The Banking Regulation Review

Fourteenth Edition

Editor
Jan Putnis

The Law Reviews

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Jan Putnis

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PREFACE

This edition of *The Banking Regulation Review* is emerging during significant turbulence in the banking sector following the failure of two medium-sized US banks and the merger – yet to be completed at the time of writing – between the UBS and Credit Suisse Groups in order to save the latter. Whatever happens next, it is clear that business strategy, prudential regulation and resolution strategies in the banking sector will fall under further scrutiny in all major banking centres as a result of these events. As a result, a sector that hitherto had, on the whole, been doing a reasonable job of recovering from the stresses that the covid-19 pandemic imposed in many countries has, in a matter of weeks, been thrown into a new period of regulatory uncertainty.

Up until these market shocks, banks had been preparing for a range of regulatory changes, many of which have been a very long time coming, including the implementation of Basel III. Other items on the reform agenda included the ongoing focus on environment, social and governance (ESG) considerations, particularly climate-related initiatives; greater focus on consumer outcomes in a number of jurisdictions (including the introduction in 2023 of the UK's 'consumer duty'); the re-examination of some post-financial crisis reforms; still greater focus on the quality of banks' controls over outsourcing and other third-party service arrangements; continued regulatory activism in relation to actual and suspected failings in banks' anti-money laundering systems and controls; further moves to encourage 'open banking'; and the gradual move towards the regulation of activities relating to cryptoassets. The UK government, in particular, has unveiled a complex set of post-Brexit reform proposals which, even though not particularly radical, will set in train real divergence of the UK from the EU in banking regulation. In addition, the prospect of central banks issuing digital currencies in the future is now beginning to get the attention it deserves among banks.

All of these items remain on the agenda, but it is hard to see how there will not now also be renewed focus on the causes of bank distress. Bank resolution authorities will be looking carefully again at their powers to act in a crisis and barriers that may exist to the use of those powers. This is further proof that there is never an ideal moment to publish a book such as this as there always seems to be an important set of legal, regulatory or market developments of uncertain impact just around the corner. Yet that is also what makes banking regulation so interesting.

This edition of *The Banking Regulation Review* covers 31 countries and territories in addition to the usual chapters on international initiatives and the European Union. My thanks go to the authors for continuing to prepare informative chapters while running busy practices advising their clients. They make this book the useful overview and guide to banking regulation around the world that it is.

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Chapter 23

NORWAY

Markus Nilssen, Vanessa Kalvenes, Marcus Cordero-Moss and Sondre Kyte[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. At the time of writing, there are 111 banks incorporated in Norway: 87 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 Markus Nilssen is a partner, Vanessa Kalvenes is a managing associate, and Marcus Cordero-Moss and Sondre Kyte are associates at Advokatfirmaet BAHR AS.

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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 implement all relevant EU banking and financial services legislation. This means that the principles of freedom of establishment and freedom to provide services apply to EEA institutions wishing to provide services in Norway (through a branch or on a direct cross-border basis), as well as Norwegian institutions wishing to offer their services in other countries within the EEA.

The combination of accepting deposits and providing credit triggers a requirement for a banking licence under Norwegian law. The main regulations applicable to banks can be found in the Financial Undertakings Act 2015. The Financial Undertakings Act transposes into national law EU rules on capital requirements and resolution, including Capital Requirements Directive (CRD V),[2] the Capital Requirements Regulation (CRR II)[3] and the Bank Recovery and Resolution Directive (BRRD II).[4]

The Financial Undertakings Act applies to 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 (MiFID II)),[5] the Alternative Investment Fund Act 2014 (implementing, inter alia, the Alternative Investment Fund Managers Directive)[6] or the Investment Fund Act 2011 (implementing, inter alia, the Undertakings for Collective Investments in Transferable Securities Directive).[7]

The Anti-Money Laundering Act 2018 and Norwegian Anti-Money Laundering Regulation 2018 transposed the fifth Anti-Money Laundering Directive (AMLD V)[8] into national law and took in recommendations of the Financial Action Task Force.

