THE BANKING REGULATION REVIEW

ELEVENTH EDITION

Editor
Jan Putnis

THE LAWREVIEWS

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PREFACE

Writing this preface in the depths of the crisis sweeping the world with the spread of covid-19, it is tempting to wonder whether banking regulation will fall down the agenda of priorities for governments when matters of life and death loom. The wave of corporate and individual insolvencies that the crisis has caused means, however, that the way that banks respond to economic crisis has never been as important as it is now, and the law and regulation that controls that response has never before affected the lives of so many people so directly.

The way that governments and regulators handle this crisis in the coming months is likely to make the difference between the success and failure of millions of businesses, and the well-being of hundreds of millions of people. Banking regulation will have a critically important role to play in determining how and when banks can and must help their customers get through this difficult time, and financial regulators must play their part to help facilitate this.

Like much else in the financial world, banking regulation will never be the same again and this crisis is likely to lead to new regulatory initiatives to help banks to support stricken economies and businesses. Regulatory lawyers will also have their part to play in helping banks navigate the immediate crisis and any subsequent reforms.

While operational resilience was already at the heart of many financial regulators' agendas before the crisis, it will now surely feature even more urgently. It is important that reforms and still greater expectations in this area are developed in a joined-up way, recognising the critical need for market participants to work together closely to maximise resilience rather than running their own operational resilience projects in isolation.

Looking forward with hope to a time when the crisis eases, other pressing issues will move back up the agenda for banks, such as their continuing efforts to harness the benefits and avoid the pitfalls of emerging technologies, and the role of the financial sector in helping to address climate change and its consequences. Whatever the outcome of the crisis, it seems certain that there will be many lessons to learn, both for banks and regulators. It is to be hoped that as the crisis evolves, cross-border regulatory cooperation and, where necessary, regulatory deference, will operate effectively and not be inhibited by irrational political considerations.

This edition covers 37 countries and territories in addition to our usual chapters on international initiatives and the European Union. Very special thanks are due to all of the authors who have devoted time to the book this year despite, in many countries, working from home, often in difficult and unexpected conditions amid 'lockdown' arrangements on account of covid-19, without any reliable indication of when those arrangements will come to an end.

Thank you also to the partners and staff of Slaughter and May in London and Hong Kong for continuing to support and contribute to this book, and in particular to Nick Bonsall, Ben Kingsley, Peter Lake, Emily Bradley, Selmin Hakki, Jiayi Li, Jennyfer Moreau, Loye Oyedotun, Tolek Petch, Tamara Raoufi and David Shone.

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I wondered in the Preface to the 10th edition whether by the time of the 11th edition the position on Brexit would be clearer. That is, of course, only partially true, but no one imagined a year ago that Brexit would be comprehensively overshadowed by a crisis such as that caused by covid-19.

It is to be hoped that the crisis will be under control by the time of the next edition, and that banks and their regulators will have played a leading and positive role in helping economies begin to recover from the shock they are now experiencing.

Jan Putnis
Slaughter and May
London
April 2020

Chapter 28

NORWAY

Richard Sjøqvist, Markus Nilssen and Steffen Rogstad[1]

I INTRODUCTION

The Norwegian banking industry has developed in cycles during the past 200 years. From a minimal start, the number of banks increased rapidly until nearly every small municipality had at least one bank. During the recession in the late 1920s, many banks had to close but subsequently reopened. In the 1930s, there were around 700 banks in Norway, of which 630 were savings banks. This continued until around 1970, when a rapid consolidation started. Today, there are 122 banks incorporated in Norway: around 100 of these are savings banks, while the rest are commercial banks. This includes subsidiaries (but not branches) of foreign banks. Around 40 credit institutions have opened branches in Norway; however, only a few operate as full-service banks, and many specialise in equipment financing, typically automobiles. Many credit institutions from European Economic Area (EEA) Member States have provided notification in respect of cross-border services; however, probably only a minority of them regularly provide services in Norway.

The Norwegian banking industry is dominated by two large commercial banks (DNB Bank ASA and Nordea Bank ABP) and two groups of independent savings banks (Eika Group and SpareBank 1 Group). Each savings bank operates independently, but both Eika Group and SpareBank 1 Group have certain joint operations and a common brand. Foreign banks, through branches or cross-border activities, are active, and hold a significant market share of business within the shipping, oil or offshore and mainland industries.

