



# *AKU 2018*

ANNUAL KNOWLEDGE UPDATES  
PROFICIENCY REQUIREMENTS

# Content

- The function served by the proficiency requirements .....2
- Target group adaptation.....2
- Cognitive levels.....3
- Subjects, AKU 2018.....4
  - Investment fraud .....4
  - EBA’s guidelines regarding monitoring and control .....4
  - EU’s Data Protection Regulation.....4
  - Risk tolerance and portfolio choice .....5
  - The household’s housing finances .....7
  - More stringent mortgage repayment requirement for households .....8
  - The finances of tenant-owners’ associations .....8
  - Treatment of insurance policies in conjunction with division of joint property and distribution of estates.....10
  - Occupational pension transfer right .....10
  - New Insurance Distribution Act .....10
  - Family law and mortgage loans .....12
  - Investment savings accounts.....13
  - Housing taxation.....13
  - Durable powers of attorney .....14
  - Ethics case .....14

## The function served by the proficiency requirements

Having an active SwedSec licence requires that the licence holder undergoes an Annual Knowledge Update (“APU”) in subjects that are determined by SwedSec’s review board. Proficiency requirements provide an overview of what licence holders with different positions are expected to know. Proficiency requirements shall provide support when the structuring training and examination questions. It is the task of each professional training provider to interpret the proficiency requirements and develop a relevant and instructive course based on such interpretation.

## Target group adaptation

SwedSec has a system of profession-adapted licensing examinations. Annual Knowledge Updates must also be adapted to professional roles. APU 2018 covers in total 17 subjects. The licence holder must take at least six subjects relevant to his/her profession in order to pass APU 2018. The table below describes which subjects licence holders in respective target groups are recommended to take.

Subject	Management and control functions <sup>A</sup>	Advisers <sup>B</sup>	Specialists <sup>C</sup>	Mortgage loans <sup>D</sup>
Investment fraud	x	x	x	
EBA’s guidelines regarding monitoring and control	x			
EU’s Data Protection Regulation	x			
Risk tolerance and portfolio choice		x	x	
The household’s housing finances				x
More stringent mortgage repayment requirement for households				x
The finances of tenant-owners’ associations				x
Treatment of insurance policies in conjunction with division of joint property and distribution of estates		x		
Occupational pension transfer right		x		
New Insurance Distribution Act	x	x		
Family law and mortgage loans				x
Taxation of capital assets in business operations		x	x	
Taxation of derivative instruments in business operations			x	
Investment savings accounts		x	x	
Housing taxation				x
Durable powers of attorney	x	x		x
Ethics case	x		x	

<sup>A</sup> Individuals whose work involves various management and control functions on the securities market, e.g. CEOs and other responsible managers, compliance officers, as well as certain positions within risk control and other control functions.

<sup>B</sup> Individuals whose work involves the provision of financial advice to consumers or investment advice to clients and/or individuals whose work involves insurance mediation and the provision of advice regarding life insurance with a savings element, e.g. private advisers, corporate advisers and Private Banking advisers.

<sup>C</sup> Individuals whose work involves various types of specialist functions in the securities area, e.g. fund and portfolio managers, analysts and stockbrokers.

<sup>D</sup> Individuals whose work involves putting together, offering, granting, brokering or providing advice on mortgage loans to consumers, e.g. mortgage loan advisors and credit managers.

## Cognitive levels

The description of each subject states the cognitive level which the licence holder is expected to have attained after having undergone the knowledge update. The table below describes various cognitive levels.

Level	Explanation
Recall (R)	A candidate is required to recognise and remember concepts, definitions, and facts.
Comprehend (C)	A candidate is required to understand and be able to explain various connections and contexts.
Apply (A)	A candidate is required to be able to apply, for instance, formulae, rules, statutes, and methods

## Subjects, AKU 2018

### Investment fraud

The subject of investment fraud was included in ÅKU 2012, but it is constantly relevant. Fraudsters approach customers of the affiliated companies. And the customers, in turn, approach their ordinary adviser or bank contact in order to obtain advice on what they should do and, perhaps, to transfer money, etc.

Often, the fraudsters invite the customer to invest in some security or product which will provide a fantastic return, not infrequently made more enticing by a tax benefit which borders on the impermissible. The fraudsters sometimes come back to customers who have previously been swindled, e.g. through the fraudster offering, in exchange for payment, to convert the unsellable security that the customer was induced into buying. Or even more cunning is that the fraudster pretends to be a foreign supervisory authority or law firm which will help the customer recover her or his money – naturally in return for a certain fee.