A widely discussed subject related to this area is trade with cryptocurrencies. Legislation adopted in 2018 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 this business; and that providers are subject to supervision by the FSAN. Subsequently, fit and proper requirements for persons holding management functions in certain cryptoasset businesses have been introduced.

2 Directive (EU) 2019/878.
3 Regulation (EU) 2019/876.
4 Directive (EU) 2019/879.
5 Directive 2014/65/EU.
6 Directive 2011/61/EU.
7 Directive 2009/65/EC.
8 Directive (EU) 2018/843.

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Banks' handling of personal data is subject to the provisions of the General Data Protection Regulation (GDPR),[9] which was implemented in Norwegian law through the Act on the Processing of Personal Data 2018.

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

The FSAN is the main regulator. It finances its operations 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 main tasks are:

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

ii Deposit taking

Norwegian financial undertakings must have a banking licence to take deposits from the public. Non-banking credit institutions may receive repayable funds from the public (other than deposits) by way of issuing bonds or other debt securities. EEA credit institutions providing services in Norway based on their home state licence (passporting) may take deposits in Norway, provided 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. At the time of writing, Norway has not implemented the EU Crowdfunding Regulation.[10]

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 such financial undertakings normally fund their activities through debt capital markets. Mortgage credit institutions issuing covered bonds are important sources of funding for Norwegian banks. These are typically owned by banks or savings bank groups and use bond proceeds to acquire loan portfolios from the banks or grant loans directly to end consumers.

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.

9 Regulation (EU) 2016/679.
10 Regulation (EU) 2020/1503.

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v Payment services

The Payment Services Directive (PSD)[11] was fully implemented into Norwegian law in 2010, and regulations implementing the public law parts and the most important private law parts of the second Payment Services Directive (PSD II)[12] were implemented on 1 April 2019. PSD II was fully implemented into Norwegian law in connection with the entry into force of a new Finance Agreements Act on 1 January 2023.

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

Norwegian banks can be organised as either commercial banks or savings banks.

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, namely 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 these instruments.

Both commercial banks and saving banks must at all times have a total 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 CRD V and MiFID II. The main regulator of a foreign branch is its home state regulator but branches of foreign banks are also subject to Norwegian rules to a certain extent, pursuant to, inter alia, the Financial Undertakings Act, and supervised by the FSAN, pursuant to, inter alia, the Regulation on Supervision of Financial Undertakings Established in Another EEA State 1993.

Foreign banks established within the EEA may also provide cross-border services in Norway pursuant to passporting rules securing the freedom to provide services. 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. This includes UK banks as a result of Brexit and applies

11 Directive 2007/64/EC.

12 Directive (EU) 2015/2366.

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irrespective of whether a UK bank had established a branch in Norway prior to Brexit. A licence to provide cross-border services is not available for banks established outside of the EEA.

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 has the authority to impose binding instructions on supervised entities; however, this is rarely done as the supervised entities generally comply with 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 purpose of this inspection varies, but an evaluation of the bank's ability to monitor risks will normally be a main area of interest, as will anti-money laundering routines. In line with applicable prudential legislation, the FSAN divides risks into the following categories: credit, market, liquidity, operational, funding, debt ratio and other risks relevant to the bank. The FSAN's main tasks are listed in Section II.i.

ii Management of banks

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). A bank established as a subsidiary in a financial group may also 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 also 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.

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In addition, for banks with securities listed on a regulated market in Norway, the Norwegian Code of Practice for Corporate Governance will apply.[13] The Code is based on the principle of 'comply or explain', whereby companies must comply with the Code of Practice or, if they have chosen an alternative approach, explain why.

Foreign 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 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 and the purpose of the disclosure. While Norwegian law does not contain an absolute prohibition against these arrangements, any information sharing will be subject to, inter alia, applicable banking confidentiality and data protection rules, including the GDPR. 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, because 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 Financial Undertakings Act explicitly allows this sharing of information provided that certain conditions are fulfilled, as set out in Section IV below.