The five largest banks in the Norwegian market (excluding those owned by a public body) measured by balance sheet value are:

a DNB Bank ASA;
b Nordea Bank ABP, Filial i Norge (a branch of Nordea Bank ABP);
c Danske Bank (Norge) (a branch of Danske Bank A/S);
d Handelsbanken (a branch of Svenska Handelsbanken AB (publ)); and
e SpareBank 1 SR-Bank ASA.

1 Richard Sjøqvist and Markus Nilssen are partners and Steffen Rogstad is a senior associate at Advokatfirmaet BAHR AS.

II THE REGULATORY REGIME APPLICABLE TO BANKS

i General

Norway is not a member of the European Union, but, through the EEA agreement, it is committed to implementing all the relevant directives for the finance industry. This means that the free establishment rule applies for EEA institutions wishing to provide services in Norway, and for Norwegian institutions wishing to offer their services within the EEA.

The combination of accepting deposits and providing credit triggers a requirement for a banking licence under Norwegian law. The main regulation applicable to banks can be found in the Act on Financial Undertakings and Financial Groups 2015 (the Financial Undertakings Act). The Financial Undertakings Act is an attempt to consolidate the main financial regulations, which were previously scattered in various pieces of legislation, into one comprehensive act (implementing, inter alia, the Capital Requirements Directive IV (CRD IV), the Capital Requirements Regulation (CRR) and the Bank Recovery and Resolution Directive (BRRD)). The Act regulates the following financial undertakings:

a banks and other credit institutions;
b finance companies;
c holding companies in financial groups;
d payment institutions;
e electronic money institutions; and
f insurance and pension institutions (not discussed in this chapter).

Banks providing investment services or investment fund services are also subject to the Securities Trading Act 2007 (implementing, inter alia, the Second Markets in Financial Instruments Directive), the Alternative Investment Fund Act 2014 (implementing, inter alia, the Alternative Investment Fund Managers Directive) or the Investment Fund Act 2011 (implementing, inter alia, the Undertakings for Collective Investments in Transferable Securities Directives).

A new Anti-Money Laundering Act was enacted with effect from 15 October 2018. The new Act and regulations have provided that the key parts of Norwegian legislation are assumed to be in compliance with the EU's Fourth Anti-Money Laundering Directive and the Financial Action Task Force Recommendations.

A widely discussed subject related to this area is trade with cryptocurrencies. Legislation adopted in 2018 has provided some clarification concerning how the anti-money laundering and anti-terror financing regulations will affect this trade. The Norwegian legislation is aiming to address this, in particular, by imposing a duty to notify the Financial Supervisory Authority of Norway (FSAN) before conducting such business, and that providers are subject to supervision by the FSAN. Furthermore, the Ministry of Finance (MOF) has recently sent on public hearing a proposal on amendments to the anti-money laundering legislation for implementation of the Fifth Anti-Money Laundering Directive. The deadline for submitting comments to the proposal was 23 March 2020.

Finally, all financial undertakings are subject to the Financial Supervision Act 1956.

The FSAN is the main regulator. Its resources come from fees paid by the institutions it supervises and its main purpose is to promote financial stability and a well-functioning market.

The FSAN's instruments are:

a supervision and monitoring;
b licensing;
c regulatory development; and
d information and communication.

ii Deposit taking

Norwegian financial undertakings that wish to take deposits from the public must have a licence as a bank. Non-banking credit institutions may receive repayable funds from the public (other than deposits) by way of the issue of bonds or other comparable securities. EEA credit institutions providing services in Norway based on their home state licence (passporting) may take deposits in Norway if their home state licence allows them to do so.

iii Lending

Lending is a regulated activity, and a licence or a passport is needed. However, Norway has established rules that allow for crowdlending by private individuals if certain criteria are met. Norwegian financial undertakings without a banking licence may grant loans based on a licence as a non-banking credit institution or as a finance company, and will normally fund themselves in the bond market. Typical today are mortgage credit institutions operating in the covered bond market. These are normally owned by banks or savings bank groups, and acquire loan portfolios from the banks.