A licence holder should be familiar with warning signs regarding investment fraud in order to be able to warn the customer and assist the customer in obtaining more information. A licence holder should also know that it is possible to search in the Swedish Financial Supervisory Authority's register of companies licensed to operate in Sweden. A list of companies which the Authority warns about, and information on how to recognise investment fraud, are available on the Financial Supervisory Authority's website.

<http://www.fi.se/sv/konsumentskydd/undrar-du-over-ett-foretag/fi-varningslista/investeringsbedragerier/>

### EBA's guidelines regarding monitoring and control

At the end of September 2017, the EBA (European Banking Authority) updated its guidelines regarding internal monitoring and control of credit institutions. Parts of the guidelines will probably be incorporated in regulations and general advice issued by the Financial Supervisory Authority. The licence holder must understand the more important parts of the guidelines, i.e.

- The responsibilities and obligations of company management (board and managing director) as well as which committees must be in place and their composition.
- Which other policies and guidelines must be in place at a credit institution.
- Roles, duties and composition of the control functions
- Requirements for processes for new and modified products.

<http://www.eba.europa.eu/documents/10180/1972987/Final+Guidelines+on+Internal+Governance+%28EBA-GL-2017-11%29.pdf>

### EU's Data Protection Regulation

In May 2018, the EU's Data Protection Regulation will enter into force and thereupon replace the Swedish Personal Data Act. The licence holder must be familiar with the fundamental provisions of the Regulation, i.e.

- What, according to the Regulation, constitutes a legal basis for processing personal data.
- Which information regarding the processing of personal data must be provided to customers, etc.
- The rights of data subjects to obtain access to their personal data, have their data corrected and deleted, prevent certain use of the data, and transfer personal data to other companies.

<http://eur-lex.europa.eu/legal-content/SV/TXT/PDF/?uri=CELEX:32016R0679&rid=1>

## Risk tolerance and portfolio choice

Generally speaking, investors have two things in common. They want a high return on their investments and as low a risk as possible. Unfortunately, it is difficult, if not to say impossible, to satisfy both wishes simultaneously. Creating the possibility for a high return almost always requires a degree of risk-taking. The higher the return one wants, the greater the risk one is forced to accept. This means that everyone who works with investment advice must have a good understanding of what risk really is and how the balancing between risk-taking and return expectations should take place in each individual case. This is, of course, a very difficult task since it also includes an ability to communicate complicated technical issues in a manner which the customer is able to understand and is convincing. In this ÅKU subject, focus is thus placed on several key issues involving risk and risk-taking.

To begin with, there must be an understanding of the actual concept of risk and how it is defined and calculated. The licence holder must understand the difference between uncertainty and risk and understand the most common measurement of risk (standard deviation or volatility). The licence holder must be familiar with various rules of thumb regarding standard deviation and risk (e.g. “two years out of three, the actual return ends up within plus/minus a standard deviation from the expected”), and understand the assumptions regarding the probability distribution of the returns on which such rules of thumb are based. The licence holder must be able to calculate what a low and high standard deviation in an investment concretely entails for conceivable outcomes (profits/losses) on the investment, in both per cent and kronor. The licence holder must be familiar with the most common limitation of risk measurement such as standard deviation, namely the difficult problem associated with recurring market periods of unexpected major price movements (extreme outcomes, “fat tails”, “ten Sigma events”).

Diversification is an important concept and the advice to diversify one’s portfolio is a fundamental aspect of all investment advice. The licence holder should, therefore, understand how diversification works, i.e. which type of risks can be diversified away (“unique risk”) and which type of risk cannot be diversified away (“market risk” or “systematic risk”). The licence holder must know that correlations between assets vary over time, and that the correlations usually increase in periods of market unease, which reduces the diversification effect (“Diversification functions well except when one really needs it”).

The next stage is to link together risk and expected return and understand the balance between them. The licence holder must be able to illustrate the connection between expected return and standard deviation for classes of assets such as equities, bonds and bank funds in a capital allocation diagram (that which internationally is usually referred to as “Capital Allocation Line”). The licence holder must also be able to illustrate “best possible” and “worst possible” outcomes for different levels on the

standard deviation in such a diagram. The licence holder must understand the types of assets for which standard deviation is an appropriate risk measurement (typically for classes of assets or portfolios) and when other risk measurements are more justified (e.g. the beta value with respect to individual shares).

