Bank regarding the future supervisory collaboration. The discussions were held in a good and constructive spirit, and the authorities agreed on overarching principles regarding, for example, the exchange of information, cooperation during investigations and informal contact before material policy decisions are made. Given this background, it is Finansinspektionen's overall assessment that it will have sufficient insight into the branch and Nordea Bank Abp in order to be able to be active in preserving financial stability in Sweden.

After the merger, Nordea Bank Abp will also become a member of the payment system like Nordea Bank AB is today. Finansinspektionen therefore makes the assessment that the merger should not increase the risk of a serious disruption in the payment system or the manner in which the capital market functions.

Neither Sveriges Riksbank nor the Swedish National Debt Office, which have been given the opportunity to submit an opinion in this matter, have to Finansinspektionen presented anything that constitutes grounds upon which Finansinspektionen may deny the application. Both authorities have emphasised, however, the importance of retaining the capital requirement and a functioning supervisory collaboration.

There are therefore no grounds upon which to deny the application due to public interest.

Overall, Finansinspektionen finds that there are no grounds upon which to deny the application. Authorisation to execute the merger plans is therefore granted.

## **1 The case**

### ***1.1 Background***

The Nordea group (Nordea or the Group), which has assets totalling EUR 570 billion, is the largest bank in the Nordic region and one of the largest in Europe.

Nordea Bank AB (Nordea Bank or the bank) is the Group's parent company and has Swedish subsidiaries which are subject to the authorisation obligation: Nordea Finans Sverige AB, Nordea Hypotek AB, Nordea Investment Management AB and Nordea Livförsäkring Sverige AB. In addition, Nordea Bank has both subsidiaries and branches in Denmark, Finland and Norway. Nordea Bank also has subsidiaries in Russia and Luxembourg as well as branches in Estonia, Germany, the UK, Poland, the USA, China and Singapore. Nordea Bank also holds a qualifying ownership in Luminor Group AB, which conducts banking business in the Baltics.

Nordea Bank now plans to transfer all of the bank's assets and liabilities to the newly established Finnish subsidiary, Nordea Bank Abp (Nordea Finland). Nordea Finland received authorisation from the European Central Bank (ECB) on 26 June 2018 to conduct banking and securities business in Finland. After execution of the merger, Nordea Finland will be the new parent company in the Group and thus take over direct and indirect ownership of all subsidiaries.

Nordea Bank's operations in Sweden will, after the execution of the merger, be conducted by Nordea Finland through a branch in Sweden. In this way, Nordea Bank's operations, to the extent they originate from, for example, Denmark, Norway, Estonia, Germany, the UK, Poland, the USA, China and Singapore, will be conducted by Nordea Finland through branches in each of these jurisdictions. The subsidiaries will continue to conduct their respective operations as prior to the merger.

Nordea Bank needs to receive authorisation from Finansinspektionen in order to execute the merger plan. Nordea Bank intends to execute the planned merger on 1 October 2018.

### ***1.2 Application***

Nordea Bank has submitted an application for authorisation to execute a merger plan. The following information is presented in the application.

According to the merger plan, Nordea Bank's assets and liabilities will be taken over by Nordea Finland through a "reverse cross-border merger" in the form of an absorption. Nordea Bank's balance sheet total amounted to EUR 426 billion on 30 June 2018, which corresponds to 75 per cent of the Group's total balance sheet total.

Nordea Bank has presented as reasons for the merger that, due to its unique Nordic and international structure, the existing national regulations are not well suited for the bank's operating model and the bank's current strategic development. Nordea Bank furthermore argues that by establishing Nordea Finland's in a country that is a member of the EU's banking union, this will make Nordea Finland subject to a similar regulatory framework as other comparable banks within the EU.

As a result of the merger, Nordea Finland will become the new parent company in the Nordea Group. The Group's domicile will thereby move to Helsinki, Finland. After the execution of the merger, Nordea Bank's operations, to the extent they originate from Sweden, will be conducted by Nordea Finland through a newly established branch in Sweden.

After the execution of the merger, the operations that today are conducted by Nordea Bank, to the extent they originate from Finland, will continue to be conducted by Nordea Finland without any changes due to the merger. As a result of the merger, Nordea Bank's branch in Finland will be closed, which will be notified for registration in conjunction with the execution of the merger.

The merger plan that was prepared and signed by the Boards of Directors of Nordea Bank and Nordea Finland was attached to the application.

The Boards of Directors of Nordea Bank and Nordea Finland also prepared a joint statement in accordance with Chapter 23, section 39 of the Companies Act (2005:551) in which they describe the circumstances that may be important when assessing the appropriateness of the merger. The statement contains, for example, information regarding the likely implications of the merger for shareholders, creditors and employees. According to the statement, Nordea Bank's and Nordea Finland's creditors are assured satisfactory security given the companies' financial circumstances.

Nordea Bank's and Nordea Finland's auditors have reviewed this statement and the merger plan. In their opinions, the auditors expressed that there is no reason to believe that the merger poses a risk that the creditors of Nordea Finland would not have their claims paid.

Appended to the applications are declarations of oath from the Boards of Directors of Nordea Bank and Nordea Finland that the merger has not been prohibited in accordance with the Competition Act (2008:579) or Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings and that an assessment of the merger is

not currently under way in accordance with the Competition Act or the aforementioned Regulation.

In terms of the impact of the merger on Nordea Bank's operations, the bank's point of departure is that the merger is not intended to impact the scope of the operations that are currently conducted in Nordea Bank. The number of local offices will not change as an effect of the merger, and Nordea Finland and its branches will offer the same type of services and products that are currently offered by Nordea Bank and its branches.

In terms of the impact of the merger on customers, the bank's intention is that its existing customers shall not be significantly affected by the merger since the operations currently conducted by Nordea Bank will be conducted by Nordea Finland and its branches after the merger. One change for Nordea Bank's customers is that their deposits will primarily fall under the Finnish deposit insurance system. Customers in Sweden will also be partly subject to the Swedish deposit insurance system through the "topping up" increment. For customers in Sweden, this means that they will be subject to the Swedish protection for deposits linked to certain life events, such as temporary high deposits due to divorce, sale of a home, claims, termination of employment, partition of joint property, pension, illness, disability or death with an add-on amount of up to SEK 5 million.