Investment firms need a separate licence to provide loans in connection with their investment activities.

iv Foreign exchange

Spot foreign exchange trading can be carried out by banks, payment institutions, electronic money institutions and finance companies as well as by foreign passported credit institutions, payment institutions and electronic money institutions, all subject to having an appropriate licence to do so.

Dealings in foreign exchange derivatives can only be carried out by an institution with an investment firm licence.

v Payment services

The Payment Services Directive (PSD1) was fully implemented into the Norwegian legislation in 2010, and regulations implementing the public law parts and the most important private law parts of the PSD2 were implemented on 1 April 2019. The full implementation of PSD2 is expected to happen in connection with the adoption of a new Finance Agreement Act, as further described in Section IV.

vi Investment services

A licence to provide investment services may be granted to banks and limited liability companies.

Banks may obtain a licence in their own name or through subsidiaries. Foreign passported firms may also provide investment services in Norway; see further below.

vii Legal structure of banks

There are two legal structures of banks available: commercial and savings.

Commercial banks have to be organised either as public limited liability companies or private limited liability companies. Pursuant to the Financial Undertakings Act, banks established after 1 January 2016 must be organised as public limited liability companies; however, those established as subsidiaries in a financial group may be organised as private limited liability companies.

Savings banks were originally organised as independent entities without external owners. Hence, their equity capital historically consisted mainly of retained profits from earlier years. Since 1987, savings banks have been entitled to bring in external equity by issuing equity instruments, called equity certificates. These differ from shares in that they do not give holders ownership of a bank's entire equity capital. Moreover, holders have limited voting rights to a maximum of two-fifths in total in the bank's highest body, the general meeting. Around 40 savings banks, including several of the largest ones, have issued such instruments.

All banks must have a total of share capital and other equity capital of at least €5 million.

viii Branches and cross-border services

Foreign banks established within the EEA may establish branches in Norway in accordance with the EU or EEA banking directives. The prime regulator of a foreign branch is its home state regulator, but branches of foreign banks are also regulated by Norwegian rules to a certain extent, pursuant to, inter alia, the Financial Undertakings Act, and supervised by the FSAN pursuant to, inter alia, Regulation No. 1257 of 28 December 1993.

Foreign banks established within the EEA may also provide cross-border services in Norway pursuant to EU or EEA passporting rules. Foreign banks providing cross-border services in Norway are to a lesser degree regulated and supervised by the FSAN.

Banks established outside the EEA must have a Norwegian licence to provide banking services in Norway through a branch. A licence to provide cross-border services is not available for such entities.

III PRUDENTIAL REGULATION

i Relationship with the prudential regulator

Entities under supervision file various reports with the FSAN on which it may comment or raise questions. Communication between the FSAN and an entity under supervision will normally be in the form of written correspondence. The FSAN also has the power to give specific directives to an institution, but this is rarely done, as the supervised entities will normally follow the FSAN's guidance. The FSAN bases its supervision and monitoring of the market on global standards.

From time to time, the FSAN will conduct a physical inspection of a bank, normally with a couple of weeks' notice. The object of such inspection varies, but an evaluation of the bank's ability to monitor risks will normally be a main area of interest, as will money laundering routines. The FSAN divides risks into four categories: credit, market, liquidity and operational.

The instruments available to the FSAN are listed in Section II. The main purpose of the FSAN, according to its strategy document for the period from 2019 to 2022, are to promote and secure financial stability and a well-functioning market through six sub-goals:

a solid and liquid finance institutions;

b robust infrastructure;

c investor protection;
d consumer protection through good information and advice;
e efficient crisis management; and
f prevention of economic crime.

In its strategy, the FSAN has identified the following supervisory priorities:
a macroeconomic supervision;
b solvency supervision of financial institutions;
c supervision of the distribution of loans and trading of pension savings schemes, collective investment vehicles and other financial instruments;
d supervision of financial infrastructure, payment, trade and settlements systems; and
e supervision of compliance with the money laundering regulations.

ii Management of banks

The promulgation of the Financial Undertakings Act implies a modernisation and coordination of the corporate governance requirements of banks, which, inter alia, means that the Norwegian requirements are brought in line with international developments. As a result, certain previously required management structures, such as a committee of representatives and a control committee, are no longer required.

Commercial banks are organised either as public limited liability companies or, if established prior to 2016, as private limited liability companies, and are as such required to have a board of directors and a chief executive officer (CEO). Note, however, that a bank established as a subsidiary in a financial group may still be organised as a private limited liability company.