The customer's risk tolerance is absolutely crucial for the portfolio choice the customer should make. Understanding what risk tolerance is and how it can be measured in practice is, therefore, one of the most important aspects of providing advice. The licence holder must be able to explain why most people would not choose to participate in an ordinary toss of the coin where one wins SEK 10,000 if the outcome is heads but is forced to pay SEK 10,000 if it is tails, and must be able to use this understanding to illustrate the concept of risk tolerance. The licence holder must understand how an investor's risk tolerance determines which allocation between risk-filled and risk-free assets best suits the investor, and understand that the capital allocation line demonstrates the possible portfolio choice, while the risk tolerance is needed to establish which, of all portfolios on the line, the investor should choose. In this context, the licence holder must know what is meant by "should" and "best suited" ("optimal balance between risk and return given the investor's risk attitude").

The licence holder must know in what way it is possible to attempt to establish a customer's risk tolerance in practice, typically using a questionnaire, but also know that it is difficult to arrive at the real risk attitude through questions of a hypothetical nature. One does not really know how a customer reacts to risk before the risk materialises (e.g. when the customer suffers an unexpected large loss on her/his investments).

Risk tolerance is a measurement of the customer's attitude or position as regards risk-taking (related concepts that are used in practice are risk appetite or risk willingness) and is thus associated with the customer's psychology. Another important concept is the customer's risk capacity, which instead reflects the customer's ability to bear risk (withstand losses) in a given situation. Risk tolerance or risk willingness is a more subjective concept than risk capacity, which instead rather reflects the restrictions imposed on the customer in the form of assets, investment goals, work income and investment horizon. The licence holder must understand that the customer's risk willingness and the customer's risk capacity can sometimes result in contradictory recommendations, and must understand which, in such case, is the most suitable advice to give (it can often mean choosing the most conservative recommendation).

In this context, the licence holder must also know that the Mifid 2 regulations have expressed a requirement that, when providing investment advice, advisers take into account the customer's financial capability to bear a loss (risk capacity) and to take into consideration the customer's risk tolerance (risk willingness).

In recent times, so-called robotic advisers (digital automated provision of advice, "robo advising") have become increasingly common on the capital market. Such digital algorithms are usually based on fundamental financial theory. Accordingly, the licence holder must understand that, generally speaking, advisory robots function in accordance with the analysis framework addressed in the sections above (defining risk and return for different assets, calculating the risk allocation line, asking questions about risk willingness and risk capacity, calculating the customer's risk tolerance, proposing a suitable portfolio on the line). The licence holder must be able to explain to a customer the principles underlying such automatic advice algorithms, and be familiar with their limitations).

## The household's housing finances

There are many different factors to take into consideration with respect to a household's housing finances, apart from the question of whether, at present, one is able to finance one's home. The licence holder must be able to explain and discuss these factors with her/his customers. Three of the most common issues are discussed below.

### **Choice of fixed interest period on the mortgage loan**

With today's record-low interest rates, with a strong Swedish economy and a rate of inflation which appears to be on the way up, it is particularly important to consider future interest rate trends and their conceivable impact on borrowing costs in the short and long-term. The licence holder must be able to explain the advantages and disadvantages of long or short fixed interest periods on the loan. The licence holder must also be able to explain in which situations it may be advantageous to fix the interest rate on the mortgage loan for a longer period of time, instead of choosing a three-month rate. The licence holder must also be able to explain what happens if the customer wishes to prematurely redeem a loan with a long fixed interest period. The licence holder must be able to apply this when providing advice as to which fixed interest periods suit the customer's risk profile, not least taking into account the length of time that the customer has envisaged living in the relevant home.

### **Personal protection insurance, changes in income and repayment capability**

The licence holder must know which types of personal protection insurance are available for mortgage loans and be able to explain how they work. The licence holder must also be able to explain which type of personal protection insurance for mortgage loans suit customers in different life situations. The licence holder must understand how changes in income, for example in conjunction with retirement, may affect the customer's repayment capability, and the risks involved in taking large loans based on current working income when the customer begins to approach the retirement age.

### **To save or to repay the loan**

There is in fact no contradiction between mortgage repayments and savings, since mortgage repayments can be regarded as a type of saving. Individuals who currently have mortgage loans below the level at which the law requires mortgage repayments should consider the advantages of repaying the mortgage, instead of investing their savings in more or less unsecure types of saving. Repaying a loan can be regarded as a saving with a return that corresponds to the interest rate on the loan, which in principle is a rate of return that is impossible to obtain on any other short-term saving without taking major risks.

It may be enticing to decide not to repay the loan when there is no statutory obligation to do so, and instead invest the money in some form of saving. This means, of course, that it is possible to increase one's capital more quickly, but it also involves a risk that people are perhaps not always aware of. Saving in a form of savings where the return is lower than the interest one is paying on the loan is normally not a good deal for the saver, but with one important exception, namely the part of the saving which constitutes a liquidity buffer for unexpected economic expenditures. Such reserves should be liquid and safe, and with today's low interest rate levels one should waive a high return in respect of this part of the savings.