As for remuneration policies and practices, the Norwegian regulations are based on CRD IV. The FSAN has confirmed that it will apply and observe European Banking Authority (EBA) Guidelines on sound remuneration policies.[14] In accordance with CRD IV, as a starting point, institutions are not allowed to award variable remuneration that exceeds the fixed remuneration. CRD IV does, however, allow for remuneration of up to 200 per cent of the fixed remuneration provided that certain conditions are fulfilled, and the Ministry of Finance (MOF) has implemented the same approach. For the CEO and other members of a bank's senior management team, the variable remuneration may not exceed 50 per cent of the fixed remuneration. The current Norwegian remuneration rules apply regardless of the size and complexity of an institution or the size of the employee's variable remuneration. Accordingly, Norwegian regulations are in some ways stricter than those set out in CRD IV and the EBA Guidelines, which include 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 must satisfy the requirements 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 1 – calculation of minimum regulatory capital: banks shall at all times fulfil own funds requirements, which reflect each bank's exposure to credit risk, operational risk and market risk. A bank shall hold own funds equalling at least 8 per cent of its risk-weighted assets (RWA). At least 4.5 per cent of the own funds requirement must

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

14 EBA/GL/2021/04.

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be met with Common Equity Tier 1 (CET1) and at least 1.5 per cent with Additional Tier 1. The remaining 2 per cent may be met with Tier 2. Banks are obligated to report their capital ratios to the FSAN on a quarterly basis;

b Pillar 2 – banks must annually perform a review and assessment of own risks, including the need for capital (ICAAP) and liquidity (ILAAP) to cover these risks. The FSAN shall review and evaluate each bank's ICAAP/ILAAP and the results of these processes and will, on the basis of this review, set an individual Pillar 2 requirement (P2R) for each bank. The starting point is that banks must meet the P2R with the same composition of own funds as required under the Pilar 1 requirement; however, the FSAN may require the P2R to be met with a higher ratio of CET1; and

c Pillar 3 – disclosure of information: banks are required to disclose relevant information regarding their activities, risk profile and capital situation.

In addition to the minimum capital requirements under Pillar 1 and Pillar 2, Norway has adopted the following buffer requirements, which must be met with CET1:

a a capital conservation buffer of 2.5 per cent of RWA;

b with effect from 31 December 2020, a new systemic risk buffer of 4.5 per cent of RWA. The systemic risk buffer requirement is based on structural vulnerabilities and other systemic risks in the Norwegian economy and, accordingly, only applies to banks' exposures in Norway. A transitional rule provides that small banks, which in this context means banks measuring credit risk on the basis of the standardised approach or the foundation internal ratings-based (IRB) approach, shall continue to apply the previous systemic risk buffer requirement of 3 per cent until 31 December 2023 for all exposures. The intention is for the systemic risk buffer requirement of 4.5 per cent to apply equally to foreign banks' exposures in Norway;

c if the financial undertaking is deemed to be systematically important, it will be subject to an additional buffer requirement between 1 and 3 per cent of RWA, depending on the degree of systemic importance; and

d a countercyclical buffer of 2 per cent of RWA to banks' exposure in Norway. With effect from 31 March 2023, the countercyclical buffer is increased to 2.5 per cent.

If a financial undertaking fails to meet the buffer requirements, it is required to prepare a plan on how to increase its CET1 capital ratio and is automatically restricted from paying dividends, bonuses or coupons on Additional Tier 1 capital without prior approval from the FSAN.

The capital requirements for banks and other financial undertakings in Norway are described in detail in Chapter 14 of the Financial Undertakings Act and the CRR/CRD IV Regulation 2014 (which implements the requirements on capital adequacy and liquidity in CRD V and CRR II into Norwegian law). The regulations on capital requirements constitute a complex framework that describes in detail how financial undertakings must calculate RWA for credit risk, market risk and operational risk. The requirements for calculating RWA for credit risk and market risk allow banks to use different approaches, some of which may only be used with the FSAN's approval (IRB).

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 where they reside.