The general meeting is the highest body of both savings and commercial banks. The general meeting of a commercial bank is governed by the ordinary company laws. In savings banks, at least three-quarters of the members of the general meeting shall be persons who are not employed by the company. The details regarding the election of members to the general meeting in a savings bank shall be set out in the company's articles of association.

Banks with more than 200 employees might have a corporate assembly, if so agreed between the bank and a majority of the employees. The corporate assembly will have tasks such as to elect members of the board of directors and the chair of the board of directors, to supervise the board, the management and the bank's operations, and to decide in cases regarding major investments.

Banks must, as a main rule, have an audit committee, a compensation committee and a risk committee, all consisting of members of the board of directors. The purpose of the audit committee is to support and advise the board of directors with respect to, for example, internal control systems, risk management and auditing of the bank's financial statements. The compensation committee draws up proposals and issues recommendations to the board of directors regarding remuneration, and acts generally in an advisory capacity with respect to remuneration and other important personnel-related matters. The purpose of the risk committee is to support and advise the board in its role as supervisor and governing body of risk and risk control.

In addition, for banks with securities listed on a regulated market in Norway, the Norwegian Code of Practice for Corporate Governance will apply.[2] The Code is based on the comply or explain principle, whereby companies must comply with the Code of Practice or explain why they have chosen an alternative approach.

Banks operating in Norway through a branch are not subject to the regime described above but must nevertheless register a CEO or similar contact person with the Norwegian Business Register and the FSAN, and may also choose to have a Norwegian board of directors.

If a Norwegian branch or subsidiary of a foreign bank is subject to an internal group approval regime, the extent to which the branch or subsidiary may pass on customer information to other members of its company group will depend on the nature of the information. While Norwegian law does not contain an absolute prohibition against such arrangements, any information sharing will be subject to, inter alia, applicable banking confidentiality and data protection rules. Most foreign banks with a presence in Norway operate through a branch, which enables a more efficient flow of information between the branch and its head office. In addition, since banks are subject to strict rules with respect to risk control and capital requirements on a consolidated basis, there is a legitimate need for reporting. The law has been rather unclear on these questions, but the Financial Undertakings Act does explicitly allow for such sharing of information, as set out in Section IV.

As for remuneration policies and practices, new regulations were brought into effect as of January 2015 based on the CRD IV. In accordance with the Directive, it is not possible to award remuneration on more than 100 per cent of the basic salary. The CRD IV does, however, allow for remuneration of up to 200 per cent in some cases for EU Member States, and the MOF has implemented the same approach. The Norwegian remuneration rules are applicable regardless of the size, nature, scope or complexity of institutions. Accordingly, Norwegian regulations are in some ways stricter than those set out in the CRD IV and the European Banking Authority (EBA) guidelines, which includes, inter alia, the principle of proportionality.

iii Regulatory capital and liquidity

Norwegian banks are subject to ongoing capital adequacy requirements, which implement EU directives and regulations based on the Basel III regime. Financial groups are considered on a consolidated basis. In line with the recommendations of the Basel Committee on Banking Supervision, the regulatory approach in the Financial Undertakings Act is divided into three pillars:

a Pillar I – calculation of minimum regulatory capital: banks shall at all times fulfil the own funds' requirements reflecting credit risk, operational risk and market risk. The current requirement is that a bank's own funds shall constitute at least 8 per cent of a calculation basis reflecting such risks. The Common Equity Tier 1 (CET1) capital ratio requirement is at least 4.5 per cent and the Additional Tier 1 capital ratio requirement is at least 6 per cent. Own funds can be in the form of core and supplementary capital. Core capital will typically consist of equity capital, while supplementary capital can be hybrid capital or subordinated loan capital. The capital requirements must be complied with at all times. Banks are obligated to document their fulfilment of the requirements by reporting quarterly to the FSAN;

2 The Code of Practice is issued by the Norwegian Corporate Governance Board: see www.nues.no.

b Pillar II – assessment of overall capital needs and individual supervisory review: banks must, inter alia, have a process for assessing their overall capital adequacy in relation to their risk profile and a strategy for maintaining their capital levels. The FSAN reviews and evaluates these internal capital adequacy assessments and strategies, and it may take supervisory action if not satisfied with the result of an evaluation process; and

c Pillar III – disclosure of information: banks are required to disclose relevant information regarding their activities, risk profile and capital situation.