In terms of the impact of the merger on corporate governance, Nordea Bank asserts that changes resulting from the merger will not have a material impact on the corporate governance of the Group. After the merger, the operations will continue to be managed, and the Board of Directors and the Managing Director of Nordea Finland will bear full responsibility.

In terms of the impact of the merger on recovery and resolution, Nordea Finland will be obligated to apply Regulation (EU) No 806/2014 of the European Parliament and of the Council on a Single Resolution Mechanism as the primary recovery and resolution regulations instead of national resolution regulations. The Single Resolution Mechanism consists of a resolution board that is authorised to exercise early intervention of Nordea Finland, which according to Nordea is similar to the mandate of national authorities. Nordea Bank therefore makes the assessment that the merger is not expected to have a negative impact on the possibilities for recovery and resolution.

Nordea Finland, according to Nordea Bank, will have the opportunity, in the same way that the bank does today, to use its diversified business model and the full strength of its balance sheet to support the areas or countries that are experiencing challenging economic conditions.

## 2 Comments from Sveriges Riksbank and the Swedish National Debt Office

Finansinspektionen has provided the Swedish central bank, Sveriges Riksbank, (the Riksbank) and the Swedish National Debt Office (SNDO) with an opportunity to submit an opinion regarding the application.<sup>1</sup>

### 2.1 *Opinion from the Riksbank*

The Riksbank primarily states the following.

Moving the domicile of Nordea Bank does not have a material impact on the bank's operations or customers in Sweden. A move can still have significant consequences for the Swedish financial system and Swedish financial stability. A condition for a move not leading to increased risks that can threaten financial stability is that Nordea Finland's capital and liquidity requirements must not be reduced.

It is important that all banks in Sweden, including the Nordea Group, have liquidity requirements in all significant currencies to counteract short-term liquidity risks. It will become more important for Nordea Finland to have sufficient liquidity reserves in SEK after a move.

Over a period of several years, Swedish authorities have placed higher demands on Swedish banks than those established by European minimum levels in order to protect financial stability. The reasons for this are, for example, that the Swedish banking sector is concentrated and has a high percentage of foreign market financing. The stricter requirements for Nordea Bank apply in part to capital requirements, liquidity requirements and requirements on eligible liabilities. Because Nordea Finland's risks will not change as a result of the move, these requirements should not be lowered. It is also unfortunate on principle if a bank can lower its requirements by changing its domicile; this creates the wrong incentives for banks.

In order to ensure that the risks in Nordea Finland's operations are limited and that financial stability is maintained, it is also important to continue to intensify the cooperation between Swedish authorities and the authorities that will be responsible for Nordea Finland. Natural forums for this cooperation are supervisory and resolution colleges as well as the cooperation between central banks. It is also important that such cooperation takes into consideration national expertise and national conditions, particularly since the part of Nordea's operations that will become part of the banking union is relatively small – approximately 75 per cent of Nordea's operations are instead located in countries outside the banking union. An extended cooperation applies to everything from risk assessments to preparations for measures in the event of a

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<sup>1</sup> Finansinspektionen has given Nordea Bank the opportunity to express its opinion regarding the opinions of the Riksbank and SNDO.

crisis. This also applies to matters about how to transfer and reciprocate other countries' macroprudential measures in order to protect financial stability, counteract financial imbalances and allow different banks in the same country to operate under similar roles without hampering competition.

A move means that the responsibility for injecting liquidity in a crisis is transferred to the Finnish central bank, which is expected to process the application of emergency credit from Nordea Finland if such should become necessary. This responsibility includes Nordea Finland's foreign branches and also applies to any liquidity in SEK.

Nordea Bank is today a key participant in the Swedish financial infrastructure, including RIX. However, there is no reason to believe that a move will change Nordea Finland's role in the financial infrastructure in Sweden. The Riksbank also makes the assessment that the operational risks resulting from the merger will be small. The merger will also not have a specific impact on Nordea Finland's roles as a RIX participant since participation will not affect the payment system. After the merger, Nordea Finland's RIX participation will be monitored by the Riksbank in the same manner as before.

## **2.2 *Opinion from SNDO***

SNDO primarily states the following.

As a result of Nordea Bank's planned merger, Sweden's formal responsibility for both the deposit insurance and resolution will become smaller. Because the Resolution Act (2015:1016) specifies that the direct costs for handling the crisis shall be carried by the bank's owners and creditors, this reduction in responsibility is not the same thing as a reduction in Sweden's financial commitment given a future crisis in Nordea. Instead, the risks that Nordea poses to Swedish financial stability and the economy will still exist, but Swedish authorities' possibilities for preventing and managing them will decrease significantly. If Nordea Finland will become subject to lower requirements, the risks may instead increase.

The merger has an impact on SNDO's assignment as the resolution and support authority as well as on the conditions for carrying out a successful resolution of Nordea Finland. SNDO faces fewer possibilities for protecting Swedish interests since its real influence in crisis planning and management will be limited to Nordea Finland's Swedish subsidiaries. With regard to Nordea Finland's resolution capacity, this will probably be weakened, in terms of loss-absorbing and recapitalisation capacity, as a result of the merger. This increases the risks marginally. Nordea Finland will also be linked after the merger to a relatively smaller resolution fund than it is today given the size of the banking sector.

Regarding deposit insurance and investor protection, the partial impairment of the protection that arises as a result of differences in how these are applied in

Sweden and Finland can be compensated by Nordea Finland applying for the Swedish deposit insurance and the Swedish investor protection for this difference through what is called *topping up*.

