

swedsec

# Swedsec's Rules and Regulations

WITH COMENTARIES

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# Chapter 1. Introductory provisions and definitions

**Section 1.** The Rules and Regulations apply to Swedsec, affiliated companies and Licence Holders.

**Section 2.** Chapters 2-10 contain the provisions applicable to affiliated companies and Licence Holders.

Chapters 11-16 contain provisions primarily concerning the handling of matters and the organisation, etc. of Swedsec Licensiering AB (Swedsec).

**Section 3.** In these Rules and Regulations:

**Licence:** *means* a Licence which has been obtained pursuant to Chapter 4 or in accordance with transitional rules in force from time to time.

**Active Licence:** *means* a Licence which is not inactive.

**Licence Holder:** *means* a natural person who holds a Licence, irrespective of whether the Licence is active or inactive.

**Knowledge updates:** *means* training and proficiency checks in accordance with Chapter 5, section 1.

**Data protection rules:** The EU General Data Protection Regulation 2016/679 (the General Data Protection Regulation) and the Act (2018:218) with complementary provisions to the EU General Data Protection Regulation.

**Data protection breach:** A security breach which results in unintentional or illegal destruction, loss, or alteration or unauthorised disclosure of, or unauthorised access to, the personal data which is transmitted, stored or otherwise processed in Swedsec's online service.

## Chapter 2. Companies covered

**Section 1.** Following approval, companies may affiliate to Swedsec provided they conduct any of the following operations in Sweden:

1. investment services pursuant to the Securities Market Act (SFS 2007:528);
2. fund operations pursuant to the UCITS Funds Act (SFS 2004:46);
3. insurance business pursuant to the Insurance Business Act (SFS 2010:2043) which provides financial advice or manages the company's own financial instruments;
4. insurance mediation pursuant to the Insurance Distribution Act (SFS 2018: 1219) which provides financial advice regarding life assurance containing a savings element;
5. management of a non-UCITS fund or discretionary management of investment portfolios in accordance with the Alternative Investment Funds Managers Act (2013:561) ('AIF managers');
6. lending or the brokering of mortgage loans to consumers provided by undertakings authorised pursuant to the Banking and Financing Business Act (2004:297); or
7. lending or the brokering of mortgage loans to consumers pursuant to the Mortgage Loans Operations Act (2016:1024).

A Swedish branch of a foreign company which conducts operations corresponding to subsections 1-7 may affiliate to Swedsec. The foregoing applies to the tied agent, established in Sweden, of a foreign company which conducts operations corresponding to subsection 1.

Approval of affiliation of companies as stated in the first and second paragraphs may be granted provided there is reason to believe that the company will

1. comply with these Rules and Regulations;
2. conduct its business in such a manner that confidence in Swedsec is maintained;
3. possesses an organisation and appropriate guidelines which ensure monitoring of regulatory compliance by Licence Holders employed at the company; and
4. have licensed personnel.

**Commentary:** Before an application for affiliation can be approved by Swedsec, an information meeting must have been held between the company applying for affiliation and Swedsec. The Rules and Regulations enter into force directly after Swedsec has approved the affiliation (i.e. signed the agreement). Companies should, therefore, consider deferring affiliation until their operations have actually started, personnel have been recruited and trained, etc.

(Subsections 3 and 4) The terms “financial advice” and “life assurance containing a savings element” correspond to the same terms used in section 1 of the Consumers (Financial Advice) Act (2003:862). The meaning of “life assurance containing a savings element” is set forth in the preparatory works (Govt. Bill 2003/04:109) to the aforementioned Act. The preparatory works state, *inter alia*, that since life assurance policies containing a savings element are involved, pure risk insurance policies are not included. It is further stated “Whether or not a life assurance policy is a pure risk insurance policy depends on the terms and conditions of the insurance contract. In a policy containing a savings element, the aim is that the premiums which are paid in will sooner or later be paid out, plus any return.”

(Subsection 5) The provision is intended to cover only AIF managers who manage non-UCITS funds or manage investment portfolios on a discretionary basis. Accordingly, managers of “other AIF funds” such as private equity funds and property funds cannot affiliate to Swedsec pursuant to this subsection.

(Subsection 6) The provision is intended to cover banks and other companies which provide or broker mortgage loans and are licensed pursuant to the Banking and Financing Business Act (2004:297).

(Subsection 7) The provision relates to Swedish limited companies or Swedish economic associations licensed to engage in lending or the brokering of mortgage loans to consumers.

(third paragraph) The provision imposes a requirement on affiliated companies to verify regulatory compliance by their Licence Holders. Both own employees and tied agents and tied insurance mediators as well as staffing personnel in accordance with Chapter 2, sections 4 and 5 are regarded as employees of the affiliated company. This is to ensure that the affiliated company possesses the conditions to be able to perform its reporting obligation pursuant to Chapter 8, section 8. The requirement applies both at the time of affiliation and during the subsequent period of affiliation. Monitoring of regulatory compliance by Licence Holders can be organised in various ways and can be carried out internally within the affiliated company or by a service provider.

(third paragraph, 4). An affiliated company shall, pursuant to Chapter 8, section 1, ensure that it has licensed personnel for the positions and duties stated in Chapter 3, section 1, first paragraph (obligatory

licence). If an affiliated company does not conduct business in which an obligatory licence is required, the company must nevertheless possess licensed personnel to some extent. This is due to the fact that it would be contrary to the purpose of Swedsec's operations for a company to be affiliated without having any licensed personnel.

**Section 2.** In exceptional cases and following approval by Swedsec's board, other parties which are subject to supervision by the Swedish Financial Supervisory Authority or which conduct similar operations may affiliate to Swedsec. Approval may be granted provided there is reason to believe that the company will

1. comply with these Rules and Regulations;
2. conduct its business in such a manner that confidence in Swedsec is maintained.

**In the agreement with Swedsec, such parties shall undertake as follows:**

1. to ensure that only employees who hold a Licence shall hold positions or perform work duties corresponding to those set forth in Chapter 3, section 1, subsections 1-23;
2. to apply the rules relevant to the operations; and
3. to have an organisation and suitable guidelines that ensure monitoring of regulatory compliance by Licence Holders who are employed in the company.

**Commentary:** Both Swedish and foreign parties may be involved. However, such companies have little possibility of affiliation. In order for affiliation to take place, licensing of personnel of such companies must appear to be meaningful. In these cases, Swedsec should consider, among other things, the extent to which the company is subject to any external regulatory regime and has internal rules, etc. pursuant to which, e.g. disciplinary proceedings may be brought. Chapter 3, section 1, final paragraph provides that licensing affects employees holding positions and performing work duties in Sweden. See also Chapter 8, section 1.

#### ***Tied Agents and tied insurance mediators***

**Section 3.** Only a tied agent pursuant to the Securities Market Act or a tied insurance mediator pursuant to the Insurance Distribution Act which is also such a company as stated in section 1 may be directly affiliated to Swedsec.

**Commentary:** In many cases, a tied agent or tied insurance mediator may decide whether the company is to be directly affiliated to Swedsec or whether the employees shall be licensed as if they were employed in the company for which it is a tied agent or tied insurance mediator; see section 5. However, direct affiliation requires that the company is, e.g. an investment firm, fund management company, insurance company or insurance intermediary (see section 1).

**Section 4.** Natural persons who are, or who are employed at, a tied agent or a tied insurance mediator of an affiliated company may be licensed through the affiliated company provided the agent or mediator does not conduct other operations subject to licence and is not directly affiliated. Upon application of these Rules and Regulations, such persons shall be regarded as employees of the affiliated company insofar as relates to the agency operations.

**Commentary:** Personnel in a company which has its own licence for, e.g. insurance mediation and at the same time is the tied agent of a company which is affiliated to Swedsec cannot be licensed through the affiliated company. Such companies must themselves be affiliated to Swedsec in order that personnel might be licensed. If a tied agent does not conduct any other operations subject to licence at the time of the licensing but is subsequently licensed for, e.g. insurance mediation, the current licences shall be declared inactive pursuant to Chapter 6, section 3, second paragraph.

As stated in Chapter 8, section 1, affiliated companies are obliged, among other things, to ensure that, at tied agents and tied insurance mediators in Sweden who do not conduct other operations subject to licence, only employees with an active Licence hold the positions and perform the work duties stated in Chapter 3, section 1, first paragraph.

### ***Service providers***

**Section 5** A natural person who is not employed by an affiliated company but who works for a single affiliated company and is bound by such company's internal rules in relevant parts and covered by the company's internal controls, upon application of these Rules and Regulations, shall be considered to be an employee of the affiliated company.

