

Covered Bonds Issuance Act (SFS 2003:1223)

Issued: 18 December 2003, came into force 1 July 2004

Implemented changes: through SFS 2007:561

Chapter 1 Introductory provisions

Scope of the Act

Section 1 This Act contains provisions governing the right of Swedish banks and credit market undertakings to issue covered bonds.

Definitions

Section 2 For the purposes of this Act, the following words and expressions shall have the following meanings:

issuing institution: A bank or credit market undertaking that has been granted a licence to issue covered bonds, in accordance with Chapter 2, Section 1,

covered bonds: bonds or other comparable debt instruments that have a priority right in the issuing institution's cover pool,

substitute collateral: assets that may be included in the cover pool, in accordance with Chapter 3, Section 2,

derivative agreements: agreements entered into, for the purpose of achieving balance between the financial terms and conditions governing assets in the cover pool and the corresponding terms and conditions for the covered bonds, between an issuing institution and any of the following:

1. the Swedish State, a Swedish municipality or comparable entity,
2. the European Communities or any of the foreign states or central banks as per the regulations supported by Chapter 6, Section 3, Item 1,
3. any foreign local authority or comparable entity that has the authority to collect taxes, as per the regulations supported by Chapter 6, Section 3, Item 1,
4. Sveriges Allmänna Hypoteksbank (General Mortgage Bank of Sweden), a credit institution or a securities company licensed in accordance with Chapter 2, Section 2, Paragraphs 2 and 8 of the Securities Market Act (SFS 2007:528),
5. a local authority or comparable entity in any of the foreign states as per the regulations supported by Chapter 6, Section 3, Item 1,

6. a foreign credit institution in any of the foreign states as per the regulations supported by Chapter 6, Section 3, Item 1,

7. international development banks as per the regulations supported by Chapter 6, Section 3, Item 1, or

8. other parties which, in accordance with the regulations supported by Chapter 6, Section 3, Item 1, are considered to be no more hazardous than those entities stated in 1-7 and that fulfil the other requirements included in the regulations,

cover pool: loans, substitute collateral and, in accordance with Chapter 4, Section 4, registered funds in which the bondholders and the issuing institution's contracting parties in derivative agreements have a priority right in accordance with the provisions of this Act and the Rights of Priority Act (SFS 1970:979),

bank: a Swedish banking corporation, a Swedish savings bank or a Swedish member bank, and

credit market undertaking: a Swedish limited liability company or a Swedish co-operative association that has obtained a licence to operate a financing business, in accordance with the Swedish Act on Banking and Financing Activities SFS (2004:297).

Chapter 2 Conditions for licences, etc.

Licence requirement

Section 1 Banks and credit market undertakings may issue covered bonds pursuant to a licence granted by Finansinspektionen (the Swedish Financial Supervisory Authority). A licence shall be granted provided that:

1. the articles of association, by-laws or regulations accord with this Act,
2. there is reason to assume that the planned operations will be conducted in accordance with the provisions of this Act and other statutes governing the operations,
3. previously issued bonds and other comparable debt instruments that have been issued in order to finance loans of the type which may be included in the cover pool, are converted into covered bonds or administered in an equivalent manner with respect to the creditors, in accordance with a plan approved by Finansinspektionen, and
4. the bank or credit market undertaking provides a financial plan showing that its financial situation is sufficiently stable such that the interests of other creditors are not jeopardised.

The financial plan referenced to in item 4 of the first paragraph (above) must include an auditor's statement substantiating the report.

Protected denotation

Section 2 The denotation "covered bonds" may only be used to describe those debt instruments that are covered by this Act.

Chapter 3 Operations of the issuing institution

Loans permitted in the cover pool

Section 1 The cover pool may be comprised of the following:

1. loans that have been granted against a pledge over real property intended for residential, agricultural, office or commercial purposes, against a pledge over a site leasehold intended for residential, office or commercial purposes, against a pledge over tenant-owner rights or against corresponding foreign securities (mortgage loans), provided that the loans fulfil all requirements stated in Sections 3-7, and
2. loans in respect of which the following borrowers or guarantors are liable (public loans):
 - a) the Swedish State, a Swedish municipality or comparable entity,
 - b) the European Communities or any of the foreign states or central banks as per the regulations supported by Chapter 6, Section 3, Item 4,
 - c) any foreign local authority or comparable entity that has the authority to collect taxes, as per the regulations supported by Chapter 6, Section 3, Item 4, and
 - d) other parties, which, in accordance with the regulations supported by Chapter 6, Section 3, Item 4, are considered to be no more hazardous than those entities stated in a-c and that fulfil the other requirements included in the regulations.