There are currently a number of ambiguities regarding the future design of both the resolution planning and the supervision of Nordea Finland under the banking union's and Finland's management. However, it is clear that Sweden, in the event the merger is executed, will be greatly affected by the regulatory application of the banking union. In order to protect the buffers that Sweden has gradually built up, Swedish authorities must therefore work together to ensure that the requirements currently placed on Nordea Bank remain in place for Nordea Finland.

### **3 Applicable provisions**

According to Chapter 10, section 20 of the Banking and Financing Business Act (2004:297), an application for authorisation to execute a merger plan for a cross-border merger must be submitted by the Swedish company that is participating in the merger, i.e. Nordea Bank.

According to Chapter 10, section 22, first paragraph of the Banking and Financing Business Act, an application for a merger through absorption shall be denied if

1. the merger plan has not been duly approved or the content thereof violates any act or other statutory instrument or the articles of association,
2. the merger has been prohibited pursuant to the Competition Act (2008:579) or pursuant to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, or where an assessment of a merger is pending pursuant to the Competition Act or the aforementioned Regulation,
3. the company's creditors have not been assured such satisfactory security as referred to in section 21 of the Banking and Financing Business Act or the merging company's financial circumstances in general are such that the merger may not be deemed compatible with the interests of depositors or other creditors, or
4. it is warranted by public interest.

For a description of the applicable provisions, see the *Appendix*.

### **4 Finansinspektionen's assessment**

#### ***4.1 Merger plan***

Nordea Bank has submitted a merger plan, which has been duly approved. Finansinspektionen makes the assessment that the merger plan is not in violation of the law or other regulation or the bank's articles of association. There are therefore no grounds related to this matter upon which to deny the application.

#### ***4.2 Competition***

Nordea Bank states that since the scope of its conducted operations will not be affected by the merger, there will be no negative impact on the competition on the market. The Boards of Directors of Nordea Bank and Nordea Finland have submitted declarations of oaths that the merger has not been prohibited in accordance with the Competition Act (2008:579) or Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings and that an assessment of the merger is not currently under way in accordance with the Competition Act or the aforementioned Regulation.

Finansinspektionen therefore finds no grounds related to the above on which to deny the application.

#### ***4.3 Interests of depositors and other creditors***

An application to execute a merger plan shall be denied if the financial circumstances of the merging companies are such that the merger may not be deemed compatible with the interests of the depositors and other creditors ("creditor interests"). Finansinspektionen shall ensure during its assessment that creditors are assured satisfactory security if the financial circumstances of the merging companies make such protection necessary and where the creditors do not already have such security. The assessment of the impact of the merger on creditors is presented below. Section 4.4 regarding public interest accounts in detail for the impact of the merger on the risks in the Swedish operations.

##### ***4.3.1 Business model***

The Nordea Group currently has equity of approximately EUR 32 billion, total assets of approximately EUR 570 billion and CET 1 capital of approximately EUR 29 billion. Approximately 75 per cent of Nordea's assets are currently in Norway, Denmark and Sweden, i.e. outside the banking union. Nordea Bank has subsidiaries in the form of mortgage institutions and branches in all three countries. The bank is the second largest bank in Denmark and Norway. In Sweden, Nordea Bank is the fourth largest bank in terms of local market shares. This means that the bank's survival capacity is important for the financial stability of all Nordic countries.

As described above, Nordea Finland will become the new parent company in the Nordea Group following the merger. The Group's domicile will thereby move to Helsinki, Finland.

Even if the legal structure will change, Finansinspektionen makes the assessment that Nordea's business model, which is based on business divisions (regardless of geographic location), will not be affected by the merger. At the Group level, the merger will lead to small changes in the balance sheet and capital adequacy. The conditions for Nordea Finland's profitability are not deemed to be negatively impacted by the merger.

With regard to the long-term sustainability of Nordea's business model, Finansinspektionen therefore makes the assessment that there will be no change as a result of the merger.

#### *4.3.2 Governance*

Nordea Bank is currently governed by what Nordea Bank calls a "one bank approach", which means that the operations are run via the business divisions and these divisions are controlled by group functions, into which all legal units are integrated. This means that the governance of the banking group is not materially affected by the country in which the parent company is located. Within the framework of the application in question, Nordea Bank has also communicated to Finansinspektionen that the bank will not be making any material changes to its governance in Nordea Finland.

Following the merger, some Group functions will most likely be moved to Finland.

In conjunction with the previous merger and the new branch structure for the Danish, Finnish and Norwegian subsidiaries, the bank introduced uniform branch governance for the systemically important branches. Under this branch governance, for example, each branch must have one responsible branch manager, one head of risk control and one head of compliance.

Finansinspektionen makes the assessment that Nordea Bank has strengthened the governance of its branches since the last restructuring. However, Finansinspektionen believes that there is still some work to be done before Nordea Bank has a governance structure for its Nordic branches that is satisfactory given the size of the Nordic branches and their importance for financial stability in each country. Finansinspektionen makes the assumption that Nordea Bank will implement the supervisory authorities' recommendations regarding branch governance. Finansinspektionen thus makes the assessment that this will not have a negative impact on the interests of the depositors and other creditors.

#### *4.3.3 Capital*

Today, Nordea has a capital requirement of EUR 28 billion and own funds of EUR 31 billion. It is Finansinspektionen's assessment that Nordea's risks and scope of operations will remain unchanged after the merger. Nordea will therefore continue to be systemically important in all four Nordic countries. A key starting point in Finansinspektionen's assessment of the application for a merger has been that Nordea's capital requirement should be retained. Finansinspektionen notes that Nordea in neither its market communication nor its application indicated that the purpose of the merger is a lowering of capital requirements. Finansinspektionen thus perceives that the intention of Nordea's board is not to lower Nordea's capital level.

The overall framework for establishing capital requirements is set out in EU directives and regulations<sup>2</sup> and is thus the same for the entire EU. Several processes and more detailed methods are also regulated through technical standards and guidelines. However, the EU framework does allow for national differences in practical application and assessments.