**Commentary:** Swedsec's Rules and Regulations are aimed primarily at affiliated companies and their employees. An affiliated company may, however, choose to organise its business in such a manner that certain work duties are performed by personnel who do not have an employment relationship with the affiliated company. For example, personnel employed by a staffing agency or retained consultants. Such personnel may, similarly to employees, be granted a licence and such a Licence Holder is treated in Swedsec's Rules and Regulations in the same manner as if the Licence Holder were an employee, e.g. with respect to knowledge updates, disciplinary proceedings, etc. However, the group of service providers in accordance with the definition in the Rules and Regulations is narrow. Only individuals who, in a single affiliated company, engage in work subject to a licence obligation are covered. For example, personnel at law firms or companies retained for compliance or risk control services to several affiliated companies are not included. Furthermore, the individuals in question must be covered by the affiliated company's internal rules governing the operations, i.e. the rules which have a natural connection with the work duties, e.g. regarding the manner in which advisory services and customer orders are handled and provisions regarding employees' own transactions. This is probably the norm and follows from external rules with respect e.g. to personnel provided by staffing agencies. With respect to the company's internal controls, the intention is to monitoring of compliance with the rules which have a natural connection to the work duties. If an affiliated company has outsourced operations to another company which is subject to a licence obligation and the personnel who perform the work are not covered by the principal's internal rules, but rather by those of the service provider, such personnel cannot be licensed under the auspices of the principal's responsibility.

### ***Obligation of affiliated companies to comply with the Rules and Regulations***

**Section 6.** Affiliated companies shall comply with Swedsec's Rules and Regulations commencing the date of execution of an affiliation agreement.

**Commentary:** Affiliation to Swedsec is voluntary. However, affiliation constitutes support for the values and objectives on which Swedsec's activities are based; accordingly, it is assumed that affiliated companies will comply in good faith with the Rules and Regulations. The provision entails that affiliated companies are bound by the Rules and Regulations commencing entry into the affiliation agreement and as subsequently amended in accordance with the provisions in Chapter 17.

### ***Termination of affiliation***

**Section 7.** An affiliated company may give notice in writing of termination of its affiliation to Swedsec. With the exception of obligations pursuant to section 9, the agreement shall terminate upon receipt of notice of termination by Swedsec.

### ***Other cases when affiliation terminates***

**Section 8.** Swedsec may decide that affiliation shall terminate in the event the Swedish Financial Supervisory Authority, or a corresponding foreign authority, revokes the affiliated company's Licence to conduct operations.

Commentary: Swedsec may decide that affiliation shall not terminate in the event the revocation entails, in essence, that the company ceases to conduct one type of business for which a Licence is required and begins to conduct another business for which a Licence is required, e.g. where an investment firm which conducts marketplace operations becomes an exchange.

### ***Notice of termination periods, etc.***

**Section 9.** In the event a company's affiliation has terminated, the company's obligations vis-à-vis Swedsec shall apply in accordance with the following:

1. The obligation to file reports pursuant to Chapter 8, section 8 (a Licence Holder's breach of rules, etc.) shall apply in respect of any violation of rules by a Licence Holder until the effective date of termination;
2. The obligation to disclose information to Swedsec in disciplinary matters and to file reports pursuant to Chapter 8, section 8 shall apply during a period of 36 months after the effective date of termination;
3. The obligation to comply with decisions taken pursuant to Chapter 10, section 11 in respect of acts or omissions which occurred during the period in which the company was affiliated shall remain in force after the effective date of termination. Similarly, the company is obliged to comply with the dispute resolution provisions in Chapter 10, section 13 and to comply with such a decision also after affiliation has effectively ceased.
4. The obligation to serve as a personal data processor pursuant to Chapter 16, terminates when the affiliated company no longer has access to Swedsec's online service.
5. Other obligations shall apply during a period of 30 days after the effective date of termination.

**Commentary:** A consequence of the second subsection is that a violation of rules which occurred one day prior to the effective termination must be reported even if the company discovers the violation up to 36 months thereafter. However, a violation of rules which occurs after termination shall not be reported, even if the company discovers it immediately.

Decisions regarding fines may thus be taken after termination by the company but must relate only to omissions up to the effective date of termination.

# Chapter 3. Obligatory Licence Holders

**Section 1.** Employees within the following categories must hold a Licence:

## **Management and control functions in the securities area – category A**

1. A managing director and deputy managing director, of
  - a. an investment firm whose operations primarily comprise investment services;
  - b. a fund management company or a management company;
  - c. a legal entity which is not a credit institution but which is an insurance intermediary;
  - d. an AIF manager;
2. the executive officer in charge of material parts of an investment firm's investment services;
3. the executive officer in charge of material parts of the fund or asset management business of a fund management company or management company;
4. the executive officer in charge of an insurance company's investment management business or the provision of financial advice;
5. the executive officer in charge of material parts of an AIF manager's management or the provision of investment advice;
6. compliance officers or holders of equivalent positions working within
  - a. investment services at an investment firm;
  - b. a fund management company or management company;
  - c. investment management business or the provision of financial advice at an insurance company;
  - d. insurance mediation at legal persons which are not credit institutions;
  - e. AIF managers;
7. holders of positions within the risk control and other material control functions who spend 50 per cent or more of their work time within the areas referred to in subsections 2-5;

## **Advisers – category B**

8. a person engaged in providing financial advice to consumers or investment advice to clients;
9. a person engaged in insurance distribution and the provision of financial advice regarding life assurance policies containing a savings element;

## **Specialists – category C**

10. a person engaged in discretionary portfolio management of client assets;
11. a person engaged in the management of UCITS funds or non-UCITS funds;
12. a person who spends 50% or more of his/her work time on:
  - a. receipt and forwarding of orders from clients; or
  - b. executing orders on instructions from clients; or
  - c. executing trades on behalf of the affiliated company;
13. a person who is authorised to execute transactions on exchanges, trading systems of MTFs or OTFs;
14. a person who develops investment analyses;



15. a person who designs investment products and develops investment services focused on a group which may include retail clients;
16. a person who engages in the provision of advisory services within corporate finance business;
17. a person who receives and forwards or executes clients' orders regarding fixed income instruments within automated order-driven trading on exchanges, MTFs or OTFs, provided that such work duties are primarily focused on retail clients.

#### **Mortgage loans - category D**

18. the managing director and deputy managing director of a credit broker licensed pursuant to the Mortgage Loans Operations Act (2016:1024), regarding the licence obligation of lenders and mortgage loan brokers;
19. executive officers responsible for mortgage loan operations at credit institutions;
20. a person who engages in the provision of advice or processing of mortgage loans,
21. a person who engages in designing, developing or otherwise structuring mortgage loan products;  
or
22. a person who engages in credit decisions regarding mortgage loans.

#### **The licensing requirement with respect to employees affects holders of positions who work in Sweden and have work duties that are performed in Sweden.**

**Commentary:** Companies are organised in different ways and it is not certain that all of the functions stated in the provision are in place or fit in with the company's organisation. However, the starting point is that the Licence requirement is to be interpreted broadly, i.e. in the case of uncertainty as to whether an employee is subject to the requirement, the company should choose to Licence the person in question. The licensing examination(s) which the employee is required to take depend(s) on the category/categories under which the employee's position or work duties are placed. Accordingly, it may be necessary for a new licensing examination to be taken where a new position or changed work duties are classified under another category.

With respect, e.g. to subsections 2-5, the affiliated company should make an assessment, based on its own organisation, of which person or persons should be covered by the Licence requirement, in light of the purpose of the licensing. The provision does not cover chief financial officers, IT managers, personnel managers, information managers or other managers who are not directly engaged in the investment services or equivalent. However, they may obtain a voluntary Licence pursuant to section 3. In the case of doubt, there may be reason to consult Swedsec. The provision relates to employees and, pursuant to Chapter 2, section 5, to service providers who provide quasi-employment services. Licences cannot be granted to lawyers and auditors. However, Chapter 2, section 4 applies to tied agents and tied insurance mediators.

The size, operations and organisation of the company are also of importance as to which licensing examination an employee must take for his or her Licence. With respect to managing directors (subsection 1), compliance officers (subsection 6) and risk managers, etc. (Subsection 7), the licensing examination for management and control functions constitutes the examination which best corresponds to the proficiency requirements that should be imposed with respect to such positions, irrespective of the size of the company. Executive officers in accordance with subsections 2-5 should take the licensing examination for management and control functions. If an employee holds such an executive position as referred to in subsections 2-5 while at the same time having work duties as a specialist (subsections 10-17) or adviser, or works with insurance distribution (subsections 8-9), it is up to the company to assess which examination or examinations are most relevant for the individual in question. Executive officers with work duties covered by subsections

8-9, i.e. who work with advisory services, should take at least the licensing examination for advisers. In larger companies, heads of business areas/divisions or equivalent who report directly to the managing director should take at least a licensing examination intended for management and control functions, while as regards other executive officers it can often be more relevant to take the licensing examination intended for specialists or advisers, depending on the area of responsibility. In a smaller company, there might not be any executive levels between managing director and, e.g. trading desk manager or the head of an advisory services unit. In such cases, the licensing examination for specialists or advisers might be most relevant. However, certain employees may need to take several different licensing examinations.

(Subsection 1 a) Turnover, for example, may be used as guidance. If 50 per cent or more of the turnover is derived from investment services, the institution's operations may be deemed "primarily" to comprise investment services.

