

Finansinspektionen's Regulatory Code

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Finansinspektionen's general guidelines on authorisation for credit institutions outside the EEA to establish a branch in Sweden and for Swedish credit institutions to establish a branch outside the EEA;

FFFS 2023:18

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decided 20 June 2023.

Finansinspektionen provides the following general guidelines.

Chapter 1 Scope

These general guidelines apply to:

1. applications for authorisation for credit institutions outside the European Economic Area (EEA) to establish a branch in Sweden, and
2. applications for authorisation for Swedish credit institutions to establish a branch outside the EEA.

Definitions

The terms and expressions used in Chapter 1 of the Banking and Financing Business Act (2004:297) have the same meaning in these general guidelines. In addition, the following definitions apply:

1. *consolidated situation*: the type of situation defined in Article 4(47) of the Capital Requirements Regulation, and
2. *qualifying owner*: natural or legal person in possession of a qualifying holding.

Chapter 2 Operations in Sweden for credit institutions outside the EEA

Establishment of branches

For Chapter 4, sections 4 and 5 of the Banking and Financing Business Act

An application should contain information regarding

1. business name and address of the branch,
2. the branch's external auditors,
3. the registered office of the board of directors and the foreign credit institution's address,
4. qualifying owners of the foreign credit institution,
5. board members and senior management of the foreign credit institution,
6. annual report for the most recent financial year,

7. consolidated financial statements for the group in which the foreign credit institution is included or of which it is the parent company,
8. the capital adequacy for both the foreign credit institution and the consolidated situation or group in which the institution is included or leads, calculated in accordance with the Basel Committee's rules, and
9. any co-operation with credit institutions or securities companies in Sweden.

The following should be appended to the application:

1. Articles of association or equivalent. The branch's articles of association or equivalent should state the operations the branch intends to conduct. The articles of association should use the examples provided in Chapter 7, section 1, second paragraph of the Banking and Financing Business Act as a basis.
2. Power of attorney in accordance with section 10 of the Foreign Branch Offices Act (1992:160).
3. Business plan. A branch's business plan should contain
 - a) an organisational diagram in accordance with the guidelines in the Description of operations section,
 - b) outsourcing agreements, if relevant, in accordance with the guidelines in the Outsourcing agreements and Auditing function sections,
 - c) annual reports, interim reports, forecasts and lending instructions, in accordance with the guidelines in the Equity ratio and liquidity section, and
 - d) guidelines and instructions, in accordance with the guidelines in the Risk management, Customer protection, Ethical rules, Events of material significance, Measures against money laundering and financing of terrorism and Audit function sections.

Description of operations

The branch should submit a detailed description of the operations it will conduct. The description should, inter alia, contain

- a general outline (organisational chart) regarding the manner in which the branch is organised,
- a general description of the areas of operation and functions,
- information regarding the number of employees, broken down by various areas of operation and functions, and
- a description of the responsibility and positions of employees with special responsibility for a particular function or area of operation.

The branch should describe in particular the parts of the operations which require authorisation in accordance with Chapter 1, sections 3 or 4 of the Banking and Financing Business Act.

The branch should furnish information regarding the manner in which it plans to organise its IT operations, the systems it will use and the strategy which may be relevant. The branch should also furnish information regarding how it plans to organise and structure the responsibility for its IT support and information security.

The managing director and other persons active in the branch should be employees thereof. The application should state whether any of the persons active in the branch will also be employed elsewhere. If this is the case, the branch should describe how the risk of conflicts of interest has been assessed.

Outsourcing contracts

Where an branch intends to outsource parts of its operations to another legal person or independent natural person, the business plan should contain a description of the engagement. When drawing up the outsourcing agreement, the branch should follow Chapter 10 of Finansinspektionen's regulations and general guidelines (FFFS 2014:1) regarding governance, risk management and control in credit institutions.

The branch should provide Finansinspektionen with an outsourcing agreement as set out in Chapter 6, section 7 of the Banking and Financing Business Act.

Equity ratio and liquidity

A branch which conducts operations on the date of the application should append an audited annual report which has been approved by the branch's general meeting. Where the branch is included in a group, an annual report for the parent company and for the group in which the branch is included should also be appended. The annual reports should refer to the immediately preceding financial year. Where applicable, the most recent preceding interim report should also be appended.

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

The forecast should contain

- balance sheets and profit and loss accounts for both the branch and the consolidated situation which the branch may come to lead or be included in, prepared in accordance with appendices 1–3 to Finansinspektionen's regulations and general guidelines (FFFS 2008:25) regarding annual reports of credit institutions and investment firms; and
- an analysis of own funds, capital adequacy ratio and exposures for both the branch and the consolidated situation which the branch may come to lead or be included in.

The branch should state the assumptions upon which the forecasts and analyses are based. These should be described for each business area. In addition, the branch should submit a sensitivity analysis regarding the impact on stated analyses and forecasts of changes in assumptions regarding e.g. volumes, interest rate levels and interest margins.

In its business plan, the branch should describe how it intends to finance the business. The description should include information on

- the markets on which the branch intends to obtain refinancing, and
- the content of agreements regarding refinancing with another credit institution or creditor.

Specific information should be provided regarding the relationship between short-term and long-term borrowing, relative to the terms until maturity of outstanding loans or other financing operations, such as leasing. The branch should append to the description instructions for the function which shall be entitled to decide upon borrowing on behalf of the branch and inform of the restrictions that shall apply. The branch should also furnish other information which may be of significance for an assessment of the financial circumstances.