The current application of the capital requirements regulations in Sweden was introduced in 2014. Finansinspektionen decided at that time to raise the capital requirements for the most systemically important Swedish banks in order for the Swedish financial system to be able to better withstand future financial crises. These stricter requirements comprise in part a higher capital requirement for systemic risk, a risk weight floor for mortgages as well as requirements (Pillar 1 and Pillar 2) on banks' internal models.

Given that the EU framework on capital requirements allows some differences in national application, Finansinspektionen's methods for determining banks' capital requirements differ in some respects from the methods used by the ECB. It has therefore been important for Finansinspektionen to analyse these differences in order to assess any potential consequences on Nordea's capital requirement from the merger.

In the short term, Finansinspektionen assesses Nordea's capital requirements in EUR as being unchanged following the merger. This assessment is made noting that Nordea has, within the framework of the banking license granted by the ECB, agreed to comply with the overall capital and own funds requirements as agreed between the authorities as part of this year's supervisory review and evaluation process. Nordea has to comply with this requirement as from the execution of the merger until the ECB renders a new decision within its supervisory review and evaluation process during 2019. Finansinspektionen assesses that, based on how the ECB process usually proceeds, a new decision will be taken in the fourth quarter of 2019.

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<sup>2</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 and 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 (CRD IV).

Even though the capital requirement in EUR will not change in short term, Nordea's risk-weighted assets, and thus its capital requirement, as calculated in percentage terms, will change. This is a consequence of the ECB's greater usage of Pillar 1 requirements over Pillar 2 requirements. This means that the risk-weighted assets will increase and the capital requirement in percentage terms will thus decrease, even if the overall capital requirement in EUR terms remains the same.

Finansinspektionen assesses that for Nordea this means, in both the short term as well as the long term, that some of the deficiencies and risks which Nordea currently hold Pillar 2 capital for (e.g. internal models for credit risk), will instead be addressed through Pillar 1 requirements. This will also make buffers calculated as a percentage of risk-weighted assets increase to some extent. When the ECB has made its decision within its supervisory review and evaluation process during 2019, Nordea's capital requirement for systemic risk will be lower than currently required by Finansinspektionen.<sup>3</sup>

Due to the differences listed above, Nordea's capital requirement, under the ECB's supervision, will have both a different form and composition between the different elements of the capital requirements. Overall, these differences are not expected to lead to any major differences in the total capital requirement.

Furthermore, Finansinspektionen assesses that due to changes in the EU capital adequacy regulations and a development towards more compatible application across authorities, the differences between Finansinspektionen's methods and those applied by the ECB to determine capital requirements are expected to decrease in the future.

For example, Finansinspektionen's application of Pillar 2 requirements and requirements on internal ratings-based models for credit risk will converge with the ECB's application in the next few years. Finansinspektionen has already begun the process and has decided to change the method to apply the current risk weight floor for Swedish mortgages. The risk weight floor that is today applied in Pillar 2 will be replaced by a requirement within the framework of Article 458 of the Capital Requirements Regulation<sup>4</sup>. Finansinspektionen will apply for reciprocity of the measure in order for it to apply to the newly formed Swedish branch as well as the group.

Finansinspektionen has had an established and well-functioning cooperation with the ECB and the Nordic supervisory authorities for many years. The ECB has participated in the supervisory colleges for Nordea and through the Finnish

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<sup>3</sup> The Finnish supervisory authority (FIVA), which is responsible for the macroprudential assessment of Nordea Holding, decided that from 1 July 2019 the systemic risk buffer for Nordea shall amount to 3 per cent, which is lower than Finansinspektionen's systemic risk requirement, which also includes a Pillar 2 requirement of 2 per cent and thus amounts to 5 per cent.

<sup>4</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

supervisory authority (FIVA) been active in the supervisory authorities' joint decisions regarding Nordea's capital requirement since 2015. This means that there is a good history of reaching consensus between Finansinspektionen, the ECB and FIVA when it comes to supervision of Nordea's risks and capital requirements.

Since the autumn of 2017, Finansinspektionen has had in-depth discussions with the ECB and FIVA regarding Nordea's capital requirements. The process has involved regular meetings across the organisations, as well as the exchange of analyses and assessments. Finansinspektionen has therefore gained a good understanding of how the ECB works with the setting of capital requirements for systemically important banks. Together with the other Nordic countries, Finansinspektionen notes Nordea's regional importance for financial stability. The ECB and FIVA have confirmed that Nordea's systemic importance in the Nordics will be taken into consideration in determining future capital requirements.

The ECB is not able to confirm the exact future capital requirements for Nordea since such assessment is not possible ex-ante given an ever-changing risk picture. However, the ECB has communicated in writing that it expects its applied capital methods, when combined with reciprocal requirements, to result in a capital requirement in EUR that is as equally conservative as the current requirements, assuming the level of risk at the bank stays the same.

Based on the extensive dialogue that was conducted with the ECB and the expected revision of the capital requirements framework and upcoming harmonisation initiatives leading to more similar future capital requirements, Finansinspektionen's overall assessment is the ECB will ensure that Nordea has a capital requirement in EUR in line with today's requirement, assuming that the level of risk stays the same.

#### *4.3.4 Liquidity*

Nordea Bank's liquidity risk management is currently centralised in accordance with the bank's business model and business governance. Finansinspektionen considers Nordea Bank's management of its liquidity risk to be satisfactory. Finansinspektionen makes the assessment that this management will not be affected by the merger.

Nordea Bank has stated that the location of the bank's head office will not have any effect on its liquidity management. Nordea Bank is financing its operations with deposits from the public and borrowings from the international bond market. The rating is the single most important factor for the bank's borrowing costs and its possibilities for issuing bonds. Nordea Bank has had a pre-merger dialogue with the rating institutions, and the bank states in its application that the rating is not expected to change as a result of the merger.

The liquidity buffer requirement (LCR) will continue to be based on applicable EU regulation, and the same applies to the Net Stable Funding Ratio (NSFR). SSM, in contrast to Finansinspektionen, does not have express requirements on LCR in specific currencies, but like Finansinspektionen requires the banks to apply Article 8(6) of Commission Delegated Regulation (EU) 2015/61. This means that the banks' liquid assets in a significant currency shall be in line with their net outflows in the same currency. On the one hand, Nordea Finland will be subject to less regulation, which could result in it choosing to have a smaller liquidity reserve in EUR, but, on the other hand, it will have greater access to EUR from the ECB.