(Subsection 1 b) 'Management company' has the same meaning as in Chapter 1, section 1, subsection 13 of the UCITS Funds Act (2004:46), i.e. a foreign undertaking licenced to manage funds (the term appears again in subsections 3 and 6b). Such a company may have a branch in Sweden at which the personnel may have a licence.

(Subsections 2-5) It may involve those persons at, for example, an investment firm who are heads of proprietary trading, portfolio management, client trading, analysis, corporate finance and back office (securities administration). In this context, the intention is to heads of business areas with responsibility for significant parts of the business operations. On the other hand, persons with only group manager responsibility for, e.g. advisers, as not intended.

(Subsections 6 and 7) As regards the compliance officer and risk controller functions, the provision is focused on those individuals who perform the work duties which are typically covered by rule compliance functions and risk management. Accordingly, it is not the title held by the person in question which determines the issue of whether there is a Licence requirement. Only those persons who work within the part of the affiliated company's operations which involve investment services, fund business and advisory services are covered. For example, major banks and insurance companies may have several compliance officers with different duties. It is intended that the Licence requirement shall apply to those compliance officers who work within the division(s) or units in which investment transactions, provision of investment advice, analyses or corporate finance are carried out. On the other hand, compliance officers who, e.g. work solely with an insurance company's insurance business, are not covered. Nor does the Licence requirement extend to centrally placed lawyers who are not directly involved in the day-to-day operations within the aforementioned business areas.

(Subsection 8) "Investment advice" means "the provision of personal recommendations to a client in respect of one or more transactions relating to financial instruments." 'Client' means both retail clients and other clients of the affiliated company, insofar as relates to investment advice. Personnel who engage in the provision of financial advice to consumers or investment advice may be found in all categories of companies which may become affiliated, i.e. at investment firms, fund management companies, management companies, insurance companies, insurance intermediaries, and AIF managers.

(Subsection 9) The terms 'financial advice' and 'life assurance containing a savings element' are addressed in the commentary on Chapter 2, section 1, subsection 4. Note the possibilities for an exemption for a person who engages solely in insurance distribution, has taken an examination and is licensed by an organisation other than Swedsec.

(Section 10) The provision refers to an employee engaged in discretionary portfolio management at an investment firm, fund management company or AIF manager.

(Section 11) The provision refers to an employee engaged in the management of UCITS funds at a fund management company and the management of non-UCITS funds at a fund management company or AIF manager.

(Subsection 12) The degree of work is linked to the individual's work time. Thus, the rules entail that, e.g. a person who devotes to the stated duties at least 50 per cent of a half-time job must hold a Licence.

(Subsection 14) Upon application of the rule, the intention is to such investment analyses as stated in Commission Delegated Regulation (EU) 2017/565 of 25 April 2016.

(Subsection 15) The provision partly relates to those persons who, e.g. work at the unit within the company which produces structured products, partly those persons who develop investment services such as robo advising. With development of investment services is meant to create terms and processes for the provision of the investment services. Accordingly, the Licence requirement does not apply to personnel who, e.g. are solely engaged in forming marketing, layout or IT-development (such as programming and other system development).

(Subsection 18) The provision relates to managing directors and deputy managing directors of credit brokers licensed pursuant to the Mortgage Loans Operations Act (2016:1024).

(Subsection 19) The provision relates to executive officers responsible for mortgage loan operations. Affiliated companies must make an assessment as to who or which parties should be covered by the licence requirement in light of the purpose of the licensing. The licence requirement applies only to executive officers who directly manage the mortgage loan operations.

(Subsection 20) The provision relates to advisers and officials who come into contact with clients in connection with applications and pending the granting of, or changes to, mortgage loans. The provision does not apply to personnel who only act as advisers or officials with duties of a purely administrative nature.

(Subsection 21) The provision relates to, e.g. employees who compile the loan agreement terms and other documents applicable to the client that are to be included in the binding offer, and personnel who participate in the structuring of the general mortgage loan product offering.

(Subsection 22) The provision relates to employees who, individually or in a committee, engage in loan decisions concerning mortgage loans. Consequently, personnel who prepare credit assessments and employees who, individually or in a committee, decide to grant mortgage loans, are covered.

Final paragraph: the fact that someone works in Sweden and has work duties that are performed in Sweden means that the person is physically located in Sweden and that work is performed on the Swedish market, e.g. provision of advice to clients in Sweden or execution of transactions on a Swedish trading venue.

### **Exemptions**

**Section 2.** The Licence requirement in accordance with section 1, first paragraph, subsections 2-5 and 12-16 shall not apply to an employee who works exclusively with fixed income or currency-related financial instruments. The Licence requirement in accordance with section 1, first paragraph, subsection 8 shall also not

apply an employee who engages solely in the provision of investment advice to business clients with respect to fixed income or currency-related financial instruments.

**Commentary:** An employee who engages in the provision of financial advice to consumers or investment advice to consumers or manages funds cannot invoke this exemption provision; instead, the Licence requirement shall apply to such employee.

### ***Voluntary Licence***

**Section 3.** Employees other than those enumerated in section 1, first paragraph, subsections 1-22 may obtain a Licence, subject to the consent of the company. Such consent may relate only to an employee working in Sweden and whose work duties are performed in Sweden.

**Commentary:** A person who obtains a voluntary Licence pursuant to this provision is covered by the Rules and Regulations and thus may be subject to disciplinary sanctions. The possibility of obtaining a voluntary Licence extends also to employees of financial group companies (only applicable for companies that have entered into a so called group affiliation before the 31<sup>st</sup> of December 2019, please refer to the transitional provision). See also the commentary on Chapter 9, section 2. The possibility for a voluntary Licence may, for example, be used by personnel who do not provide investment advice, but who provide information about financial instruments and are therefore subject to the proficiency requirements set forth in Chapter 8, section 15 of the Securities Market Act and Chapter 4 of the Swedish Financial Supervisory Authority's regulations (FFFS 2017:2) regarding investment services and activities. The fact that someone works in Sweden and has work duties that are performed in Sweden means that the person is physically located in Sweden and that work is performed on the Swedish market, e.g. provision of advice to clients in Sweden or execution of transactions on a Swedish trading venue.

## Chapter 4. Licence requirements

**Section 1.** In order to obtain a Licence, the applicant must:

1. be employed by an affiliated company;
2. be suitable to hold a Licence, which fact must be assessed and certified by the affiliated company;
3. pass a licensing examination and, if a licensing examination was passed earlier than the year before the calendar year in which the Licence is sought, undergo the immediately preceding year's annual proficiency update pursuant to Chapter 5 and, if the licence application is processed during the month of December and a licensing examination was passed earlier than during the current calendar year, undergo the current year's annual proficiency update; and
4. undertake to comply with these Rules and Regulations and to accept decisions issued by Swedsec and the disciplinary board.

**Commentary:** (Subsection 1) Pursuant to Chapter 2, section 4, employees of a tied agent or tied insurance mediator are regarded as employees of the affiliated company, and the foregoing applies also to certain service providers pursuant to Chapter 2, section 5.

(Subsection 2) With respect to the suitability assessment, see Chapter 8, sections 4-5.

(Subsection 3) According to an earlier transitional rule, a Licence could also be obtained without passing a licensing examination (referred to as an 'experience Licence'). The earlier rule that an experience Licence lapsed upon change of employer has been deleted.

The matrix below clarifies which year's annual proficiency updates must be undergone in conjunction with an application for a licence, depending on when a licensing examination was passed.

Licensing examination passed	Current year's annual proficiency update	Immediately preceding year's annual proficiency update
Current year	Need not be undergone.	Need not be undergone.
Immediately preceding year	Undergone not later than 30 Nov. if licence sought during January – November.  Undergone before licence application if licence application processed in December.	Need not be undergone.
Earlier year than above  Note that a passed licensing examination applies to licence applications for five years; see Chapter 14, sec. 4	Undergone not later than 30 Nov. if licence sought during January – November.  Undergone before licence application if licence application processed in December.	Undergone before licence application.

(Subsection 4) An applicant cannot obtain a Licence before he or she has undertaken to comply with the Rules and Regulations, etc. Thus, the affiliated company must ensure that the employees provide the acceptances, etc. required in the online service, failing which the applicant will not hold a Licence and the company will run the risk of violating the provision in Chapter 3, section 1 pursuant to which it must ensure that only Licence Holders hold certain positions and perform certain work duties.

**Section 2.** These Rules and Regulations shall apply to the Licence Holder commencing the date on which he or she becomes licensed by Swedsec.

**Commentary:** The provisions of Chapter 17 regarding amendments to the Rules and Regulations also apply to the Licence Holder as from the date of becoming licensed.