In addition to the minimum capital standards, Norway has adopted the following buffer standards:

a a capital conservation buffer of 2.5 percentage points in addition to the minimum CET1 capital ratio;

b a systemic risk buffer of 3 percentage points in addition to the minimum CET1 capital ratio and capital conservation buffer. The MOF has notified that this buffer will be increased to 4.5 percentage points from 31 December 2020. This buffer standard is based on structural vulnerabilities and other systemic risks in the Norwegian economy and will accordingly only apply to the banks' exposure in Norway when implemented. Small banks, which calculate capital on the basis of the standard method or internal models, will maintain the systemic risk buffer of 3 percentage points until 31 December 2022. The MOF are of the opinion that this buffer should apply even to foreign banks operating in Norway and will seek to have this approved by the relevant foreign authorities;

c if the financial undertaking is defined as systematically important, it has a buffer of 2 percentage points in addition to a minimum CET1 capital ratio, capital conservation buffer and systemic risk buffer. The MOF has notified that this buffer will be amended to reflect the level of systematic importance. The normal buffer will decrease to 1 percentage point, and the 2-percentage-point buffer will remain only for banks that score at least double on the objective criteria; and

d a countercyclical capital buffer of 2.5 percentage points in addition to the CET1 capital ratio, capital conservation buffer, systemic risk buffer and, if applicable, the buffer for systematically important institutions. As part of an economic package responding to the coronavirus pandemic, the countercyclical capital buffer was reduced from 2.5 to 1 percentage point with immediate effect on 13 March 2020. It is currently not expected that this buffer will be increased again before 2022.

If a financial undertaking does not meet the buffer standards, it is required to develop a plan on how to increase its CET1 capital ratio and cannot pay dividends or make bonus payments without approval from the FSAN.

The capital requirements for banks and other financial institutions in Norway are described in detail in Chapter 14 of the Financial Undertakings Act and the CRR/CRD IV Regulation of 22 August 2014 No. 1097 (as amended) (which implements the capital and liquidity rules in the CRD IV and the CRR). For credit risk and market risk, the calculation basis may be found using either risk weights specified in regulations or in accordance with internal procedures. Operational risk may be calculated using one of three calculation methods: share of average income (basis method), share of income within each business area multiplied by a loss indicator determined by the MOF (template method) or internal measuring methods (foundation or advanced).

Contrary to EU law, Norway did maintain the 80 per cent Basel I floor for banks that calculate capital on the basis of internal models after 31 December 2017. However, this floor was removed when the CRD IV and the CRR were incorporated into the EEA agreement and formally implemented in Norway at the end of 2019. The MOF and FSAN have expressed concern that the removal of the Basel I floor would lower the capital requirements for the applicable banks to an unsatisfactory level. To avoid Norwegian domestic and commercial mortgages becoming subject to decreased capital requirements, the MOF has notified that it will determine temporary floors for average risk weights on such exposures on 20 and 35 per cent, respectively. These floors will be effective for a period of two years from the end of 2020. As with the systemic risk buffer, the MOF is of the opinion that these floors should apply even to foreign banks operating in Norway and will seek to have this approved by the relevant foreign authorities.

Since July 2014, all Norwegian banks have been required to report their liquidity coverage ratio and net stable funding ratio to the FSAN. Local branches of banks incorporated outside Norway are not subject to this regime but are primarily subject to the regime in the jurisdiction of the bank.

iv Recovery and resolution

A Norwegian bank cannot be subject to ordinary insolvency proceedings (e.g., bankruptcy) in the same manner as a Norwegian company or private individual. Instead, banks experiencing financial difficulties will be subject to resolution pursuant to the rules of the BRRD as implemented in Chapter 20 of the Financial Undertakings Act. The BRRD was implemented in Norway on 1 January 2019. During 2019, the FSAN has determined the minimum requirement for own funds and eligible liabilities (MREL) for eight Norwegian banks. According to the FSAN's decisions, the MREL requirements shall be fully complied with from 31 December 2022. The FSAN has signalled that it will continuously consider determining (or whether to determine) MREL for other Norwegian banks as well. The BRRD II has not yet been implemented in Norway, but the MOF has asked the FSAN to prepare a proposal for such implementation. The proposal shall be ready in October 2020. The timing for implementation is, however, uncertain.