Finansinspektionen's overall assessment is that the liquidity risk will remain unchanged.

With regard to liquidity facilities, see section 4.4.4.

#### 4.3.5 *Deposit insurance*

Finansinspektionen's assessment of the differences between the deposit insurance systems is based on the information presented by SNDO in its opinion.

As of the date of the merger, the Finnish authorities will take over the responsibility for the deposit insurance covering deposits in Nordea Bank and its EEA branches. As a consequence of the merger, Nordea Bank's obligation to pay a fee to finance the deposit insurance is transferred from the Swedish insurance system to the Finnish insurance system. Nordea Bank's annual fee to the Swedish deposit insurance fund will thus be terminated.

As noted by SNDO, it is not likely that a default in Nordea will be managed within the framework of bankruptcy and the deposit insurance but rather through resolution proceedings. The reduced commitment to the Swedish deposit insurance therefore primarily affects the total amount that is charged and not to the same extent the actual risk that the insurance will have to be fulfilled. The deposit insurance of course may need to contribute to the resolution, but considering the preferential position of the insurance deposits and Nordea's capital structure, large losses would be required for this to become relevant.

As a result of the move, the Finnish deposit insurance's level of EUR 100,000 will include all of Nordea's depositors in the EEA, including its branches. Because the Swedish operations will be conducted through a branch, depending on the exchange rate EUR/SEK, the actual protection for depositors in the Swedish branch can fluctuate around SEK 950,000. The same applies for depositors in other Member States that chose to provide the protection in the national currency and where Nordea operates branches. There are currently differences in the deposit insurance systems in Sweden and Finland. The Swedish deposit insurance includes a higher add-on amount for some specific life events, and the Swedish system also covers different types of accounts.

Nordea Bank has communicated that the bank intends to compensate for these differences by applying for the “topping up” option in the Swedish system to ensure that customers in Sweden will have the same protection as customers in other banks in Sweden.

In connection with the merger, SNDO’s responsibility for the investor protection will also be transferred to the Finnish authorities.

According to SNDO, the risk that Swedish depositors and investors will be negatively affected by the merger as a result of differences in Swedish and Finnish application of the deposit insurance and the investor protection is expected to be negligible, assuming that Nordea Finland applies for and is granted supplemental participation in the Swedish insurance system.

#### *4.3.6 Overall assessment of the interests of depositors and other creditors*

Finansinspektionen’s overall assessment is that Nordea Finland’s governance and business model will not be affected by the merger.

Based on its extensive dialogue with the ECB and the forthcoming revision of the capital adequacy regulations, Finansinspektionen makes the assessment that the ECB will ensure that Nordea Finland has a capital requirement that is in parity with today’s level given that the level of risk remains the same. Finansinspektionen also makes the assessment that Nordea Finland will have satisfactory management of the liquidity risk after the merger.

Furthermore, the financial circumstances of Nordea Bank and Nordea Finland are such that an execution of the merger will not require additional security or protection for creditors. There is in general nothing with regard to the financial circumstances of Nordea Bank and Nordea Finland that would result in the merger being deemed incompatible with the interests of depositors or other creditors. Given this background, there are no grounds for denying Nordea Bank’s application due to the interests of depositors and other creditors.

#### **4.4 Public interest**

As mentioned above, an application shall be denied if warranted by public interest. The preparatory works state that it may be possible for Finansinspektionen to object to a merger on the grounds of public interest only in the case of very serious situations and risks. The reason for this restrictive approach is the otherwise ensuing limitations on the freedom of establishment. A general rule regarding the right to oppose a merger should primarily be applicable if the merger were to result in major disruptions in the payment system or in the functioning of the capital markets. The preparatory works also state that in order for an application for the execution of a merger plan to be denied on the grounds of public interest, the conditions of necessity and proportionality must be fulfilled. (See Bill 2008/09:180 p. 68 f.)

When assessing how the public interest is affected by the merger, Finansinspektionen in the following assesses whether the risks in Nordea Finland's operations, and thus the risk of a serious crisis in Nordea Finland, change significantly. Finansinspektionen then accounts for how the conditions for supervision, resolution, liquidity facilities, the infrastructure and the payment system are affected by the planned merger.

Another important area to assess in terms of public interest is whether Nordea Finland is holding a sufficient amount of capital. This is important in the assessment of the public interest since Nordea Finland will have systemically important operations in Sweden. Refer to section 4.3.3 for a description of this assessment.

The extent of the bank's operations in Sweden will not change following the merger. The operations in Sweden will be organised as a significant branch<sup>5</sup> and four subsidiaries subject to authorisation. As described in section 4.3.1, this means that the bank's survival capacity is important for the financial stability of all Nordic countries. If the bank were to fail, this could have significant consequences for financial stability in Sweden. The issue that Finansinspektionen shall assess is how the merger and the resulting new legal structure affect the Swedish authorities' responsibility and conditions for managing capital requirements (see section 4.3.3), supervision, resolution, and liquidity facilities and their ability to prevent and manage a serious crisis in the bank.

#### *4.4.1 Impact of the merger on the risks in the Swedish operations*

Finansinspektionen makes the assessment that the financial circumstances for Nordea Finland's Swedish operations as a whole are expected to be satisfactory even after the merger. As part of its assessment of public interest, Finansinspektionen assesses whether the risk that Nordea Finland will fail increases after the merger compared to what the risk is considered to be for Nordea Bank today. When determining the risk of a future default, Finansinspektionen needs to take into consideration whether the risks will change and consider this risk level given an assessment of the future capital strength.

The planned merger means that Nordea Bank will be dissolved and its assets and liabilities transferred to Nordea Finland. Its operations, to the extent that they originate in Sweden, will be conducted by Nordea Finland through a branch in Sweden. However, the composition of Nordea's assets and liabilities will not change as a result of the restructuring, but rather become concentrated to the parent bank in Finland.