**Section 3.** A person whose Licence has been revoked pursuant to Chapter 10, sections 2 or 3, or would have been revoked had the individual still been a Licence Holder pursuant to Chapter 10, section 9, may not obtain a new Licence until three years have passed from the date on which the Licence was conclusively revoked or a decision was issued by the disciplinary board pursuant to Chapter 10, section 9. However, where

the disciplinary board has decided that the revocation shall be, or would have been, temporary, the period of time determined by the Board shall apply.

**Section 4.** A person whose Licence has been revoked without any limitation in time must take a new licensing examination in order to obtain a Licence.

**Section 5.** In relation to the general public and the clients, the designation "Swedsec-licensed"® or similar may only be used by a Licence Holder with an active Licence.

**Commentary:** "Swedsec-licensed"® is a registered trademark.

## Chapter 5. Annual knowledge updates

**Section 1.** An affiliated company must ensure that Licence Holders who are employed in the affiliated company remain up to date in their knowledge in accordance with the proficiency requirements established in Chapter 13, section 2. Updating shall be carried out through online training with a concluding examination which demonstrates that the Licence Holder has assimilated the knowledge. The requirement does not apply to Licence Holders with an inactive Licence.

**Commentary:** The provision sets out requirements regarding the content and form of the annual knowledge update. The updating must satisfy the requirements established by the review board in accordance with Chapter 13, section 2 and shall take place through online training, e.g. e-learning, which is concluded with questions to check knowledge. What the affiliated company reports (pursuant to section 4) is that the Licence Holders have updated their knowledge within relevant areas and that this has been done in compliance with the requirements of the Rules and Regulations.

**Section 2.** The Licence Holder is obliged to undergo the annual knowledge update demanded by the affiliated company.

**Section 3.** The annual knowledge update requirement does not apply to a holder of an inactive Licence. However, in the event the inactive Licence is to be activated, prior to activation the Licence Holder must have undergone the immediately preceding year's annual knowledge update, unless the Licence Holder has been granted an exemption by Swedsec.

**Commentary:** As is the case for other Licence Holders with an active Licence, a current year's annual knowledge update must be undergone and reported to Swedsec prior to the end of the month of November; see Chapter 5, section 4. In the event activation takes place in December, annual knowledge updates for both the immediately preceding and current year must have been undergone prior to activation. Licence Holders who are granted a Licence (which does not mean activation of an inactive Licence) during the preceding year and whose Licence is thereafter declared inactive, need not undergo the preceding year's annual knowledge update prior to activation. Swedsec may grant an exemption from the requirement on annual knowledge update if the Licence Holder, due to a change of the Licence Holder's work duties, passes a new licensing examination pursuant to Chapter 6 section 8.

**Section 4.** Prior to the end of November each year, affiliated companies must submit a report to Swedsec as to which of the company's Licence Holders have completed knowledge updates.

Reporting in accordance with the first paragraph shall take place via the online service.

**Commentary:** Companies should set an internal deadline which is earlier than 30 November, to ensure that information as to which Licence Holders have undergone the updating is compiled on time.

**Section 5.** If a Licence Holder fails to complete a knowledge update in accordance with the Rules and Regulations, Swedsec may order that the Licence shall expire, unless the Licence is declared inactive pursuant to Chapter 6, section 4. Swedsec shall notify the affiliated company before a decision on expiry is taken.

**Commentary:** According to section 4, companies must report which employees have undergone knowledge updates. If such a report lacks information regarding a specific Licence Holder, Swedsec shall contact the affiliated company in order to verify whether this is due to a mistake or whether the Licence shall be declared inactive. The question of a decision that the Licence shall expire arises only if the company announces that the Licence Holder will not undergo the knowledge update and there is no question of a Licence being declared inactive.

## Chapter 6. Declaration of inactivity, expiry and activation of Licence

**Section 1.** With the exception of the annual knowledge update requirement in Chapter 5, section 1, the same Rules and Regulations apply to Licence Holders with an inactive Licence as apply to Licence Holders with an active Licence.

### ***Inactive Licence due to parental leave, leave of absence, etc.***

**Section 2.** An affiliated company may submit an application to Swedsec that a Licence Holder's Licence be declared inactive where there are reasons for so doing, e.g. where the Licence Holder is to be on parental leave, leave of absence for any other reason, discharged from work duties, or is to change work duties.

An application pursuant to the first paragraph shall be made via the online service.

### ***Inactive Licence due to termination of the employment***

**Section 3.** Where a Licence Holder's employment at an affiliated company terminates, the Licence shall be declared inactive upon application by the affiliated company.

The provisions of the first paragraph shall also apply if a tied agent as referred to in Chapter 2, section 4 begins to conduct other operations subject to licence.

**Commentary:** With respect to such service providers as referred to in Chapter 2, section 5, the first paragraph means that the Licence is declared inactive upon termination of the assignment at the affiliated company. If the Licence Holder receives a new assignment at an affiliated company, the company must reactivate the licence if the employee is to perform work subject to a licence obligation.

### ***Inactive Licence due to failure to undergo annual knowledge update***

Section 4. Where, due to illness, parental leave or other similar reason, a Licence Holder is unable to carry out an annual knowledge update within the period stated in Chapter 5, section 4, the Licence shall be declared inactive upon application by the affiliated company.

An application for a declaration of inactivity shall be made via the online service.

### ***Inactive Licence due to termination of the employer's affiliation to Swedsec***

**Section 5.** In the event a company ceases to be affiliated to Swedsec, the employees' licences shall be declared inactive.

**Commentary:** The above applies correspondingly with respect to Licence Holders who cease to be subject to the provisions of Chapter 2, section 4 as a consequence of termination of the tied agent or the tied insurance mediator ceasing to be a tied agent or tied insurance mediator.

### ***Expiry of inactive Licence***

**Section 6.** An inactive Licence shall expire after five years have elapsed from the day on which Swedsec declared the Licence inactive.

### ***Activation of inactive Licence***

**Section 7.** An inactive Licence may be activated upon application by the affiliated company. Such an application must be made through a new Licence application via the online service.

**Commentary:** When any holder of an inactive Licence obtains new work, it is not certain that the new employment will require a Licence. The affiliated company may make an assessment based on the provisions in Chapter 3.

**Section 8.** In order for an inactive Licence to be activated, the Licence Holder must undergo an annual knowledge update pursuant to Chapter 5 or have passed a new licensing examination during the last twelve months.

**Commentary:** Activation of an inactive Licence usually requires that the Licence Holder have undergone the preceding year's annual knowledge update, please refer to Chapter 5, section 3.

If the work duties of the Licence Holder have been changed and the Licence Holder hence have passed a new licensing examination during a period of twelve months prior to the activation, Swedsec may grant the Licence Holder an exemption from the requirement on the annual knowledge update.

**Section 9.** Upon activation of an inactive Licence, the affiliated company must assess whether the Licence Holder is suitable to hold a Licence and attest thereto in the online service.

**Commentary:** With respect to the suitability assessment, see Chapter 8, sections 4-5.



# Chapter 7. Exemptions

## *Exemptions from licensing examinations*

**Section 1.** Swedsec may issue a Licence without the applicant having passed a licensing examination, provided other conditions pursuant to Chapter 4, section 1 are satisfied and particular reasons exist.

Where Swedsec has entered into an agreement regarding mutual recognition of an examination conducted by another party, Swedsec may also issue a Licence in accordance with the conditions stated in such agreement.

**Commentary:** (first paragraph) The possibility to obtain a Licence without taking a licensing examination may, for example, be applied in those cases where the applicant is considered to possess sufficient expertise, but special circumstances result in derogation from the licensing examination requirement. The provision is to be applied restrictively. The provision is not intended to reintroduce a possibility to obtain a Licence based on long experience.

## *Exemption from the Licence requirement*

**Section 2.** Where special reasons exist, Swedsec may, for a limited period of time, grant an exemption from the Licence requirement pursuant to Chapter 3, section 1.

Such an exemption may also be granted without any limitation in time where particular reasons exist.

**Commentary:** (first paragraph): Chapter 8, section 1, stipulates that a newly employed holder of a position must be licensed within six months. This deadline should, ordinarily, allow sufficient time to study for, and take, an examination. In exceptional cases, however, a longer time may be necessary and the exemption rule can then be applied. There may also be other situations where such an exemption for a limited time may be relevant. A person who is not covered by the 50 per cent requirement in Chapter 3, section 1, subsection 13 and who reduces his work time due to illness, parental leave or suchlike, but retains his work duties regarding, e.g. receipt of orders, and thereby exceeds the 50 per cent threshold, should be able to obtain an exemption for a limited period of time. Similarly, a person who is to work for only a short period of time within an area subject to a Licence requirement may obtain an exemption pursuant to this section. This may, for example, involve a person who satisfies corresponding proficiency requirements in another country and who, for a limited period of time, is to perform work duties in Sweden which require a Licence.