The licence holder must understand and be able to explain the advantages and disadvantages of mortgage repayment instead of saving. The most important advantage with repayment is reduced interest expenses, and thereby reduced interest sensitivity, as the size of the loan declines. This is an

important factor in a situation where the most likely future interest rate trend involves higher interest rates on loans, irrespective of tenor. The most important disadvantage of mortgage repayment comprises a more illiquid form of saving than normal fixed-income saving, and that the need for a liquidity buffer should be met before mortgage repayment is considered.

## More stringent mortgage repayment requirement for households

***The condition for the subject being included in ÅKU 2018 is that a decision is taken to implement a more stringent mortgage repayment requirement. If no decision is taken, the subject will be deleted from ÅKU.***

Mortgage loans fulfil an important function in the economy since they enable households to buy a home through, in part, using future incomes to pay for it. The household thereby avoids having to save up the entire cost for a home before the acquisition can take place. But the household's debts, which largely consist of the mortgage loan, also creates risks for the Swedish economy. Therefore, future trends on the housing market and as regards household debts are of major importance for household finances and Sweden's finances.

The Swedish Financial Supervisory Authority proposes a more stringent mortgage repayment requirement for households with high debt ratios. This will involve new borrowers with mortgage loan debts in excess of 4.5 times gross income being required to repay at least 1% of the debts, in addition to the current repayment requirement. The rule is aimed at increasing the capacity of Swedish households to withstand macroeconomic disruptions.

On 1 June 2016, the Financial Supervisory Authority's regulations regarding repayment of new mortgage loans entered into force. The regulation means that borrowers with a loan to asset ratio in the 50-70% range must repay annually at least 1% of the mortgage loan. Borrowers with a loan to asset ratio in excess of 70% must repay each year at least 2% of the mortgage loan.

The introduction of a more stringent repayment requirement for mortgage loans which exceed 4.5 times the borrowers' gross income is proposed as from March 2018. For new mortgage loans that exceed this level, the borrowers must repay at least 1% of the debts, in addition to the current repayment requirement.

The licence holder must understand and be able to explain how the loan repayment requirement works and how the debt ratio and the debt ratio-based loan amount are calculated. The licence holder must also understand and be able to explain which incomes may be included in the concept of 'gross income'. The licence holder must also understand when it is permitted to change one's mortgage repayments if gross income has changed.

[http://www.fi.se/contentassets/87282855405946569cc6dd6b0db6797e/remisspm\\_skarpt\\_amorteringskrav.pdf](http://www.fi.se/contentassets/87282855405946569cc6dd6b0db6797e/remisspm_skarpt_amorteringskrav.pdf)

## The finances of tenant-owners' associations

An important factor to be aware of when assessing the loan in conjunction with borrowing secured against a tenant-owner's apartment is that the finances of the association must also be analysed. This

applies also when borrowing secured against an apartment in a housing association or a housing cooperative (*Sw. bostadsaktiebolag*).

Low interest rates combined with a housing shortage in the metropolitan regions have resulted in a strong increase in the prices of tenant-owner's apartments. Various measures have been taken with the aim of cooling down an overheated housing market, such as introducing mortgage loan caps and loan repayment requirements. In addition, the possibility of supplementing the loan repayment requirement with rules regarding debt ratio is being studied.

Not infrequently, the square meter price for apartments in areas of strong demand is reasonably static and does not have any major impact on the financial circumstances of the association. As a consequence of the prevailing situation, it is extremely important that, in connection with borrowing secured against apartments, an analysis is made of the association's finances in order to assess their impact on the value of the apartment and how the monthly fee might be affected in the future. This primarily involves assessing the association's indebtedness and interest expenses compared with revenues, and the percentage of the association's debts that are borne by the apartment against which borrowing is to take place. Another important assessment considers the condition and maintenance of the tenant-owners' association's property and whether its revenues are sufficient to meet future maintenance needs without major increases in monthly fees.

Through the committee report entitled "Stronger consumer protection on the tenant-owner's market" (SOU 2017:31), various proposals have been presented with the aim of achieving this. The proposed changes will enter into force at the earliest on 1 January 2019.