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<sup>5</sup> The definition of *significant branch* is provided in Chapter 1, section 5, point 22 of the Banking and Financing Business Act.

In conjunction with Nordea's legal restructuring and conversion to branches in 2017, Finansinspektionen assessed Nordea Bank in its role as a parent company and systemically important bank with future branches in the Nordic countries. The branches would be considered significant branches in accordance with Article 51 of the Capital Requirements Directive. These assessments have not changed. Finansinspektionen therefore is not conducting an assessment of the legal structure as part of this decision.

Finansinspektionen makes the assessment that the current merger will not change the operations' risks regarding lending, securities trading or financing.

The pension risk would also continue to be governed by local pension and labour regulations and thus not affected by the merger. Finansinspektionen also makes the assessment that the insurance risk will remain unchanged.

Finansinspektionen's overall assessment is that the risks in the operations will not change, but the actual execution of the merger will temporarily lead to higher operational risks, for example in the form of risks of significant business interruptions or interruptions in availability, which could have a significant impact on the bank, its customers and the financial market.

Finansinspektionen also makes the assessment that Nordea Bank has taken measures to manage the risks associated with the change. There is a distinct organisation for the execution of the merger that has established processes for identifying and rectifying risks during the course of the merger as well as clear escalation procedures for conveying information up through the organisation.

As presented in section 4.3.3, the ECB has communicated that it expects its applied capital methods when combined with reciprocity for certain capital requirements to result in a capital requirement in EUR that is equally conservative as the current requirements, assuming the level of risk stays the same. Given this background and the risk assessment in this section, it is Finansinspektionen's overall assessment that Nordea Finland will have satisfactory capital strength relative to its risk level even in the future. This assessment is based on the extensive dialogue conducted with the ECB and the future revisions to the capital adequacy regulations.

#### *4.4.2 Impact of the merger on Finansinspektionen's supervision*

EU directives, regulations, technical standards and guidelines form an overall framework for cooperation between supervisory authorities.<sup>6</sup> These regulate

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<sup>6</sup> See, for example, Articles 51(3) and 116 of Directive 2013/36/EU of the European Parliament and of the Council (CRD IV), Commission Delegated Regulation (EU) 2016/98 with regard to regulatory technical standards for specifying the general conditions for the functioning of colleges of supervisors, Commission Implementing Regulation (EU) 2016/99 laying down implementing technical standards with regard to determining the operational functioning of the colleges of supervisors, and Guidelines on supervision of significant branches, EBA/GL/2017/14.

the cooperation for supervision of banks that have foreign subsidiaries and branches. The technical standards regulate how supervisory colleges shall work operationally and functionally based on the conditions set out in the capital adequacy regulations.

The cooperation between the Nordic supervisory authorities and the ECB is also regulated by a Memorandum of Understanding (MoU) for supervision of significant branches.<sup>7</sup> A need was also identified within the EU for additional EU principles for the supervision of significant branches. The European Banking Authority (EBA) therefore published guidelines on the supervision of significant branches.<sup>8</sup>

Finansinspektionen is currently the home state supervisory authority for Nordea Bank. This means that Finansinspektionen is directly responsible for the supervision of the parent company, including its branches, and the Swedish subsidiaries. Finansinspektionen is furthermore also responsible for the consolidated supervision of the entire Nordea Group. As a result, Finansinspektionen leads the bank's supervisory college and is responsible for investigations of the group, the preparation of the annual supervisory capital assessment for the entire Group and the approval of the Group's recovery plan.

Following the merger, the ECB will become the home state supervisory authority for the new parent company Nordea Finland, including its branches. This means that the ECB will be responsible for the supervision of the parent company, including its branches, and the consolidated supervision of the Nordea Group. With regard to a branch of a foreign credit institution that is domiciled within the EEA, which Nordea Finland's newly established branch in Sweden will be, the formal supervision responsibility for the stability of Nordea Finland will lie with the home state authority, i.e. ECB and FIVA, and Finansinspektionen will thus become the host state authority.

In other words, the merger decreases the responsibility for, as well as the influence over, the supervision of the Nordea Group and Nordea's Swedish operations, although Finansinspektionen will still have supervision responsibility and the possibility of intervening against the Swedish subsidiaries. Furthermore, Finansinspektionen will have supervision responsibility for the branch in terms of national regulations related to money laundering and consumer protection. Given that Nordea Finland's operations will continue to be systemically important in Sweden, there is still a need to participate in the supervision of both the Nordea Group and the branch.

After the merger, Finansinspektionen will be a member of the ECB-headed supervisory college for Nordea. As the competent supervisory authority for the Swedish subsidiaries, Finansinspektionen will participate in decisions

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<sup>7</sup> Memorandum of Understanding (MoU) between the Nordic financial supervisory authorities and the European central bank on prudential supervision of significant branches in Sweden, Norway, Denmark and Finland, dated 2 December 2016.

<sup>8</sup> Guidelines on supervision of significant branches, EBA/GL/2017/14.

regarding the total capital and liquidity assessment for the Group. However, if the supervisory college is not in agreement, Finansinspektionen's formal and thus also real possibilities for influence are limited.

Since both the MoU and the EBA's guidelines, both of which Finansinspektionen has adopted, are general and to be used proportionately, the authorities need to agree on a common view of the cooperation and information-sharing with regard to the supervision of the Nordea Group and its significant branches. As the long-standing chair of the supervisory college, Finansinspektionen has established practices for the supervision cooperation between the members of the college that are characterised by openness and joint assessments. This same tradition of joint cross-border group supervision with EU countries outside the banking union is not yet in place at the ECB. The ECB's processes are largely adapted to cooperation with authorities that are part of the banking union. A banking group like Nordea, which has the majority of its assets within the EU but outside the banking union, therefore requires adaptation from the ECB.