(Second paragraph) The provision can be applied, e.g. when the Licence requirement is based on the rule in Chapter 3, section 1, first paragraph, subsections 1-5, but, due to the organisation of the affiliated company, the actual responsibility is delegated to another person who holds a Licence. In order to avoid double licences, the provision may also be applied to an employee who engages solely in insurance distribution pursuant to Chapter 3, section 1, subsection 9 and is licensed by another organisation. In order that an exemption might be relevant in such cases, the licensing system in question must correspond to Swedsec's system in essential respects; for example, the person in question must have undergone an examination conducted by the other organisation and it must be possible to revoke the licence in the event of regulatory violations.

### ***Exemption from annual knowledge updates***

**Section 3.** Where special reasons exist, Swedsec may grant an exemption for a limited time in order to allow the applicant to carry out previously non-completed knowledge updates.

**Commentary:** According to Chapter 6, section 4, the Licence may be declared inactive in the event the Licence Holder is unable to carry out the annual knowledge update on time due to illness, parental leave or any other similar reason. A declaration of inactivity means that the Licence Holder may not perform certain work duties (see Chapter 3, section 1, first paragraph). Exemptions pursuant to this provision are primarily for Licence Holders who are active within an area subject to a Licence requirement and who need additional time to carry out the annual knowledge update. The possibility of an exemption may also be used by Licence Holders who return from an extended leave of absence or, for any other reason, have not held an active Licence during an extended period of time. Without the exemption possibility, the Licence Holder would be unable to perform his work duties immediately. The Licence Holder must first update his knowledge before the Licence can be activated. This may result in the Licence Holder being unable to perform his ordinary work duties for one or more days. The provision allows Swedsec, where special reasons exist, to grant an exemption for a limited time to enable the Licence Holder to perform his work duties pending the knowledge update.

The exemption possibility is to be applied restrictively. The exemption to be considered normally should not exceed one week. The main rule, therefore, is that the Licence shall be declared inactive.

### ***Applications for exemption***

**Section 4.** An application for an exemption pursuant to sections 1-3 shall be made by the affiliated company.

**Commentary:** Applications pursuant to section 1, section 2, first paragraph and section 3 shall be made via the online service. However, in certain cases it may be required that the application be supplemented with an appendix/appendices, e.g. certification which is physically submitted to Swedsec.

## **Chapter 8. Obligations of affiliated companies**

### ***Obligations to Swedsec, clients and employees***

**Section 1.** In the absence of an exemption situation pursuant to Chapter 3, section 2, an affiliated company shall ensure that only employees holding an active Licence, or employees with an exemption from the Licence requirement, hold the positions or perform the work duties in Sweden as stated in Chapter 3, section 1.

The obligation imposed under the first paragraph attaches six months from the date when the company affiliated to Swedsec.

New employees must have an active Licence within six months from the date when the employee was appointed to the position or to perform the work duties in question.

**Commentary:** All employees stated in Chapter 3, section 1 must hold a Licence. An affiliated company's responsibility extends to its own employees and employees of tied agents and tied insurance mediators who do not conduct other operations subject to licence; see Chapter 2, section 4. The affiliated company must assess which licensing examination(s) employees must take; see the various examinations set out in the commentary to Chapter 14, section 1. The foregoing applies in the case of both new employees and in the case of a change in work duties. Such assessments must be made in a responsible and discerning manner.

When a company affiliates to Swedsec, the company must ensure that the persons holding the positions stated in Chapter 3, section 1 are licensed as soon as possible, and not later than within six months. The same six-month deadline applies to new employees. The company must monitor that the employees pass an approved examination before the deadline. In some cases, there is a legal requirement that an approved proficiency examination be passed before certain work duties can be performed. This applies, for example, to a person who works with investment advice, insurance mediation, and mortgage loans. Employees with such work duties must, accordingly and irrespective of the deadlines in the provision, pass an examination before they can perform such work independently

**Section 2.** An affiliated company shall endeavour to ensure that, upon request, the Company's clients receive assistance from a Licence Holder with an active Licence.

***Obligation to provide information, notification, certificates, etc.***

**Section 3.** An affiliated company is obliged, upon written request by Swedsec, to provide Swedsec with the information that Swedsec requests and requires for the application of these Rules and Regulations.

**Section 3 a.** An affiliated company is obliged to notify Swedsec immediately in the event the company no longer has a licence to conduct operations, or regarding other circumstances that may affect the company's affiliation to Swedsec.

**Commentary:** For companies with licences for any of the operation stated in Chapter 2, section 1, the notification obligation shall apply if the company no longer has a licence, either because the licence has been withdrawn or the company has itself returned the licence. For companies that are affiliated pursuant to the exception rule in Chapter 2, section 2, the notification obligation relates to circumstances which constituted the basis for the affiliation, e.g. the nature of the operations, ownership structure, etc.

***Suitability assessment***

**Section 4.** An affiliated company is obliged to conduct a comprehensive suitability assessment with respect to an employee who is required to hold a Licence.

**Commentary:** The suitability assessment must be aimed at minimising the risk of unsuitable individuals becoming Licence Holders. It is of great importance for public confidence in the operations conducted by the affiliated companies that stringent demands as regards suitability and regulatory compliance are imposed on personnel who are to be licensed. The suitability assessment must provide the affiliated company with a basis for making a relevant assessment of the employee's or tied agent's suitability for being Licence Holder, irrespective of whether the employee or tied agent previously held a Licence at another affiliated company. In conjunction with the affiliated company's assessment, consideration should be given to the employee's judgement, integrity and independence, etc. Consideration shall be given to whether the employee has been convicted of an offence which may damage confidence in the employee, has been subject

to a trading prohibition, placed into bankruptcy or been subject to disciplinary sanctions imposed by Swedsec's disciplinary board. For example, the person in question cannot engage in work subject to a licence obligation if the Licence has been revoked. It should be noted that warnings and reprimands entail that the disciplinary board was of the view that the Licence Holder is able to continue to engage in work subject to a licence obligation and, consequently, do not in themselves mean that the person cannot be deemed suitable to hold a Licence. In respect of an employee who holds or has held a Licence from employment at another affiliated company, it is important that the affiliated company verifies the register extract in accordance with section 7. Guidance to assist affiliated companies in conducting their suitability assessments is available on Swedsec's website.

**Section 5.** When an affiliated company applies for a Licence in respect of an employee, the affiliated company must (1) certify via the online service that the applicant is employed by the affiliated company and (2) certify that a suitability assessment has been conducted in accordance with section 4 and that the employee is suitable to hold a Licence.

**Section 6.** An affiliated company shall, within ten banking days at the latest, notify Swedsec via the online service regarding the termination of a Licence Holder's employment. The company shall thereupon state whether or not termination of the employment was connected to a violation in accordance with section 8.

**Commentary:** If the affiliated company states that the termination of the employment was connected to a violation, this means that the company has taken a decision to report a violation of the rules to Swedsec. See also the provision in section 8 regarding the obligation to report violations of the rules as soon as possible.

**Section 7.** Where an affiliated company recruits a person who holds a Licence, the company should verify the register extract which, upon request, the Licence Holder is required to present; see Chapter 15, section 9.

**Commentary:** The register extract sets forth pending disciplinary matters, issued disciplinary sanctions, and whether the conclusion of the Licence Holder's previous employment was connected to any violation of the rules which has or must be reported pursuant to section 8. For example, the person in question cannot engage in work subject to a licence obligation if the Licence has been revoked. It should be noted that warnings and reprimands entail that the disciplinary board was of the view that the Licence Holder is able to continue to engage in work subject to a licence obligation and, consequently, do not mean *per se* that the person cannot be deemed suitable to hold a Licence. Information regarding a pending disciplinary matter or that the termination of the Licence Holder's previous employment was connected to violation of regulations means, substantively, that the matter has not yet been determined. The existence of such information should not in itself result in any measure other than the employing company discussing the nature of the matter with the Licence Holder.

**Section 8.** An affiliated company shall, as soon as possible, report to Swedsec in writing where, during the period of employment at the company, a Licence Holder has:

1. breached his obligations pursuant to Chapter 9, sections 2 and 3 and there is reason to assume that this may result in the disciplinary sanctions Licence revocation, temporary Licence revocation or warning pursuant to Chapter 10; or
2. committed a criminal offence or otherwise outside the performance of his duties, acted in such a manner that, based on his personal circumstances, the Licence Holder cannot be deemed suitable to hold a Licence.

The reporting obligation pursuant to the first paragraph applies notwithstanding that the Licence Holder has concluded his employment when the matter is discovered.

A report shall contain the information stated in Chapter 12, section 3.

**Commentary:** The obligation to report that the Licence Holder has committed a criminal offence is conditional on the affiliated company being aware of the criminal offence. The affiliated company has no reporting obligation before the Licence Holder has been found guilty of a criminal offence through a judgment which has become final. The obligation to report applies also with respect to tied agents and tied insurance mediators as well as former tied agents and former tied insurance mediators, to the extent the violation occurred in the agency operations. It follows indirectly from the final paragraph that the affiliated company is required to conduct an initial investigation into what has occurred before any report is filed. Such an investigation should be conducted promptly, and any report should be filed as soon as possible after sufficient information has been compiled.