Several of the proposals are aimed at creating improved conditions so that interested parties will easily be able to form a correct impression of the association's financial position and results. Among other things, a so-called component depreciation is proposed, whereby depreciation takes place of the different parts of the building based on expected lifespan, in order to create a stronger connection to the association's maintenance plan and need for liquid funds. The committee report also proposes an increased disclosure requirement aimed at elucidating the connection between depreciation and expected future maintenance. The report also recommends introducing a requirement that the annual reports of associations contain a cash flow statement and presentation of a number of key performance indicators such as annual fee/sq. m., indebtedness/ sq. m. and interest rate sensitivity. With respect to newly formed associations, according to the committee more stringent requirement should be imposed for financial plans and certifiers with the aim of contributing to associations being financially sustainable when they begin their operations. Among other things, it is proposed that the financial plan shall include a technical maintenance plan for the coming 50 years.

To summarise, it can be noted that the committee report entitled "Stronger consumer protection on the tenant-owner's market" emphasises the importance of lenders carrying out a careful analysis of the finances of the association in conjunction with loan assessments. That is already the case today and thus will apply irrespective of whether or not the proposed rules are implemented. The analysis is of considerable interest for both the lender and the customer since, among other things, it constitutes a basis for assessing the value of the security and the risk of future increases in monthly fees.

The licence holder must understand how the analysis of the finances of the association is carried out and how the association's finances affect the customer's finances.

Linked to the committee report:

<http://www.regeringen.se/rattsdokument/statens-offentliga-utredningar/2017/04/sou-201731/>

## Treatment of insurance policies in conjunction with division of joint property and distribution of estates

The Marriage Code and the Inheritance Code contain rules concerning the treatment of life insurance policies in conjunction with the division of joint property and distribution of estates.

The licence holder must be able to apply the way in which pension policies and endowment policies are treated in conjunction with divorce or death of the policyholder.

## Occupational pension transfer right

On 16 February 2017, the Ministry of Finance published on the Government's website a memorandum entitled "A more effective right of transfer of insurance savings". The licence holder must, therefore, be familiar with the following:

According to the proposal, transfer charges may only relate to the company's direct costs for administrative measures caused by the policy surrender or the transfer. It is proposed that precise definitions of companies' *direct costs* will be included in regulations issued by the Government or a competent authority. The proposal applies solely to individual life insurance policies and it is proposed that it will enter into force on 1 July 2018.

It is also clarified that remaining acquisition costs that are directly attributable to the surrendered or transferred policy may only be charged for a maximum of five years. Thus, if the policy has been taken out for five years, the acquisition costs will be deemed paid. The proposal will apply only to individual life insurance policies and it is proposed that it will enter into force on 1 July 2018. The proposal regarding charges linked to outstanding acquisition costs shall be applied also to contracts that are signed prior to the entry into force, but after 30 June 2007, and which are not renewed following the entry into force.

The memorandum also proposes changes in the Income Tax Act. From a tax perspective, this transfer rule includes all types of pension policies, i.e. also collective policies. The change is due to the fact that it might be possible to transfer the entire value of one or more pension policies without any tax consequences, and that this might be possible during an ongoing disbursement of pension. According to the proposal, the transferred pension insurance no longer need be newly purchased, and also need not have been purchased by the policyholder in the original policy. However, disbursement of the transferred pension insurance must not have begun. It is proposed that the proposal will enter into force on 1 January 2019.

## New Insurance Distribution Act

On 23 February 2018, Sweden is expected to obtain a new Insurance Distribution Act, which will replace the Insurance Mediation Act. The licence holder must understand the differences between the

new Act and the Insurance Mediation Act, and how the conditions for distribution and advice regarding insurance policies will be affected. The licence holder must be familiar with the following:

### **Insurance distribution**

Insurance distribution includes both direct insurance and reinsurance, which involves:

- providing advice on/proposing insurance contracts or performing other preparatory work prior to the entry into an insurance contract;
- entering into an insurance contract on behalf of any third party; or
- assisting in the administration and performance of insurance contracts.

However, the following are excluded from insurance distribution:

- referring to insurance companies, insurance brokers or potential customers;
- providing general advice about insurance;
- within the scope of other professional activities, in individual cases providing information/advice about insurance;
- professionally administering, valuing or adjusting insurance claims; or
- conducting operations which constitute securities business in accordance with the Securities Market Act with respect to “insurance-based investment products” or pension policies “exposed to market volatility”.

An insurance distributor is an insurance broker, tied insurance broker, ancillary insurance broker, tied ancillary insurance broker, or an insurance company.

### **Advice and compensation**

Advisers may provide advice about their own products; on the other hand, there are requirements that the commission paid must increase the quality of the service and that the commission must be proportionate to the benefits received by the customer. Throughout, it is also important that the commission does not create any conflicts of interest which adversely affect the possibility to satisfy the customer’s interests.