Mortgage loans that have been granted against a pledge over real property, site leasehold rights or tenant-owner rights that are intended for office or commercial purposes may not exceed 10 percent of the cover pool.

Substitute collateral in the cover pool

Section 2 Substitute collateral may be included in the cover pool. This may consist of the following types of assets:

1. cash in hand, checks and bank money orders,
2. investments and claims for which the Swedish State, a Swedish local authority or comparable entity is responsible,
3. investments and claims for which a foreign state or central bank is responsible, provided that the investment or claim is valid in the foreign state's currency and has been refinanced in the same currency,

4. other investments and claims for which the European Communities or any of the foreign states or central banks as per the regulations supported by Chapter 6, Section 3, Item 5 are responsible,

5. investments and claims for which any foreign local authority or comparable entity that has the authority to collect taxes, as per the regulations supported by Chapter 6, Section 3, Item 5, is responsible,

6. other investments, claims, guarantees and commitments that are in accordance with the regulations supported by Chapter 6, Section 3, Item 5 and are considered to be no more hazardous than the items stated in 1-5, and

7. investments, claims, guarantees and other commitments for which the pledged collateral consists of such investments and claims as those stated in 1-6.

Upon application, Finansinspektionen may also approve usage of the following types of assets as substitute collateral:

1. investments and claims for which Sveriges Allmänna Hypoteksbank (General Mortgage Bank of Sweden), a credit institution or a securities company licensed in accordance with Chapter 2, Section 2, Paragraphs 2 and 8 of the Securities Market Act (SFS 2007:528) is responsible,

2. investments and claims for which a local authority or comparable entity in any of the foreign states as per the regulations supported by Chapter 6, Section 3, Item 5 is responsible,

3. investments and claims with a remaining term that does not exceed one year for which a foreign credit institution is responsible,

4. investments and claims for which a foreign credit institution in any of the foreign states as per the regulations supported by Chapter 6, Section 3, Item 5 is responsible,

5. investments and claims for which one of the international foreign development banks as per the regulations supported by Chapter 6, Section 3, Item 5 is responsible,

6. other investments, claims, guarantees and commitments which, in accordance with the regulations supported by Chapter 6, Section 3, Item 5, are considered to be no more hazardous than those entities stated in 1-5 and that fulfil the other requirements included in the regulations, and

7. investments, claims, guarantees and other commitments for which the pledged collateral consists of such investments and claims as those stated in 1-6.

Substitute collateral may not exceed 20 percent of the cover pool. In special circumstances, Finansinspektionen may, in an individual case, allow the proportion of substitute collateral to be at most 30 percent of the cover pool during a limited period of time.

Loan-to-value ratio

Section 3 When granting a mortgage loan, the loan may be included in the cover pool to the extent that the loan, relative to the collateral, lies within:

1. 75 percent of the market value, regarding real property, site leasehold rights and tenant-owner rights intended for residential purposes,
2. 70 percent of the market value, regarding real property intended for agricultural purposes, and
3. 60 percent of the market value, regarding real property, site leasehold rights and tenant-owner rights intended for commercial or office purposes.

These same loan-to-value ratios apply to corresponding foreign collateral.

Valuation principles

Section 4 Whenever an issuing institution grants mortgage loans, the market value, in accordance with Section 3, shall be based upon an individual valuation. However, valuation of the following types of items may be based upon general price levels:

1. real property that consists of residential property in a single or two-family home,
2. site leasehold rights that have been granted for residential purposes regarding a single or two-family home, or
3. tenant-owner rights granted for residential purposes.

Market value refers to the price that would be reached if a sale were carried out under market conditions with reasonable time allowed for negotiations. The market value shall be assessed without regard to speculative and temporary circumstances.

Requirements for performing valuations

Section 5 In accordance with Section 4, an independent valuation must be performed by a competent appraiser. A valuation must be documented. This documentation must state the identity of the person that performed the valuation as well as when, and on what basis, the valuation was made.

Valuations based upon general price levels must be performed in a satisfactory manner.

Geographic limitation

Section 6 Collateral for mortgage loans may only consist of property located within the European Economic Area.

Value of collateral

Section 7 An issuing institution must continually monitor the market value of property used as collateral for mortgage loans.