(Second paragraph) In those cases where the Licence Holder has switched employer, it is the former employer who is obliged to report to Swedsec in the event the Licence Holder committed a criminal offence which is connected to the business operations or in the event the employee breached the provisions of Chapter 9, sections 2 or 3, and there is reason to believe that this may result in the disciplinary sanctions Licence revocation, temporary Licence revocation or warning.

There is no maximum limit on the length of time after termination of the employment during which the affiliated company is subject to this reporting obligation. However, situations may arise in which a considerable time elapses before a violation committed by a former Licence Holder is discovered. It may be the case that such a long period of time has elapsed that the committed violation loses relevance. This assessment is made by the affiliated company which, in the case of doubt, may consult with Swedsec.

Examples of violations of rules which resulted in disciplinary sanctions, and therefore should be reported pursuant to this provision, are set forth in Swedsec's guidance on reporting violations of rules, which are available on Swedsec's website. Please note that earlier precedents include decisions on breaches of rules that have led to the disciplinary sanction reprimand which must not be reported, however the disciplinary board may also in the future impose a reprimand in its decision making (please refer to Chapter 10).

**Section 9.** An affiliated company must notify Swedsec in writing in the event it subsequently discovers that a report pursuant to section 8 should not have been filed or that information in the report was incorrect.

**Section 10.** An affiliated company shall notify Swedsec of the identity of a person who shall be responsible for the contacts with Swedsec. He or she shall possess requisite expertise in legal matters within the licensing area and be well acquainted with the Rules and Regulations. The notification shall contain details of the contact person's name, personal ID number, telephone number and e-mail address.

Notification pursuant to the first paragraph shall take place on the agreement regarding affiliation to Swedsec. The agreement is available on Swedsec's website. Any change of contact person details shall be sent to Swedsec by e-mail.

**Commentary:** In practice, this duty is often allocated to compliance officers. However, the rule does not mean that a single person must handle all contacts with Swedsec. Administrative routines concerning the licensing procedure may, for example, be delegated to other personnel. This possibility of delegation has

been denoted in the wording of the rule by stating that the person shall “be responsible for the contacts.” The rule entails only an administrative responsibility. Thus, the contact person bears no personal responsibility for ensuring that the affiliated company performs its obligations under the Rules and Regulations.

**Section 11.** An affiliated company must collect from its employees Licence certificates relating to expired or revoked Licences.

**Section 12.** An affiliated company shall destroy Licence certificates which have been returned to it pursuant to Chapter 9, section 5 (Licence certificates returned by employees who have concluded their employment). An affiliated company must also destroy Licence certificates where the Licence has expired or been revoked, unless the revocation is temporary. If a Licence has been temporarily revoked, the Licence certificate may be returned to the employee upon termination of the revocation period.

### **Fees**

**Section 13.** Affiliated companies shall pay fees set by Swedsec. Detailed provisions regarding the amount of the fees, payment, etc. shall be issued by Swedsec.

**Commentary:** A current price list is available on Swedsec’s website.

## Chapter 9. Licence Holders’ obligations

**Section 1.** Upon written request by Swedsec, the Licence Holder shall provide Swedsec with the information which Swedsec requests and requires for the application of these Rules and Regulations.

**Section 2.** Licence Holders shall comply with the laws and other statutes, as well as generally accepted practice, governing the operations. In addition, Licence Holders shall comply with Swedsec’s Rules and Regulations and with the company’s own internal rules insofar as such are based on laws, regulations, other statutes, general guidelines, or industry recommendations, and otherwise also act in conformity with the suitability requirements imposed for holding a Licence.

**Commentary:** The majority of the laws, regulations, general guidelines and industry recommendations that apply to affiliated companies are of a commercial law nature and, accordingly, are not aimed directly at employees. However, in order for the commercial law requirements to be satisfied, where appropriate the employees must heed and comply with the rules governing the operations. The employees must, therefore, act in conformity with laws, regulations, other statutes, general advice and industry recommendations, irrespective of whether such relate to them directly or only indirectly. The foregoing applies to all of the activities in which the Licence Holder engages, including activities which are not covered by the obligatory licence area. See also the provision regarding voluntary Licences in Chapter 3, section 3.

**Section 3.** Licence Holders at an affiliated company as referred to in Chapter 2, section 2 shall, in addition, comply with the affiliated company’s own internal rules which are based on obligations in agreements with Swedsec.

**Section 4.** Where the Licence Holder commences new employment at another affiliated company, at the request of such company the Licence Holder shall present an extract from Swedsec's register pursuant to Chapter 15, section 9.

**Section 5.** A Licence Holder who concludes his employment at an affiliated company shall return the Licence certificate to the company.

## Chapter 10. Disciplinary sanctions, fines and expulsion of companies

**Section 1.** The following disciplinary sanctions may be imposed on Licence Holders:

1. Licence revocation, sections 2 and 3;
2. temporary Licence revocation, section 4;
3. a warning, section 6; and
4. a reprimand, section 7.

The following sanctions may be imposed on affiliated companies:

1. fines, sections 10 – 11; and
2. exclusion, section 12.

### **Revocation**

**Section 2.** The disciplinary board may revoke the Licence where a Licence Holder has seriously violated his obligations pursuant to Chapter 9, sections 2 and 3.

**Commentary:** The basis for revocation is linked to the Licence Holder's obligations pursuant to Chapter 9, sections 2 and 3. As stated in the commentary on Chapter 9, section 2, most of the laws and regulations in the finance area are aimed at companies and not directly at their employees. In many cases, correct behaviour by the employee is ensured by means of the company's internal instructions and regulations, and violation of internal rules can then entail violation of the obligations set forth in Chapter 9, section 2. There may, however, also be situations where a particular pattern of behaviour is obvious and natural in relation to the company's obligations, e.g., according to public regulations, without this having been expressly stated in any written instruction. The affiliated companies conduct extensive operations and it is impossible, and also often undesirable, to issue express instructions governing all conceivable situations. The company is often obliged to issue certain guidelines and principles as to how the business is to be conducted. Thus, in order to ensure that the purpose underlying the provision is satisfied in full, a Licence can be revoked in the event a Licence Holder has failed to act in a manner which complies with the suitability requirement imposed for holding a Licence, even if this has not been expressly stated in internal or external rules aimed at the Licence Holder. Criminal offences by a Licence Holder which are connected with the business operations, e.g. embezzlement of client funds, theft from the employer or fraud against the employer, constitute such serious violations by the Licence Holder that revocation of the Licence may be relevant.

It should be possible to apply corresponding reasoning in the case of a Licence Holder employed at a tied agent, based on the affiliated company's responsibility as regards the tied agent insofar as pertains to the agency activities.

Examples of disciplinary board decisions in which the Licence has been revoked are provided in Swedsec's guidance on reporting violations of rules.

**Section 3.** The disciplinary board may revoke the Licence where a Licence Holder has committed a criminal offence outside the course of his duties, or otherwise acted in such a manner that, due to personal circumstances, he or she cannot be deemed suitable to hold a Licence.

**Commentary:** The provision corresponds to the suitability assessment that the affiliated company is obliged to conduct in connection with an employee obtaining a Licence; cf. Chapter 8, sections 4-5. If the affiliated company subsequently considers that the Licence Holder is no longer suitable to hold a Licence in light of a committed criminal offence or the Licence Holder's personal circumstances in general, the company is obliged to report the matter to Swedsec. The criminal offences at issue here have been committed outside the workplace. The investigation will be carried out by the police and prosecutor. A considerable period of time may elapse before the affiliated company learns that the Licence Holder is suspected, or has been convicted, of a crime. The obligation to report a criminal offence committed by the Licence Holder is conditional on the affiliated company being aware of the criminal offence, and no reporting obligation is imposed on the affiliated company until the Licence Holder has been found guilty through a judgment which has become final. It is primarily economic crimes – which generally by their nature damage confidence – which may be relevant. Other criminal activity, if deemed to be of a relatively serious nature, may also give cause to call into question the Licence Holder's suitability and thereby trigger revocation of the Licence. As evident from the disciplinary board's decision 2014:4, a licence may be revoked also in respect of a crime committed before the licence was granted. Thus, the situation described here differs from the situation where a Licence Holder has committed a crime in connection with the operations, e.g. embezzlement of client funds, theft from the employer, or fraud against the employer. In such a situation, the affiliated company is able, by means of its own investigation, to clarify the facts and the affiliated company is able to report the matter to Swedsec upon discovery of the circumstance. In such situation, the circumstances might also be such that the disciplinary board can reach a decision in the matter before the issue of criminal liability has been adjudicated by the court. Upon an overall assessment of the circumstances, the board may, instead of basing a revocation on the ground that a criminal offence has been committed, conclude that the Licence Holder has seriously violated Chapter 9, sections 2 or 3, based on the evidence provided by the affiliated company.

**Section 4.** Where reasons exist for doing so, the disciplinary board may order a temporary revocation. Such revocation shall apply for a period determined by the disciplinary board, however not exceeding one year.