An insurance distributor may receive compensation from third parties, however only when the payment or the benefit has no adverse impact on the quality of the relevant service to the customer, and does not adversely impact on the insurance distributor’s conditions for acting in an honourable, fair and professional manner in accordance with the best interests of hers/his customers.

### **Impartial adviser**

An insurance broker who informs the customer that advice is provided based on an impartial and personal analysis must carry out an analysis of a sufficiently large number of insurance contracts. The selection for the analysis must be sufficiently diversified with respect to type of product and product provider.

The product may also not have been developed by the broker or a closely connected company. The provision of advice may also not be combined with the provision of non-independent investment advice.

In conjunction with the provision of advice based on an impartial and personal analysis, the adviser may not receive and retain compensation from a party other than the customer. However, “smaller non-monetary benefits” may occur provided they can increase the quality of the service and cannot be

deemed to prevent the broker from acting in an honourable, fair and professional manner in accordance with the best interests of the customer. More precise definitions are expected in regulations to be issued by the Financial Supervisory Authority.

### **Fines and the possibilities for intervention**

The Swedish Financial Supervisory Authority (FSA) is the supervisory authority and the Swedish Companies Registration Office is the registration authority.

The FSA is entitled to decide on orders, injunctions against executing decisions, remarks, revocation of licences, forfeiture of concessions, warnings, prohibitions on senior executives remaining in place, or to decide on administrative penalties.

Administrative penalties against distributors that are legal entities may not exceed the highest of the following: 10% of the legal entity's turnover, EUR 5 million, or two times the profit generated as a consequence of the violation of the rules.

The FSA may also intervene against a broker when the latter has declared that it waives its licence or lacks a licence to be entitled to conduct its operations.

## **Family law and mortgage loans**

It is important to understand ordinary family law issues and the consequences that various family law circumstances may have when providing advice regarding mortgage loans.

The licence holder must understand the rules applicable when domestic partners buy a home and take loans:

- How the division of joint property is affected if the domestic partners purchase different shares in the home
- How the division of joint property is affected if the domestic partners take loans of different sizes
- How the division of joint property is affected if one of the domestic partners makes a larger cash contribution
- How the division of joint property is affected if a domestic partnership agreement is entered into
- What happens in the event of death in the various situations

The licence holder must understand the rules that apply when married couples buy a home and take loans:

- How the division of joint property is affected if the spouses purchase different shares in the home
- How the division of joint property is affected if the spouses take loans of different sizes
- How the division of joint property is affected if one of the spouses makes a larger cash contribution
- How the division of joint property is affected if a prenuptial agreement is entered into
- What happens in the event of death in the various situations

## Taxation of capital assets in business operations

Securities owned by legal entities and which are not trading stock assets constitute capital assets. Taxation upon divestment of capital assets in business operations is essentially in accordance with the rules regarding capital for the various types of securities; however, there are certain provisions that apply solely to business operations and for legal entities. The licence holder must understand and be able to explain these provisions.

Read more <https://www4.skatteverket.se/rattsligvagledning/edition/2017.6/331521.html>

## Taxation of derivative instruments in business operations

Companies often use different types of instruments to hedge against different types of risks. The risks that companies primarily guard against are risks of changes in interest rates and exchange rate changes, as well as risks of changes in the price of raw materials, shares and suchlike. The licence holder must be familiar with the rules pertaining to the taxation of such instruments.

Read more <https://www4.skatteverket.se/rattsligvagledning/edition/2017.6/331521.html>

## Investment savings accounts

On an investment savings account (ISA), customers can save in equities, funds and other financial instruments. Sales and dividends within the investment savings account are not taxed; instead, an annual tax is paid based on a calculated standardised income irrespective of the change in value of the holding.

The licence holder must understand the purpose with investment savings accounts and be able to apply the rules regarding:

- when an investment savings account is advantageous
- which assets are permitted on an investment savings account
- transfers of own securities and consequences in conjunction with transfers
- what may be taken out of an investment savings account
- how transfers of securities take place to an investment savings account
- what is included in the capital basis and how the standardised income is calculated
- what is the difference compared with an endowment policy

## Housing taxation

The licence holder must understand the rules regarding property charges and property tax with respect to homes and site leasehold plots. The licence holder must also understand the rules regarding stamp duty, in conjunction with both acquisition and registration.

The licence holder must understand the rules when calculating tax with respect to deductions for interest expenses and site leasehold ground rent. In addition, the licence holder must be able to apply the rules as to how homes and holiday homes are taxed when sold, which deductions may be made and

within which timeframes, as well as the applicable rules regarding deferment of payment of capital gains tax.