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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 BRRD as implemented in Chapter 20 of the Financial Undertakings Act. BRRD was implemented in Norway on 1 January 2019. During 2019 and 2020, the FSAN determined the minimum requirement for own funds and eligible liabilities (MREL) for 14 Norwegian banks. The recapitalisation amount of MREL shall be met with subordinated liabilities (i.e., non-preferred senior debt or capital of higher quality). Following the implementation of BRRD II into Norwegian law, a cap on how much of the recapitalisation amount must be met with subordinated liabilities has been introduced. The FSAN has decided that, for banks that have received an MREL requirement, the subordination requirement shall be fully complied with from 1 January 2024. On 1 July 2021, the Bank Creditor Hierarchy Directive[15] was transposed into Norwegian law.

A notable feature of 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 BRRD and the Deposit Guarantee Scheme Directive (DGSD),[16] 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; however, it is still uncertain whether the Norwegian guarantee coverage level will be lowered to align the coverage with the DGSD, in particular if the DGSD is incorporated into the EEA Agreement.

IV CONDUCT OF BUSINESS

On 1 January 2023, the new Finance Agreements Act 2020 entered into force, replacing the Finance Agreements Act 1999. The Finance Agreements Act 2020 implements (among others) the Consumer Credit Directive,[17] PSD II and the Mortgage Credit Directive[18] into Norwegian law, and 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 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 3-54 (1) of the Finance Agreements Act 2020, 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.

15 Directive (EU) 2017/2399.
16 Directive 2014/49/EU.
17 Directive 2008/48/EC.
18 Directive 2014/17/EU.

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Further, the Finance Agreements Act 2020 contains new preventive measures to avoid debt servicing issues, particularly among consumers by imposing an obligation on lenders to reject an application for credit if certain criterions are met. The Act also introduces new protective measures against fraud and implements changes as a result of PSD II.

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 one of the following criteria is met:

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 Anti-Money Laundering Act 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 Oslo 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 non-exhaustive list illustrates that the main rule of absolute confidentiality is subject to multiple 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 two main funding sources for Norwegian banks are deposits from customers (which amount to approximately 45 per cent of banks' total 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 important source of funding for Norwegian banks 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

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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 acquires 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. The central bank of Norway 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, which transpose the Acquisitions Directive[19] into national law. Pursuant to these rules, an acquisition that results in direct or indirect ownership of a bank that represents 10 per cent or more 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 (each a qualifying holding), requires prior authorisation from the FSAN or the MOF. Ownership by close associates is consolidated. The same rules apply to holding companies of banks.

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 this influence over the financial undertaking as the qualifying 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 to acquire a qualifying holding in a bank 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 qualifying holding of 10 per cent, but also to acquisitions increasing an (already) qualifying holding to a total holding of more than 20 per cent, 30 per cent or 50 per cent, as the case may be.

In relation to the ownership control rules, the MOF, for many years, has maintained an administrative practice whereby no single shareholder is, as a main rule, allowed to own more than 20 per cent to 25 per cent of the total shares in Norwegian banks. This practice

19 Directive 2007/44/EC.

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has been followed by the MOF when exercising discretion in its application of the ownership control rules. The government has stated that the administrative practice serves two main purposes: (1) to reduce the risk of misuse of ownership power; and (2) to reduce the excessive risk incentives inherent in banks with concentrated ownership structures. In recent years, the administrative practice has come under pressure from both the European Free Trade Association Surveillance Authority (ESA) and the *Netfonds* case. On 3 March 2021, the appeals court[20] ruled in favour of the government, reaching the same conclusion as the MOF and contradicting the court of first instance. The ruling was appealed to the Supreme Court, but the Supreme Court decided not to try the case. The appeal court's ruling is thus legally binding. Following the Supreme Court's decision, the ESA issued a letter of formal notice to Norway in September 2022 over its incorrect implementation and application of EEA law as a result of the administrative practice for restricting ownership in credit institution. A letter of formal notice is the first step in an infringement procedure against Norway. The Norwegian Government has two months to express its views after receiving such a formal notice before the ESA decides whether to take the cases further. At the time of writing, it is unknown whether the ESA has decided to take this case further.