A notable feature of the Norwegian banking regulations is the generous deposit guarantee scheme, which currently covers deposits of up to 2 million kroner. In connection with the implementation of the BRRD and the Deposit Guarantee Scheme Directive, both in January 2019, the EU has exerted pressure to lower the deposit guarantee scheme coverage to the EU level of €100,000. Nevertheless, the Norwegian guarantee coverage level has been upheld, and the Parliament Standing Committee on Finance and Economic Affairs has requested the government to continue talks with the EU to maintain the Norwegian guarantee level. Hence, it is still uncertain whether the Norwegian guarantee coverage level will be lowered or not.

IV CONDUCT OF BUSINESS

The Finance Agreements Act 1999 (which implements the Consumer Credit Directive) imposes certain conduct of business obligations upon banks, especially when dealing with consumers. In short, the Act provides that banks have a general duty to properly inform their clients, often in writing, and to ensure that a client has understood the information he or she has received. The Act also sets certain limits with respect to the kinds of materials and procedural provisions that can be included in a financial agreement (e.g., a loan agreement). A great number of the Act's provisions can be derogated from in a bank's dealings with business customers, but the Act is mandatory with respect to dealings with consumers.

Pursuant to Section 4 of the Finance Agreements Act, trade organisations for banks, insurance companies and other financial institutions in Norway have, with the Norwegian Consumer Ombudsman, established a mediation board for consumer complaints with respect to banks and banking products. However, the mediation board's resolutions are non-binding on the parties.

There have been lengthy discussions regarding a new Finance Agreement Act. The Ministry of Justice and Public Security sent a draft of a new act on public hearing in 2017. The draft received considerable criticism from various interested parties. The Minister of Justice has previously stated to the Parliament that the Ministry of Justice and Public Security aimed to issue a proposal to Parliament for a new Finance Agreement Act during 2019; however, the Minister has recently informed the Parliament that the work on the proposal has been delayed, and that it will be issued in early 2020.

Norwegian banking confidentiality rules are set out in the Financial Undertakings Act Sections 9-6, 9-7 and 16-2. The main rule is that, in the absence of a statutory exception, any non-public information concerning a bank or its customers that the bank's officers, employees or anyone who carries out an assignment for the bank, such as external auditors and lawyers, gain knowledge about in their position within the bank, is subject to a duty of confidentiality. The confidentiality obligation is directed both at the individual and the bank itself. In principle, the obligation extends to internal disclosure within the bank, but exceptions are available with respect to internal disclosure on a need-to-know basis.

Several exceptions apply to this main rule. Disclosure can be made without regard to the confidentiality obligation if:

a the customer consents to disclosure;

b disclosure is needed to fulfil requirements for reporting, control and internal governing within a banking group;

c the disclosure is made to another finance institution pursuant to specific rules in the Financial Undertakings Act;

d the disclosure is required pursuant to the Money Laundering Act 2018 or similar regulations;

e the disclosure is requested by the police or prosecuting authorities;

f the disclosure is made in a civil or criminal court proceeding pursuant to a decision by the court;

g the disclosure is made to certain other authorities, such as tax authorities, competition authorities, the FSAN or the Norwegian stock exchange, and in accordance with specific regulations; or

h to a certain extent, the disclosure is for the purpose of establishing a central client register in a banking group.

This list is not exhaustive, and illustrates that the main rule of absolute confidentiality is subject to quite a few exceptions. A breach of the confidentiality obligation is a criminal offence punishable by a fine or, if considered a serious offence, imprisonment for up to three years.

V FUNDING

The main funding sources for Norwegian banks are deposits from customers, which amount to around 50 per cent of funding and the bond market (both domestic and international). A number of Norwegian banks have also established euro medium-term note programmes.

Another funding source is the raising of regulatory capital (see Section III.iii). Banks also fund themselves through credit lines with domestic or foreign third-party banks.

An increasingly important source of funding is the covered bond market. The Norwegian covered bonds legislation allows banks to set up specialised mortgage credit institutions, which in turn issue covered bonds to investors. The bonds are backed by a pool of specific types of mortgages (usually residential) or public sector loans acquired by the issuing mortgage credit institutions. The mortgage credit institution must be licensed as such, but it does not necessarily have to be affiliated with the bank from which it has acquired the mortgages.