In addition, the licence holder must understand the Swedish Tax Agency's position paper entitled "Changes in conditions for leasing a private tenant-owner property". A decrease or increase in the area of a tenant-owner's apartment or purchase of a parking space may have the consequence that the Swedish Tax Agency considers the original tenant-owner's apartment to have been sold and any gain must be taxed.

<https://www4.skatteverket.se/rattsligvagledning/360683.html?date=2017-02-16>

## Durable powers of attorney

See the new Durable Powers of Attorney Act, which entered into force on 1 July 2017.

Many people suffers sooner or later from disease or impaired health which results in difficulties in looking after themselves and their finances. Durable powers of attorney provide individuals with the possibility to appoint someone who can look after their personal and financial affairs if they are unable to do so personally later in life.

Durable powers of attorney constitute an alternative to the appointment of a trustee and administrator and are a supplement to ordinary powers of attorney. Durable powers of attorney strengthen the individual's self-determination by improving the possibilities to plan for the future and maintaining control over issues of major importance for the individual.

Durable powers of attorney enter into force once the individual becomes incapable of making decisions. It is the attorney-in-fact who decides when this occurs. In addition, there is a possibility to have the issue adjudicated by a court.

The licence holder must understand what a durable power of attorney is and when it enters into force.

## Ethics case

Tomas works at a major bank at a department which administers bond issues. The primary group of customers comprises major companies, banks, municipalities, etc. that seek financing by issuing bonds. The bonds are often listed on the exchange. The department also coordinates the bank's contacts with potential investors, e.g. insurance companies, fund management companies, pension funds, etc. in order to be able to price and create a market for the issues.

One day, Tomas is contacted by a municipality which wishes to carry out an issue. The representative of the municipality explains that it intends to borrow approximately SEK 500 million and to list the bonds on the exchange. The municipality already has outstanding bonds listed on the exchange. The municipality has an idea of approximately how much interest it is prepared to pay and the tenor, but there is of course a range and the municipality's representative wishes Tomas to sound out a few investors (the larger purchasers in the preceding issue) regarding which levels and tenors may be of interest, and subsequently to base the pricing on their input.

Tomas explains that doing so will probably mean that a case of market soundings is involved in accordance with the Market Abuse Regulation, with the consequence that he must classify the investors as insiders, comply with a special timetable, etc. Tomas says that many investors are hesitant about participating in market soundings, but that the municipality can avoid such a procedure by, e.g. first issuing a press release regarding the impending issue. However, he continues and explains that this presupposes that the municipality provides information as to what the money is to be used for and the terms and conditions of the issue. The municipality's representative is astonished by this. He says that he must speak with the municipality's lawyer and that he will get back to Tomas.

When Tomas has put down the phone, the CEO of a large industrial company calls him. Tomas' department has several times helped the company in issuing bonds and the bank's analysis department covers both the company's shares and bonds with analyses that are distributed to investors. At the moment, the company is preparing an additional bond issue. The CEO says that he would like to see a draft of an impending analysis of the company before it is made public, and mentions that he considers the bank's current assessment of the company's credit worthiness to be incorrect and in need of correction; in addition, in his opinion the assessment of the company's prospects is excessively negative. Tomas answers that he must check if it is possible to do so and he will get back to him.

The municipality's representative calls back and says that he has spoken with the lawyer. He explains that the Market Abuse Directive and the rules regarding market soundings do not apply to municipalities and that they are not interested in any process involving market soundings or the issuance of any press release. He asks Tomas to contact investors in the manner he has requested. Tomas believes that he must talk with Compliance about what the bank should do, but first he must talk with the analyst who covers industrial companies regarding the CEO's request to see the impending analysis in advance. The analyst becomes very angry over the request to send the analysis to the company. He says that this can never happen –“they may not read a single line in advance”– since he engages in independent analysis and cannot allow the company he analyses to influence in any way what is written in the analysis. Tomas is of the view that he should take up the issue with his superior, who is also head of the analysis department, and request him to order the analyst to provide the company with the analysis.

Tomas believes that the work day hasn't begun very well. And only one hour has passed.

### **Issues to discuss**

- Is the municipality's representative correct? Do the market sounding rules not apply to municipalities?
- If the market sounding rules apply (and Tomas assumes that they do), was it right for Tomas to explain how the municipality might circumvent the market sounding procedure?
- How should Tomas have acted vis-à-vis the municipality?
- What about the analysis of the industrial company? Is it permissible at all to issue analyses of a company that one also assists with a new issue? And, in such case, what factors should one consider?
- Is the analyst correct? Is it not permitted to allow a company to review an analysis before it is published?
- Is it a good idea for Tomas' superior to order the analyst to send the analysis to the industrial company. And, if it is not a good idea, how should Tomas act?