In order for a temporarily revoked Licence to become valid again, the Licence Holder must undergo an annual knowledge update in accordance with Chapter 5.

**Commentary (second paragraph):** It should be noted that if a knowledge update has not been carried out, upon expiry of the revocation period the Licence shall be declared inactive.

**Section 5.** Where Swedsec makes the assessment that there are risks associated with a Licence Holder holding a Licence pending investigation of a matter, Swedsec may order the interim revocation of the Licence, with immediate effect. Such interim revocation shall be reviewed by the disciplinary board within not later than 30 days.

**Commentary:** In practice, in the event of serious violations the affiliated company will probably react immediately upon learning of the event by prohibiting the Licence Holder from continuing his work. When the event is reported to Swedsec, delay is not normally prejudicial. The reason for the provision is to provide Swedsec with a tool to address the exceptional cases which might arise as a consequence of the affiliated company failing to react with appropriate promptness. For reasons of due process, the disciplinary board must review the disciplinary committee's decision within 30 days.



## ***Warning***

**Section 6.** The disciplinary board may issue the Licence Holder with a warning in respect of a violation: where there are grounds for revocation but there are special circumstances which render a warning sufficient; or where the violation is not so serious as to justify revocation.

**Commentary (Subsection 1):** 'Special circumstances' mean, for example, that a long period of time has elapsed between the date of the violation and the reporting of the violation to Swedsec, or where there are other special circumstances which make revocation appear to be too severe a measure.

Examples of disciplinary matters where Licence Holders have been issued with a warning are provided in Swedsec's guidance on reporting violations of rules.

## ***Reprimand or waiver of sanctions***

**Section 7.** Where the disciplinary board considers the Licence Holder's violation to be of minor importance or excusable or where there otherwise exist mitigating circumstances, the disciplinary board may issue the Licence Holder with a reprimand or entirely waive the imposition of any sanctions.

**Commentary:** Examples of disciplinary matters where Licence Holders have been issued with a reprimand are provided in Swedsec's guidance on reporting violations of rules. Please note that breaches of rules that are expected to lead only to a reprimand must not be reported, however the disciplinary board may also in the future impose a reprimand in its decision making (please refer to Chapter 8, section 8).

## ***Decision to declare the Licence invalid***

**Section 8.** Where a Licence has been granted on erroneous grounds, the disciplinary board may declare the Licence invalid.

**Commentary:** If the Licence has been granted based on some error or mistake – incorrectly calculated examination results, mix-up of personal ID numbers or suchlike, the Licence may be declared invalid. If a Licence has been received based on, e.g. the provision of false or incorrect information by the Licence Holder, e.g. deliberate cheating in the licensing examination or incorrect information as a basis for the suitability assessment, this should normally mean that the Licence Holder has acted in violation of the suitability requirements that are imposed for holding a Licence. In other words, the Licence Holder has violated her/his obligations pursuant to Chapter 9, sections 2 and 3, and some disciplinary sanction such as revocation, warning or reprimand may be relevant.

## ***Decisions in cases where the Licence has expired***

**Section 9.** In a matter concerning a person whose Licence has expired, the disciplinary board must determine whether there were reasons for disciplinary sanctions and thereby determine the sanction which would have been issued had the person still been a Licence Holder.

**Commentary:** The aim of this rule is to allow an assessment to be made regarding violations of the rules committed by a former Licence Holder, notwithstanding that the Licence has expired, since a sanction affects the possibility to obtain a new Licence, either because a certain period of time must elapse after a

revocation of the Licence or since a warning or reprimand may affect the suitability assessment which the affiliated company is required to make in accordance with Chapter 8, sections 4-5.

### ***Fines on affiliated companies***

**Section 10.** An affiliated company which intentionally or negligently fails to perform its obligations pursuant to Chapters 2-8 may be ordered to pay a fine to Swedsec of not less than SEK 25,000 and not more than SEK 5,000,000.

**Commentary:** This might be the case, for example, where, notwithstanding a reminder from Swedsec, the affiliated company has failed to Licence the group of employees whom the company has undertaken to Licence pursuant to the Rules and Regulations. One of the company's obligations is promptly to report disciplinary matters and provide information in such a matter. Such matters must be handled promptly and omitted information or incorrect information may be due to a scanty investigation or the fact that new circumstances come to light at a later stage. The affiliated company must not, however, find itself in a situation in which it is subsequently forced to pay a fine notwithstanding that it has acted with normal care in connection with the investigation which was carried out prior to reporting to Swedsec.

**Section 11.** Swedsec's board of directors shall decide whether a fine is to be paid and the amount of such fine.

When determining the amount of the fine, consideration shall be given to the consequences or risks of consequences which the affiliated company's acts or omissions have had as regards Licence Holders, Swedsec, other affiliated companies or confidence in the finance market. In addition, the company's financial position shall be taken into consideration.

Before a decision is taken in the matter, Swedsec shall afford the affiliated company the opportunity to present its case. A decision to impose a fine shall state the reasons on which the decision is based.

### ***Exclusion of affiliated companies***

**Section 12.** In the event an affiliated company has seriously violated its obligations under the Rules and Regulations or no longer satisfies affiliation requirements pursuant to Chapter 2, sections 1 or 2, or confidence in the affiliated company has otherwise been seriously damaged, Swedsec's board of directors may decide that the company may no longer be an affiliated company (exclusion). Prior to taking any decision in the matter, Swedsec shall afford the affiliated company an opportunity to present its case. A decision regarding exclusion must state the reasons on which the decision is based.

### ***Dispute resolution***

**Section 13.** Disputes between Swedsec and an affiliated company that arise relating to these Rules and Regulations shall be conclusively determined through arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

The arbitral tribunal shall comprise three arbitrators.

The seat of arbitration shall be Stockholm. The proceedings shall be conducted in the Swedish and the dispute shall be governed by Swedish law.

**Commentary:** Disputes that arise might involve, for example, a dispute as to whether a company is liable to pay a fine, or whether there are grounds for exclusion. The Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce shall be applied to the procedure. The Rules are available on the Chamber of Commerce's website.

## Chapter 11. The disciplinary board

**Section 1.** There is a disciplinary board to determine issues of a disciplinary nature and invalidity of Licences pursuant to Chapter 10, section 8 ('disciplinary matters'). Provisions regarding the procedure before the disciplinary board are set forth in Chapter 12, sections 9-23.

**Section 2.** The chairman, deputy chairman and other members of the disciplinary board shall be appointed by Swedsec's board of directors.

**Section 3.** The chairman presides over the work of the disciplinary board. The chairman may delegate this work to a deputy chairman.

## Chapter 12. Disciplinary matters

**Section 1.** The preparation and handling of disciplinary matters shall take place promptly and in a manner which guarantees due process. A disciplinary matter shall be investigated to the extent dictated by the nature of the matter.

### *Handling of disciplinary matters at Swedsec*

**Section 2.** A disciplinary matter may be initiated at Swedsec through a report from an affiliated company or on Swedsec's own initiative.

**Commentary:** It is up to Swedsec to determine whether a disciplinary matter is to be commenced on Swedsec's initiative. There is no ultimate time limit as to when a disciplinary matter may be commenced on Swedsec's initiative. Parties other than affiliated companies may also notify Swedsec of a Licence Holder's violation of the rules, etc.

**Section 3.** A disciplinary matter shall be reported in writing, containing a description of the circumstances on which the report is based. The written documents invoked must be appended to the report. A report must contain at least the following:

1. a description of the violation of rules committed by the Licence Holder;
2. an extract from the internal rules which the Licence Holder is alleged to have violated;
3. a description of the consequences of the violation of the rules, e.g. financial loss incurred by clients or the company.

**Commentary:** In order for the disciplinary proceedings to function, a detailed report from the company is required which describes the violations of rules committed by the Licence Holder: when they were committed, and the extent and frequency thereof. Prompt handling requires that the report be as complete as possible from the start. Once the affiliated company has reported the violation, Swedsec assumes responsibility for investigating the matter. Accordingly, Swedsec may request supplementation from the affiliated company if the report is deficient or if any information is lacking which is required for an assessment of the matter; see section 4.

Swedsec has issued written guidance regarding the reporting of violations of the rules, which is updated regularly. The guidance contains, among other things, information regarding the possible content of the report.

**Section 4.** Where a report does not satisfy the requirements set forth in section 3 or is otherwise incomplete, Swedsec shall afford the company an opportunity to supplement its report.

Swedsec may dismiss a report:

1. if supplementation is not received within the prescribed time; or
2. if the report, even after supplementation is received, is so deficient that it cannot serve as a basis for continued handling of the matter.

**Section 5.** When Swedsec is deciding whether a matter shall be referred to the disciplinary board for assessment or that the matter shall be dismissed, and when taking decisions regarding interim revocation of licences pursuant to Chapter 10, section 5, Swedsec may be assisted by a disciplinary committee.

Swedsec's board of directors appoints the members of the disciplinary committee.