Only the largest Norwegian banks have access to the international capital markets, and Norway's largest bank, DNB Bank ASA, is an important source of funding for smaller banks. Norges Bank (the Norwegian central bank) offers certain funding to banks on a secured basis, and also acts as lender of last resort.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

The shares of a commercial bank and the equity certificates of a savings bank are freely transferable, unless the bank's articles of association state otherwise. There are no limitations under Norwegian law on the rights of non-residents or foreign owners to hold and vote for a commercial bank's shares or a savings bank's equity certificates. The Financial Undertakings Act does, however, contain non-discriminatory ownership control rules. Pursuant to these rules, an acquisition of ownership in a bank that represents 10 per cent or more of the sum of the capital or the votes, or that otherwise gives the right to exercise significant influence on the management of the bank and its business, requires prior authorisation from the FSAN and the MOF. The same rules apply to holding companies of banks.

Ownership by closely committed persons is consolidated, and convertible loans are deemed to be included in a person's holding.

Whether authorisation shall be granted is regulated in the Financial Undertakings Act and pertinent regulations, the main consideration being whether the acquirer is deemed fit and proper to exercise such influence over the financial undertaking as the qualified holding will enable. Additionally, the MOF must make an assessment as to whether the acquisition is sound in light of the financial undertaking's current and future business. The application will contain, inter alia, information about the following:

a current and proposed holding of shares;

b the acquirer's other business and available financial resources;

c ownership in other financial undertakings; and

d the purpose of the acquisition. If the financial undertaking in question will become a subsidiary, a plan for the organisation and activities of the group must be submitted.

An application for authorisation shall be decided within 60 business days of the FSAN having confirmed that it has received the application, but this may be prolonged if the MOF or the FSAN deem that additional information is necessary or desirable in connection with the fit and proper assessment.

The above applies not only to acquisitions resulting in a qualified holding, but also to acquisitions increasing an (already) qualified holding to a total holding of more than 20, 30 or 50 per cent, as the case may be.

Banks and other financial undertakings are subject to limitations on their ability to grant security for their assets. As a main rule, the FSAN's permission is necessary for a bank to grant security for assets representing more than 10 per cent of its core capital. Exceptions apply to security granted for real estate, as well as security transactions entered into in accordance with market practice and on standard arm's-length terms.

In relation to an acquisition of a commercial bank, the bank will be restricted under Norwegian corporate law from providing capital or security in support of the acquisition.

In December 2018, the MOF ordered a study on the Norwegian ownership rules. The mandate of the study was, inter alia, to consider whether the Norwegian law on ownership for banks is in accordance with EEA law. The report, which was submitted to the MOF in April 2019, points to a number of potential issues in the current Norwegian ownership rules. The MOF has, however, not yet commented on how the report will be further handled.

ii Transfers of banking business

Transfers of customers' deposits would, as a starting point, require the consent of each customer in accordance with ordinary rules relating to the transfer of debtor positions. Even if consent is given, it is at present technically impossible to transfer a customer's unique bank account from one bank to another. This is due to the fact that Norwegian bank account numbers are assigned systematically, and serve a special identification function: for instance, the first four digits of an account number are used to identify the bank with which the account is registered. In other words, the account number belongs to the bank and not to the customer. It has been proposed to enact legislation that would enable customers to retain their account number when changing banks, but this has yet to be resolved.

With respect to loans, Section 45 of the Finance Agreements Act provides that banks may transfer loans without the borrowers' explicit consent only to other financial undertakings (as defined in the Financial Undertakings Act), unless otherwise agreed. Transfers of loans from banks to non-financial undertakings require the borrowers' consent. Until 2015, the Norwegian financial legislation contained special securitisation rules that allowed for the transfer of loans from a financial institution to a non-financial institution without active consent from the borrowers in connection with a securitisation transaction. However, these rules were abolished when the Financial Undertakings Act came into effect on 1 January 2016. These rules may be amended in connection with a future implementation of the Securitisation Regulation. A working group established by the MOF has proposed amendments to Norwegian law to implement the Securitisation Regulation. A public hearing of their proposal took place during the autumn of 2019.