Given this background, Finansinspektionen has identified a need to clarify and ensure a common understanding of certain principles. Finansinspektionen has conducted a dialogue with the ECB regarding this matter during the spring of 2018. The authorities have used the MoU and the EBA's guidelines to agree on an institution-specific method for the supervisory cooperation regarding Nordea. The discussions were held in a good and constructive spirit, and the authorities agreed on overarching principles regarding, for example, the exchange of information, cooperation during investigations and informal contact before material policy decisions are made.

Given that there is a good platform for continued discussions, i.e. common EU regulations and an MoU, and institution-specific overarching principles, it is Finansinspektionen's overall assessment that the authority will have sufficient insight into the branch and Nordea Finland in order to be able to be active in preserving Swedish financial stability.

#### 4.4.3 *Resolution*

Resolution is a relatively new legal tool that aims to ensure the orderly winding up of a systemically important bank that is assessed to be about to fail.<sup>9</sup> After passing a decision regarding resolution, the State, via the resolution authority, takes control of the bank. The goal of the resolution is to maintain the bank's critical functions while at the same ensuring that the losses caused by the bank's default are carried by the bank's owners and lenders. Only in exceptional cases will it be possible to contribute public funds during a resolution.

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<sup>9</sup> Cf. the Resolution Act (2015:1016).

The resolution of a cross-border and systemically important bank that is part of a financially and operationally integrated banking group in practice is largely a national concern for the home state and the parent company. Because the parent company is in Finland, the responsibility for Nordea Finland lies with the resolution authority within the banking union (SRB).

SNDO has made the assessment that its real influence in resolution proceedings for Nordea after the merger will be limited to the Swedish subsidiaries. SNDO will in this respect still be part of the resolution college with the possibility of influence. However, a consequence of the merger is that SNDO's options in its work to promote financial stability in Sweden will be limited.

Furthermore, SNDO makes the assessment that Nordea's resolution capacity will probably be weakened in terms of loss-absorbing and recapitalisation capacity as a result of the merger. This is largely because the SRB will not apply requirements on subordination for the entire MREL requirement<sup>10</sup>. SRB will instead apply partial subordination, which will depend on systemic importance. This increases the risks marginally. Nordea Finland will also be linked after the merger to a relatively smaller resolution fund than it is today given the size of the banking sector.

As noted by SNDO, however, there are no indications that SRB will apply another resolution strategy than that which currently applies to Nordea Bank. In this respect, the merger probably will have no impact on the resolution capacity. Given that the risks are judged to increase only marginally, that SNDO will participate in the resolution college and that SRB intends to use the same resolution strategy, Finansinspektionen makes the assessment that SRB will be able to manage the resolution planning and implementation of the resolution, if necessary, in a satisfactory manner.

#### 4.4.4 *Liquidity facilities*

Central banks can provide both general liquidity facilities and targeted liquidity facilities (emergency loans). Normally, both branches and subsidiaries have access to general liquidity facilities in the countries where they operate. The situation for emergency loans, however, is not as clear. Even if both subsidiaries and branches formally have access to emergency loans in the countries where they operate, decisions regarding emergency loans are often more discretionary. As indicated by the Riksbank, the responsibility for a situation where Nordea Finland, including its foreign branches, would need liquidity infusions would lie with the Finnish authorities. As a member of RIX, however, Nordea Finland's Swedish branches will also have access to the Riksbank's standing liquidity facilities. The Riksbank could also provide the Swedish branch with extraordinary liquidity facilities in a crisis situation if the branch is a monetary counterpart. Such operations could mean loans with

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<sup>10</sup> Minimum Requirement for own fund and Eligible Liabilities (MREL).

longer maturities, in both SEK and foreign currency, and for collateral other than what the Riksbank normally accepts.

The Riksbank states that an MoU between the Nordic and Baltic central banks signed in December 2016 regulates how responsibility is broken down in practice with regard to extraordinary liquidity facilities. According to this MoU, the home state central bank is expected to process any application for emergency loans. This means that Finland's central bank is expected to process and application for emergency loans from Nordea Finland after the merger. This includes emergency credit to the Swedish branch as well applications for emergency credit in SEK. At the same time, the Riksbank is expected to provide assistance for such applications.

Finansinspektionen makes the assessment that both Nordea Finland and the Swedish branch will have access to emergency loans after the merger.

#### *4.4.5 Impact of the merger on Swedish financial infrastructure firms and the payment system*

Nordea Bank is a member of all systemically important Swedish financial infrastructure firms: RIX, Euroclear Sweden, Nasdaq Clearing and Bankgirot. Finansinspektionen shares the Riksbank's opinion that the merger will not change this role within the financial infrastructure in Sweden. The operational risks introduced by the merger will therefore be negligible.

The merger will also not have a specific impact on the RIX participation. After the merger, the Swedish branch will be a member of RIX.

#### *4.4.6 Overall assessment of the public interest*

Overall, Finansinspektionen makes the assessment that the risks will not be significantly changed as a result of the merger, aside from the temporary increase in operational risks resulting from the actual execution of the merger. The merger will not lead to an increased risk of a serious crisis in Nordea Finland, either. Even if the supervision responsibility will change, it is Finansinspektionen's assessment that the authority will have sufficient insight into the branch and Nordea Finland to be able to act to preserve financial stability in Sweden. Furthermore, Finansinspektionen makes the assessment that the merger will not lead to increased risks of serious shocks to the payment system or the functioning of the capital market. Given this background, there are no grounds for denying Nordea Bank's applications due to public interest.

### **4.5 Conclusion**

Finansinspektionen makes the assessment that the merger plan has been duly approved and that the content thereof does not violate any act or other statutory instrument or the articles of association.

The merger has not been prohibited in accordance with the Competition Act (2008:579) or Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings. The merger is also not subject to an assessment in accordance with the Competition Act or the aforementioned Regulation.

Finansinspektionen makes the assessment that the interests of depositors and other creditors are met and that the merger is compatible with public interest.

Finansinspektionen's overall assessment is therefore that there are no grounds on which to deny the application. Authorisation to execute the merger plans is therefore granted.