Accounting

The business plan should contain a description of the organisation, allocation of responsibility and payment approval instructions with respect to the economy and accounts function. A description of the accounting system should state the connection between the subsidiary ledgers and the books of prime entry and general ledger. The branch should also state which measures have been or will be taken in order to ensure satisfactory control regarding bookkeeping and funds management.

Governance, internal information and internal control

A branch should append to its business plan proposed guidelines and instructions for the areas set out below in the Risk management, Customer protection, Ethical rules, Events of material significance, Audit function and Measures against money laundering and financing of terrorism sections. Guidance may be obtained from Finansinspektionen's regulations and general guidelines (FFFS 2014:1) regarding governance, risk management and control at credit institutions and in Finansinspektionen's regulations (FFFS 2009:1) on measures to combat money laundering and terrorist financing.

Risk management

The business plan should contain a description of the manner in which the undertaking will handle the risks associated with its operations. Examples of material risks include

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

Proposed guidelines and instructions should be appended to the business plan. Guidance may be obtained from Finansinspektionen's regulations and general guidelines (FFFS 2018:16) regarding management of credit risks in credit institutions and securities companies, Finansinspektionen's regulations and general guidelines (FFFS 2014:1) regarding governance, risk management and control at credit institutions and Finansinspektionen's regulations (FFFS 2010:7) regarding management of liquidity risks in credit institutions and investment firms.

Customer protection

In the business plan, a branch should describe the measures planned to ensure that its operations comply with consumer protection legislation. The branch should provide information about its procedures for handling complaints. Information should be provided regarding the name of the person or the senior managers who will be responsible for complaints from the public. Guidance may be obtained from Finansinspektionen's general guidelines (FFFS 2021:29) regarding consumer credit and Finansinspektionen's general guidelines (FFFS 2002:23) regarding complaints management concerning financial services for consumers.

Ethical rules

A branch should append to its business plan the guidelines for handling ethical issues that the branch shall apply. The application should state the manner in which common knowledge of ethical rules in the industry is to be disseminated within the branch and the person or function which is to be responsible therefor. In addition, the branch should state the manner in which it handles follow up, control and reporting, as well as internal information and training, concerning ethical issues. Guidance can be obtained from Finansinspektionen's general guidelines (FFFS 1998:22) regarding guidelines for handling ethical issues at institutions under the supervision of the supervisory authority.

Incidents of significant importance

A branch should append to its business plan guidelines for handling and reporting events of material significance which are to be applied by the branch. These guidelines should, among other things, set forth decision-making and reporting procedures in such matters. Guidance may be obtained from Finansinspektionen's general guidelines (FFFS 2021:2) regarding reporting of events of material significance.

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

Measures to combat money laundering and the financing of terrorism

A branch should append to its business plan an account of the measures it has taken or intends to take to prevent money laundering and financing of terrorism. Proposed instructions should be appended. Guidance can be obtained from Finansinspektionen's regulations (FFFS 2017:11) regarding measures against money laundering and financing of terrorism.

Internal audit function

In its business plan, a branch should describe the manner in which the independent internal audit function is to be structured and how it is to work.

The description should state

1. the manner in which the review function will be organised,
2. which instructions the function will follow,
3. whether there is to be an independent review of IT and information security,
4. whether an audit plan will be produced and who will adopt this plan, and
5. how often and to whom the internal audit function will report.

In the event the internal audit function is to consist of external auditors or consultants, a comparable description should be provided in respect of their engagement. The engagement should be regulated in a separate agreement which is appended to the business plan. Guidance can be obtained from Finansinspektionen's regulations and general guidelines (FFFS 2014:1) regarding governance, risk management and control at credit institutions.

Representation offices

For Chapter 4, section 6 of the Banking and Financing Business Act

In addition to the foreign credit institution's annual report, the application should contain information regarding

1. the representation office's business name and complete address,
2. name and complete personal details of the person who will be responsible for the representation office,
3. the planned operations, and
4. the foreign credit institution's branches of business.

Finansinspektionen should be notified about changes in the above information. The foreign credit institution should also submit its annual report to Finansinspektionen each year.

Chapter 3 Swedish credit institution's operations outside the EEA

Establishment of branches

For Chapter 5, section 5 of the Banking and Financing Business Act

Content of application

A credit institute should append to its application for establishment of branch office outside the EEA

1. a business plan for the branch's operations, and
2. a forecast regarding anticipated financial results for the branch during the upcoming three financial years.

The credit institute should state the assumptions upon which the forecast is based. These should be described for each business area. In addition, the credit institute should provide a sensitivity analysis regarding the impact on stated analyses and forecasts of changes in assumptions regarding e.g. volumes, interest rate levels and interest margins.

The branch should appoint a person to be responsible for the operations. This person should be domiciled in the country in which the branch is established. A curriculum vitae for this person should be appended the application.

In the event the branch is to have its own board of directors, the branch should submit information regarding the composition thereof, including any alternate members and information identifying the persons who will be the chairman and vice chairman of the board of directors.

Change in the branch's operations

A credit institution which, after establishing a branch in a country outside the EEA, intends to make changes to the branch's operations, address or senior management should notify Finansinspektionen in writing about such changes at least one month before the change is implemented. The institution should also notify the supervisory authority in the country in which the where branch is established.

These general guidelines shall enter into force on 18 July 2023, whereupon Finansinspektionen's general guidelines (FFFS 2011:50) regarding application for authorisation to conduct banking and financing business shall be repealed.

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