In the event of a significant decline in the value of property used as collateral for mortgage loans, the portion of the mortgage loan that may be included in the cover pool must lie within:

1. 75 percent of the value, regarding real property, site leasehold rights and tenant-owner rights intended for residential purposes,
2. 70 percent of the value, regarding real property intended for agricultural purposes, and
3. 60 percent of the value, regarding real property, site leasehold rights and tenant-owner rights intended for commercial or office purposes.

Matching rules

Section 8 The nominal value of the cover pool must at all times exceed the aggregate nominal value of any claims that may be brought against the issuing institution in respect of covered bonds.

Section 9 The issuing institution's loans and substitute collateral in the cover pool shall be subject to certain terms and conditions regarding currency, interest rates and the fixed interest period. These shall be set such that a suitable balance is maintained in relation to the corresponding terms and conditions that apply to covered bonds. Derivative agreements may be used for this purpose.

The issuing institution shall be considered to have achieved such balance as referred to in the first paragraph if, at all times, the present value of assets in the cover pool exceeds the present value of liabilities regarding covered bonds. The present value of derivative agreements must be taken into consideration when making the calculation.

The issuing institution must ensure that the flow of payments regarding assets in the cover pool, derivative agreements and covered bonds are such that the institution is, at all times, able to fulfil its payment obligations towards the holders of covered bonds and counterparties in derivative agreements.

The issuing institution is required to hold the funds referred to in the third paragraph in a special account that is separate from the institution's other funds.

Obligation to maintain a register

Section 10 An issuing institution is required to maintain a register on covered bonds, the cover pool and, if applicable, derivative agreements.

At all times, the register must indicate the nominal value of the covered bonds as well as the cover pool that is tied to such bonds. The register must also show the funds referred to in Chapter 4, Section 4.

Contents of the register

Section 11 The register must contain the following:

1. for each covered bond, information regarding the bond's nominal value, interest rate and date of maturity,
2. for each individual loan, information regarding the loan number, borrower, nominal value, amortisation terms and interest rate,
3. for each public loan, information regarding the guarantor (if such exists),
4. for each mortgage loan, information regarding the value of collateral as well as when, and on what basis the valuation was made,
5. for all substitute collateral, information regarding which assets are included, the nominal value of such assets and, if applicable, the term and interest rate for the assets,
6. for each derivative agreement, information regarding the type and number of the agreement, counterparty of the derivative agreement, nominal amount, currency, interest rate, value of the net claim or net liability and the effective/termination dates of the contract.

Independent inspector

Section 12 Finansinspektionen will appoint an independent inspector for each issuing institution. Finansinspektionen is entitled to revoke any such appointment and appoint a new inspector.

The auditor is entitled to receive a reasonable fee from the issuing institution for services provided. The fee amount shall be determined by Finansinspektionen.

Section 13 The inspector is required to look after that the register as per Section 10 is maintained in a correct manner and in accordance with the provisions of this Act.

Such inspector is required to regularly report any findings, pursuant to the first paragraph, to Finansinspektionen.

Section 14 An issuing institution is required to provide the inspector with any information requested regarding the institution's activities related to covered bonds.

The inspector is entitled to conduct investigations at the issuing institution's premises.

Chapter 4. Insolvency of the issuing institution

Rights of priority

Section 1 Such priority right as stipulated in Section 3 a of the Rights of Priority Act (SFS 1970:979), shall apply to all assets that are registered as cover pool in accordance with Chapter 3, Section 10.

In addition, such priority right applies to the following:

1. funds in existence at the issuing institution at the date when adjudication of bankruptcy or execution is made which derive from the cover pool or derivative agreements and
2. funds subsequently recorded in the register in accordance with Section 4.

Administration of assets

Section 2 If, at the date of adjudication of bankruptcy, the assets in the cover pool meet the requirements set forth in this Act, they shall be maintained together and separate from the other assets and liabilities of the bankruptcy estate. Such measures shall prevail as long as the requirements remain fulfilled. This shall also apply to assets covered by the right of priority stated in Section 1, Paragraph 2 as well as bonds and derivative agreements listed in the register pursuant to Chapter 3, Section 10.

Should any temporary, minor deviation from these terms and conditions arise, the first paragraph shall nevertheless still apply.

Contractual payments

Section 3 Holders of covered bonds as well as counterparties to derivative agreements are entitled to payments in accordance with the contract terms from the assets covered by the priority right, provided that such assets meet the requirements set forth in this Act or there is only a temporary, minor deviation from such requirements.