The Financial Undertakings Act also contains a provision regarding the transfer of substantial portfolios of loans or other receivables by banks and other financial undertakings. If the portfolio to be transferred is deemed substantial in light of the involved companies' business, consent from the MOF is required to effect the transfer. The exact scope of application of the provision has yet to be clarified.

If a bank's business is transferred by way of a merger or demerger in accordance with the applicable Norwegian company legislation, customer consent will not be necessary with respect to loans or deposits that, as a result of the merger, have been transferred to a new legal entity. The acquiring party in a merger or demerger is considered to automatically assume all rights, obligations and liabilities of the acquired party without the need for customer consent. However, mergers and demergers of banks must be applied for and are subject to the consent of the Norwegian regulator.

VII THE YEAR IN REVIEW

No major changes took place in the Norwegian banking market in 2019. The Norwegian banking industry retained strong profit levels. Both pre-tax profits and return on equity rose as compared to 2018 (as at September 2019). Moreover, the overall net interest income of the banks has increased, while operating expenses have decreased as compared to 2018. This is partly due to the industry's focus on digitalisation and streamlining, and Norwegian banks are among the most efficient in Europe according to figures from the EBA.

Moreover, the capital adequacy of the Norwegian banks has been further strengthened, and the banks' combined own equity was at 16.2 per cent as at September 2019. This increase is mainly because of a decline of the average risk weights due to high growth in lending with low risk weight, and the implementation of internal ratings-based models.

In September 2019, the European Systemic Risk Board published a warning to the Norwegian authorities stating that the high level of household debt combined with high real estate prices is the biggest risk for financial stability in Norway. The MOF has enacted a new regulation that mainly extends the temporary regulation imposing stricter requirements for mortgage lending until 31 December 2020, with some alterations.

Furthermore, there have been worries related to high levels of unsecured consumer loans in which the default ratios are much higher than for other loans. By September 2019, the level of defaulted loans was at 9.4 per cent for banks included in an FSAN survey comprising banks that offer such loans, as compared to 0.9 per cent of all banks' total loans. An interim regulation on unsecured consumer loans came into effect on 12 February 2019 and will be in effect until 31 December 2020. The regulation requires financial institutions to undertake more extensive assessments of their customers when distributing unsecured loans to consumers. Accordingly, the banks must, inter alia, ensure that a customer can bear an interest increase of 5 percentage points, and that the total debt does not exceed five times his or her annual salary. Moreover, amortisation of unsecured loans must be made monthly, and with not more than a five-year amortisation profile.

The first debt registers became operational during 2019. These will give the banks more comprehensive information regarding the total debt of the customer and will improve the banks' credit approval processes.

There was considerable attention paid to various money laundering issues during 2019.

Lastly, the Brexit process has been a significant issue throughout the year.

VIII OUTLOOK AND CONCLUSIONS

We expect a number of legislative changes, but no major structural changes, to the Norwegian banking industry in 2020.

First, we expect that the government will propose a new Finance Agreement Act during 2020 and that this new Act will comprise, inter alia, the above-mentioned interim regulation on unsecured customer loans. Second, Brexit will continue to be a subject of attention. Although transitional agreements between the EU/EEA and UK have been put in place for 2020, nothing is certain regarding the outcome of the discussions between the EU and UK regarding a long-term agreement. The financial institutions will monitor the discussions on the arrangements between the EU/EEA and UK after the transitional period and will put in place plans for the various possible outcomes.

Furthermore, we expect that the report on the Norwegian ownership rules will be discussed.

The FSAN has been instructed by the MOF to prepare a proposal for implementation of the EU 'banking package' (CRD V, CRR II and BRRD II) into Norwegian law. The proposal shall be presented to the MOF by the end of October 2020.

Moreover, there has been increasing attention on the impact of climate change and the transition to a low-carbon society on the financial market and financial institutions. The MOF has stated that the need for changes to the Norwegian legislation will be considered in the light of how the recommendations published by the Task Force on Climate-related Financial Disclosures are being adapted by the market, as well as on the basis of new legislation in the EU as a part of the follow-up of the action plan on financing sustainable growth.

Lastly, the MOF has recently received a proposal from the FSAN regarding implementation of the EU covered bonds legislation. The MOF has previously stated that the intention is to implement the legislation at the same time as the EU.

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