## **The purpose with the case**

### *The issue of market soundings*

The Market Abuse Regulation<sup>1</sup> applies to financial instruments that are traded on a trading venue (regulated market, MTF and OTF). Such bonds listed on an exchange are covered, with the consequence that the rules regarding market soundings (Article 11 of the Regulation) apply to municipalities since it is the issuer of such financial instruments that is covered.

The market sounding rules apply in a situation where an issuer, or any third party on behalf of the issuer, e.g. in this case a bank, contacts potential investors before an issue or transaction has been made public through a press release (or made publicly known in some other manner), with the aim of assessing the investors' interest in the transaction and the terms and conditions for it, in order to use the input from the investors as a basis for pricing and other terms and conditions for, e.g. an issue. In brief, the rules mean that the investors must be informed that a market sounding is involved and whether or not it involves inside information, and that a list must be maintained of who has been contacted (see the Commission's Delegated Regulation (EU) 2016/960). In this case, it is difficult to determine whether inside information is involved, but in any event the rules regarding market soundings apply also in those cases where inside information is not involved.

As someone employed on the securities market, one should ensure that a wide margin is maintained from that which is impermissible. It is inappropriate to provide tips to customers on how to circumvent rules. However, what Tomas proposes – the issuance of a press release – is not to be regarded as any circumvention. The rules regarding market soundings are aimed at ensuring that information that is not available to all is disseminated only under controlled circumstances. By issuing a press release, the information would become publicly available and the need for a special procedure when contacting investors would lapse. It is entirely legitimate to propose, and not infrequently to recommend, alternative solutions that satisfy the same purpose, if this is more practical for the customer and/or the bank. However, before doing so the employee must be certain that the alternative leads to the same result. If, for example, the press release had not contained the terms and conditions for the issue, one might have questioned Tomas' action; in such case, the potential investors would have received more (valuable) information than the general public.

The municipality is clearly wrong in its conclusion that the market soundings rules do not apply to them. Tomas can hardly satisfy the municipality's request as to how he should act. Doing so would involve violation of the rules by both the municipality and the bank, which acts on behalf of the municipality. After having conferred with Compliance, Tomas should contact the municipality and explain that the bank is unable to meet the municipality's request since doing so would violate applicable rules.

### *The analysis issue*

Managing an issue for a company and issuing an analysis of the same company entails *per se* a conflict of interests. The company wishes to obtain as good a price as possible in its issue, while investors wish to have a fair analysis which assists them in any investment decision. But it is not

---

<sup>1</sup> Regulation of the European Parliament and the Council (EU) no 596/2014

prohibited to issue analyses and assist in issues. A securities institution which does so must, however, inform its customers of its various roles; it must, e.g. be stated in the analysis that the institution also plays a role in the company's issues (see Article 6 of Commission Implementation Regulation (EU) 2016/958). The institution must also ensure that the various roles are kept separate, e.g. through Chinese walls between the analysis department and the department that handles the issue.

It may be permissible per se to allow a company which is analysed to read the analysis before it is published, if the aim is to ensure that factual information is correct; it is often the company which has the best information about this (see, however, the following paragraph). Such a review may not, however, be aimed at influencing assessments and recommendations in the analysis, and if one allows the analysed company to see the analysis and one thereafter changes the analysis, this must be stated in the analysis (Article 4(1)(a) of Commission Delegated Regulation (EU) 2016/958). But this should be a matter between the analyst and the company – not, as in this case, the unit of which the company is a customer. As already mentioned, separation must be maintained between departments that represent potential conflict interests. In the instant case, such a separation is needed in order, among other things, to avoid the risk of the interests of one customer (the issuing company) adversely affecting other customers (the investing customers who are recipients of the analysis (see also recital 51 and Article 34(3)(d) of Commission Delegated Regulation (EU) 2017/565). It is, therefore, hardly a good idea if Thomas' superior orders the analyst to allow the company to see the analysis in advance, in order to satisfy the interests of the issuing company.

If the bank's analysis contains a recommendation or a guide price, the analysis may not (subject to a certain specific exception) be disclosed to the company, nor to any third party, before it has been distributed (see Article 37(2)(f) of Regulation 2017/565). Even if the analysis does not contain any express recommendation or guide price, it should not be disclosed prior to distribution if it might nevertheless easily be interpreted as a recommendation. If it is clear that the analysis constitutes a material price-sensitive recommendation, the analysis constitutes inside information and may not, in such case, be disclosed before it is made public.