The first paragraph does not influence the obligations of the bankruptcy administrator, as per Chapter 7, Section 8 of the Bankruptcy Act (SFS 1987:672).

Funds received

Section 4 Funds that are received subsequent to the date of adjudication of bankruptcy in accordance with the terms and conditions in effect for assets in the cover pool and for derivative agreements must be listed in the register described in Chapter 3, Section 10.

Chapter 5 Specific rules regarding supervision and intervention

Specific supervision

Section 1 Finansinspektionen has a supervisory role over issuing institutions to ensure that they adhere to the provisions of this Act as well as other statutes governing their activities.

Intervention against issuing institutions

Section 2 In the event that an issuing institution seriously neglects its obligations pursuant to this Act or other statutes governing its operations, Finansinspektionen shall revoke the issuing institution's licence to issue covered bonds or, where sufficient, issue a warning.

Section 3 Finansinspektionen will revoke an issuing institution's licence if:

1. it fails to begin issuing covered bonds within one year of the date when its licence was granted, or
2. it makes a declaration to waive its licence.

When sufficient, a warning may instead be issued for such cases as described in the first item of the first paragraph.

Section 4 In the event that a licence is revoked, Finansinspektionen may then determine the manner in which operations are wound up. Any revocation decision may be associated by an injunction preventing the institution to continue its operations.

Intervention against unlicensed entities

Section 5 Finansinspektionen shall issue an injunction on the continued operations of any unlicensed entity found to be conducting operations governed by this Act. Finansinspektionen is entitled to determine the manner in which operations are to be wound up.

Fines

Section 6 Should Finansinspektionen issue a prohibition on the continued operations as per Section 4 or an injunction as per Section 5, Finansinspektionen may stipulate a penalty if such order is not complied with.

Fees

Section 7 Issuing institutions are required to pay annual fees that are used to finance the activities of Finansinspektionen in accordance with this Act.

Chapter 6 Appeals and authorisations

Appeals

Section 1 Any appeal of a decision taken by Finansinspektionen in accordance with this Act shall be submitted to a general administrative court. However, this does not apply to decisions in matters as referred to in Section 20, first paragraph, item 5 of the Administrative Procedures Act (SFS 1986:223).

Leave to appeal is required for appeals to the Administrative Court of Appeal.

Finansinspektionen is entitled to make any ban on operations, injunctive order, or revocation effective immediately.

Section 2 Should Finansinspektionen fail to reach a decision regarding licensing pursuant to Chapter 2, Section 1, within six months from the date when the application is submitted, Finansinspektionen would then be required to notify the applicant of the reasons for such delay. The applicant may thereafter request a declaration by the Administrative Court of Appeal that the matter has been unreasonably delayed. Where a decision has not been issued within six months from the date of issuance of such declaration, the application shall be deemed rejected.

Authorisations

Section 3 The Government or a public authority designated by the Government may issue regulations regarding the following:

1. counterparties and foreign states referred to in Chapter 1, Section 2,
2. the content of required plans, as per Chapter 2, Section 1, first paragraph, items 3 and 4,
3. real property, site leasehold rights and tenant-owner rights as referred to in Chapter 3, Section 1, first paragraph, item 1,
4. borrowers, as referred to in Chapter 3, Section 1, first paragraph, item 2,
5. determination of the foreign states and central banks referred to in Chapter 3, Section 2, first paragraph, item 4, determination of the local foreign authorities and comparable public entities referred to in Chapter 3, Section 2, first paragraph, item 5, determination of the foreign states referred to in Chapter 3, Section 2, second paragraph, items 2 and 4, determination of the international development banks referred to in Chapter 3, Section 2, second paragraph, item 5 and the determination of assets referred to in Chapter 3, Section 2, first paragraph, item 6 and second paragraph, item 6,
6. the method for conducting the valuation of collateral in accordance with Chapter 3, Section 5,
7. the method for determining market value in accordance with Chapter 3, Section 7,

8. the terms and conditions for derivative agreements as well as the calculation method and terms for risk exposure and interest payments, as per Chapter 3, Section 9,
9. the manner in which the register shall be maintained, in accordance with Chapter 3, Section 10,
10. the required expertise for independent inspectors as well as required tasks and reporting requirements, in accordance with Chapter 3, Sections 12 and 13, and
11. the determination of fees for supervision, in accordance with Chapter 5, Section 7.