Banks and other financial undertakings are subject to limitations with respect to granting security over their assets. As a main rule, the FSAN's permission is necessary for a bank to grant security over assets representing more than 10 per cent of its CET1 and Additional Tier 1 capital. Exceptions apply to security granted over real estate, as well as collateral posted in connection with interest rate swaps or securities lending in accordance with market practice and on arm's-length terms.

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.

With respect to loans, Section 2-13 of the Finance Agreements Act 2020 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 and such consent is valid for 30 days, meaning that a transfer of loan must occur at the lates 30 days following the debtor's consent. Until 2015, the Norwegian financial legislation contained special securitisation rules that allowed the transfer of loans from a financial institution to a non-financial institution without the explicit consent of 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. On 23 April 2021, the Parliament enacted legislation transposing the Securitisation Regulation[21] into Norwegian law. At the time of writing, the timing of the implementation is unknown. The new legislation entails that sale of loans to a special purpose entity as part of a securitisation transaction will be fully exempt from the consent requirement in Section 2-13 of the Finance Agreements Act.

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, the consent of the MOF is required to effectuate the transfer.

20 LB-2018-141762.

21 Regulation (EU) 2017/2402.

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If a bank's business is transferred by way of a merger or demerger in accordance with 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 are subject to the consent of the Norwegian regulator.

VII THE YEAR IN REVIEW

The Norwegian economy is a small and open economy which is easily affected by global macroeconomic events and developments. Energy prices have soared during 2022, which in combination with global supply challenges for several categories of goods contributed to unusually high inflation both in Norway and abroad. However, Norway's annual inflation rate was lower than in most other European countries in 2022.

Since June 2022, the Norwegian Central Bank has increased the policy rate from 0.75 per cent to 3 per cent and has flagged that, based on its current assessment of the outlook and the balance of risks, the policy rate will most likely be further increased to 3.5 per cent by the end of summer 2023. Norwegian banks have followed suit and increased their interest rates on loans.

In recent years, low interest rates, low inflation, higher house prices, a favourable tax regime and increased disposable income for households in Norway have led to continued strong growth in demand for real estate, and consequently loans, especially in the residential mortgage market. The growth in demand for loans over recent years, especially in the residential mortgage market, has led to significant growth in the levels of indebtedness. High levels of household debt relative to income combined with continued growth in interest levels represent the biggest risk for financial stability in Norway, in particular as the vast majority of Norwegian residential mortgage loans carry floating rates. Concerns have also been raised over the high outstanding levels of unsecured consumer debt with higher default rates compared to other types of loans. However, stricter rules on consumer lending and the introduction of debt registers, which provide banks and other financial undertakings with aggregate information on loan applicants' debt levels, seem to have resulted in sounder credit practices. Norwegian banks have also proved their resilience through the covid-19 pandemic and the economic and financial uncertainty caused by the geopolitical tensions in 2022.

Compared to the other Scandinavian countries, the Norwegian banking market remains fragmented with many local savings banks. Over recent years we have seen a consolidation trend among Norwegian savings banks and we expect this trend to continue for the coming years.

Two key occurrences in 2022 were the implementation of the Covered Bond Directive into Norwegian law in July 2022 and the implementation of BRRD II, CRR II and CRD V into Norwegian law in June 2022. Finally, on 1 January 2023, a new Finance Agreement Act, implementing the private law parts of (among others) PSD II and the Mortgage Credit Directive, as well as a new act on Sustainable Finance, incorporating both the Taxonomy Regulation[22] and the Disclosure Regulation[23] entered into force.

22 Regulation 2020/852.

23 Regulation (EU) 2019/2088.

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VIII OUTLOOK AND CONCLUSIONS

In 2023, we expect some legislative changes, including the implementation of the Securitisation Regulation and the Crowdfunding Regulation into Norwegian law. In addition, the MOF submitted a legislative proposal for a Loan Intermediation Act, which (among others) implements the public law aspects of the Mortgage Credit Directive.

Finally, as mentioned above, the central bank of Norway has flagged that, based on its current assessment of the outlook and the balance of risks, the policy rate, which at end of March 2023 is at 3 per cent, will most likely be raised to 3.5 per cent by the end of summer 2023.

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Appendix 1

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