FINANSINSPEKTIONEN

Sven-Erik Österberg  
*Chairman*

Kajsa Larsberger Holting  
*Senior Legal Counsellor*

A decision in this matter was made by the Board of Directors of Finansinspektionen (Sven-Erik Österberg, Chair, Maria Bredberg Pettersson, Marianne Eliason, Hans Nyman, Mats Walberg, Peter Englund and Erik Thedéen, Director General) following a presentation by Senior Legal Counsellor Kajsa Larsberger Holting and Advisor Petra Gressierer. Chief Legal Counsel Charlotte Rydin, Deputy Director General Martin Noréus, Deputy Executive Director Karin Lundberg, Head of Division Martina Jäderlund and Advisor Caroline Moberg Pettersson also participated in the final proceedings.

## Appendix

### Applicable provisions

Chapter 10, section 20, first paragraph of the Banking and Financing Business Act (2004:297) prescribes the following. When the merger plan has become applicable to all companies, both the transferor company and the transferee company shall apply for authorisation to execute the plan. In a cross-border merger, the application shall be made by the Swedish company or companies involved in the merger. Applications must be submitted to Finansinspektionen.

Chapter 10, section 21 of the Banking and Financing Business Act prescribes that upon consideration of an application for authorisation to execute a merger plan, an assessment shall be made as to whether the companies' creditors are assured satisfactory security, where such security is required taking into account the merging companies' financial circumstances, and whether the creditors have not already received such security.

According to Chapter 10, section 22 of the Banking and Financing Business Act, an application for a merger through absorption may be denied if

1. the merger plan has not been duly approved or the content thereof violates any act or other statutory instrument or the articles of association,
2. the merger has been prohibited pursuant to the Competition Act (2008:579) or pursuant to Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, or where an assessment of a merger is pending pursuant to the Competition Act or the aforementioned Regulation,
3. the company's creditors have not been assured such satisfactory security as is referred to in section 21, or the merging company's financial circumstances in general are such that the merger may not be deemed compatible with the interests of depositors or other creditors, or
4. it is warranted by public interest.

According to Chapter 23, section 21a of the Companies Act (2005:551), during the period that Finansinspektionen is processing the application, the Swedish Tax Agency may decide that, for a specified period not to exceed 12 months, an impediment exists to the execution of the merger plan. This period may be extended where special grounds exist.

Chapter 23, section 51 of the Companies Act states the following.

In conjunction with a cross-border merger between a parent company and a wholly-owned subsidiary, the provisions of sections 36–50 shall apply, however with the following deviations.

1. The merger plan need not contain such information as referred to in section 38, first paragraph, points 2, 3 and 5.

2. The provisions regarding an auditor review in sections 11–13, 40 and 41, as well as regarding the general meeting’s approval of the merger plan in section 15, first paragraph, shall not apply.

With respect to the type of legal consequences of the merger, the provisions set out in section 34, second paragraph, points 1 and 2 shall apply in lieu of the provisions set out in section 26, first paragraph, points 1–4.

In conjunction with a merger pursuant to this section, the merger plan shall contain a statement from one or more such auditors as referred to in section 12, with such content as referred to in section 11, second paragraph, point 1.

Chapter 23, section 11, second paragraph, point 1 of the Companies Act states that the auditor statement in particular shall specify whether the auditors, in their review, have found that the merger would jeopardise the payment of claims held by creditors of the transferee company.

Chapter 23, section 12 of the Companies Act states the following. An auditor as referred to in section 11 shall be an authorised or approved public accountant or a registered accounting firm. Unless otherwise stated in the articles of association, the auditor shall be appointed by the general meeting of each company. Where no specific auditor is appointed, the examination instead shall be conducted by the companies’ auditors. The provisions of Chapter 9, sections 40, 45 and 46 shall apply to an auditor appointed to conduct a review pursuant to section 11.

Chapter 23, section 38, first and second paragraphs of the Companies Act prescribe the following. The merger plan shall contain information regarding

1. the forms, names and registered offices of the merging companies,
2. the ratio applicable to the exchange of shares and any securities in the transferor and transferee companies respectively and any cash payment,
3. the terms which shall apply for the allotment of shares and any securities in the transferee company,
4. the likely repercussions of the cross-border merger on employment,
5. the date from which, and the terms on which, shares and any securities entitle the holders to dividends in the transferee companies,
6. the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the transferee company,
7. the rights conferred by the transferee company on holders of special rights in the transferor company or the measures which shall otherwise be taken which are advantageous to such holders,
8. fees and other special benefits granted to a member of the board of directors, a managing director or comparable member of senior management, or a party who carries out a review pursuant to sections 11, 40 or 41 as a result of the merger,
9. articles of association for the transferee company,
10. the value of the assets and liabilities which are to be transferred to the transferee company and the considerations which have been made in conjunction with the valuation, and

11. the date of the accounts which have formed the basis for the determination of the terms of the merger.

Where appropriate, the merger plan shall also contain information on the procedures by which arrangement for the involvement of employees in the definition of their rights to participation in the company are determined.

Chapter 23, section 39 of the Companies Act states the following. The board of directors of each and every company participating in the merger shall prepare a report regarding the circumstances which may be material in conjunction with the assessment of the suitability of the merger for the companies. The report shall state how consideration for the merger was determined and the legal and financial perspectives which have been taken into account. The report shall also contain information regarding the likely implications of the merger for shareholders, creditors and employees. Where the board of directors receives a statement from the representative of the employees reasonably in advance, such statement shall be appended to the report.

Pursuant to Chapter 2, section 5a of the Banking and Financing Business Ordinance, a declaration of oath from the companies' boards of directors or managing directors shall be appended to the applications in accordance with Chapter 10, section 20 of the Banking and Financing Business Act (2004:297) stating that the merger has not been prohibited in accordance with the Competition Act (2008:579) or Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings and that an assessment of the mergers is not currently under way in accordance with the Competition Act or the aforementioned Regulation.