**Section 6.** Before Swedsec reaches its decision as referred to in section 5, the affiliated company and the Licence Holder shall receive material of importance for the decision and be afforded an opportunity to comment on the material, unless such is manifestly unnecessary.

**Commentary:** Documents are sent only to the affiliated company and the Licence Holder; however, not to other parties who, for example, have notified Swedsec of a violation.

**Section 7.** After Swedsec has reached its decision, Swedsec shall notify the decision to the affiliated company and the Licence Holder. Where the decision entails referral of the disciplinary matter to the disciplinary board, the matter shall be sent to the chairman of the disciplinary board.

**Commentary:** The notice to the disciplinary board are also not communicated to parties other than the Licence Holder and the affiliated company.

**Section 8.** Where Swedsec has decided to dismiss a matter, the affiliated company which is affected by the decision may request a review of the decision. A request for review must be submitted in writing to the disciplinary board, and must have been received by Swedsec within three weeks of the date on which the decision was issued. In respect of such a matter, the disciplinary board shall apply the procedure stated in sections 9-23.

Where Swedsec has decided to partially dismiss a matter, the company concerned may, in the manner stated in the first paragraph, request a review of the decision as regards the part or parts to which the dismissal relates. However, in such case written notice that the company intends to request a review must have been submitted to Swedsec not later than seven banking days from the date on which the decision was announced.

### ***Handling of disciplinary matters before the disciplinary board***

**Section 9.** Disciplinary matters shall be taken up for adjudication by the disciplinary board after referral by Swedsec.

The disciplinary board meets when summoned by the chairman.

**Section 10.** The written documents which are invoked must be appended to the notice pursuant to section 7. The board may demand that documents in the matter be drafted in, or translated into, Swedish.

**Section 11.** Where the material received by the disciplinary board from Swedsec is incomplete, the disciplinary board shall afford Swedsec an opportunity to supplement the material. The Board may dismiss a matter where:

1. supplementation is not received within the prescribed time; or
2. the material is so deficient that it cannot serve as a basis for the further handling of the matter.

**Section 12.** The disciplinary board may procure further evidence where there are reasons for so doing.

**Section 13.** The proceedings in the disciplinary board shall take place in writing. Swedsec and the Licence Holder may request to present their comments orally to the board, and such request shall be granted unless the chairman of the board decides that such presentation is unnecessary.

Where necessary for adjudication of the matter, at the request of Swedsec or the Licence Holder the chairman of the disciplinary board may summon the company which submitted the report to answer questions at an oral hearing before the board.

**Section 14.** A matter may not be adjudicated without Swedsec, the reporting company and the Licence Holder having been provided with all information in the matter and afforded an opportunity to comment thereon, unless such is manifestly unnecessary.

**Section 15.** When adjudicating a matter, the disciplinary board shall consist of no fewer than three and no more than five members. Of these members, the chairman shall have legal training and experience as a judge. At least one member shall be well versed in conditions on the finance market. Decisions which do not include a final adjudication of the matter may be taken by the chairman alone.

**Commentary:** If the matter involves an important issue of principle, the disciplinary board should comprise five members, whereupon there is scope for at least two members who are well versed in conditions on the finance market.

**Section 16.** The board's decisions shall be reached by majority vote. In the event of a tied vote, the chairman shall have the casting vote. Voting shall take place where differences of opinion arise in conjunction

with deliberations regarding a decision. The provisions of section 28 and 29 of the Administrative Procedure Act (SFS 2017:900) shall thereupon apply, where appropriate.

**Section 17.** The disciplinary board's decisions shall be based on the contents of the documents and facts that have otherwise come to light in the matter. The decision shall be issued in writing and state the grounds for the decision.

**Section 18.** The decision shall be sent without delay to Swedsec, the Licence Holder and the affiliated company at which the Licence Holder is employed, as well as the company which reported the matter. Any dissenting opinion shall be appended to the decision.

**Commentary:** Other parties may read the decision through publication by Swedsec. If, at the time of the disciplinary board's decision, the Licence Holder is employed at an affiliated company other than the reporting company, the decision shall be sent in anonymized form to the company where the Licence Holder is employed, together with information regarding the Licence Holder to whom the decision relates.

**Section 19.** Minutes shall be kept of meetings of the disciplinary board. The minutes shall note the members of the disciplinary board, Swedsec, the Licence Holder and the reporting party, the nature of the matter, decision and any dissenting opinion. Minutes need not, however, be prepared where the information is set forth in a separately prepared decision.

### ***Publication***

**Section 20.** Where disciplinary sanctions have been issued, Swedsec may provide information about the decision through a press release. The chairman of the disciplinary board and the affiliated company shall be afforded an opportunity to provide comments on the press release.

The decision shall be published by Swedsec without identifying details.

### ***Licence Holder's counsel***

**Section 21.** The Licence Holder shall be entitled to retain counsel or a representative in a disciplinary matter. Costs for counsel/the representative shall be reimbursed in a certain amount by Swedsec in accordance with the detailed instructions issued by Swedsec. A request for compensation (bill of costs) must have been received by Swedsec within 30 days of the date on which the disciplinary matter is conclusively resolved and must contain a description of the work and information regarding the time expended on the engagement.

**Commentary:** Instructions regarding compensation to counsel are available on Swedsec's website.

### ***Conflicts of interest***

**Section 22.** Any member of the disciplinary board or disciplinary committee who is to address a matter shall be deemed to have a conflict of interest

1. where the matter concerns such person or his spouse, parents, children, or siblings or some other closely related person;
2. where the outcome of the matter may be expected to entail a benefit for, or detriment to, the member personally or other closely related person;
3. where he, or some other closely related person, is a representative of the person whom the matter concerns or someone who may expect a benefit or detriment as a result of the outcome of the matter;
4. where he has acted as counsel or received payment to represent a party in the matter; or
5. where other particular grounds exist in the matter which are likely to detrimentally affect confidence in his impartiality in the matter.

**Section 23.** Any person who has a conflict of interest may not handle a matter unless the issue of impartiality is manifestly irrelevant. A person who has a conflict of interest may, however, undertake steps which no other person is able to undertake without unreasonable delay. Any person who is aware of a circumstance which may be assumed to entail a conflict of interest for such person shall personally raise the issue of conflict of interest. Where an issue of conflict of interest has arisen in respect of a person and no replacement has been appointed in his stead, the board or the committee shall promptly decide the issue of conflict of interest. The person in respect of whom a conflict of interest has been raised may not participate in the assessment of the issue of conflict of interest.

## Chapter 13. Review board.

**Section 1.** The board of directors of Swedsec shall appoint a review board. The members shall possess comprehensive and broad knowledge of the finance market.

**Section 2.** The review board shall determine the proficiency requirements which shall apply as regards the licensing examination and the annual knowledge updates. The review board shall ensure that the requirements correspond to developments on the finance market and that the licensing examination corresponds to the proficiency requirements.

**Section 3.** Swedsec shall inform affiliated companies regarding proficiency requirements.

**Commentary:** Proficiency requirements are available on Swedsec's website.

# Chapter 14. Licensing examinations and Licence certificates

## *Licensing examinations*

**Section 1.** Swedsec shall draw up licensing examinations as well as procedures for carrying out and grading examinations.

**Commentary:** Swedsec provides various tests for the different categories of personnel who are required to hold a Licence pursuant to Chapter 3, section 1.

Employees with the positions or work duties stated under category A in Chapter 3, section 1, first paragraph should hold a Licence based on Swedsec's licensing examination for management and control functions or Swedsec's licensing examination for the securities market or the transitional provision pursuant to section 4.18 of Swedsec's Rules and Regulations dated 1 July 2001 (experience licence).

Employees with the positions or work duties stated under category B in Chapter 3, section 1, first paragraph should hold a Licence based on Swedsec's licensing examination for advisers or Swedsec's licensing examination for the securities market or section 1 of the transitional provision in the 2013 Rules and Regulations or older transitional provisions (experience licence). A person holding a Licence based on Swedsec's licensing examination for the securities market has not thereby taken a proficiency examination which satisfies proficiency requirements or experience requirements set forth in the Swedish Financial Supervisory Authority's regulations and general guidelines on insurance distribution (Chapter 4 of FFFS 2018:10) and, accordingly, such a Licence Holder is not authorised to engage in insurance mediation solely on the basis of her/his Licence.

Employees with the positions or work duties stated in category C in Chapter 3, section 1, first paragraph should hold a Licence based on Swedsec's licensing examination for specialists or Swedsec's licensing examination for the securities market or older transitional provisions (experience licence).

Employees with positions or work duties stated in category D in Chapter 3, section 1, first paragraph should hold a Licence based on Swedsec's licensing examination for mortgage loans.

However, operations in different companies vary and it is up to the individual company to assess which licensing examination best accords with the individual employee's work duties.

**Section 2.** Swedsec shall provide opportunities to take a licensing examination to the extent required. The licensing examination shall be held at the time and place determined by Swedsec.

**Section 3.** Swedsec's website shall provide information regarding the time and place for licensing examinations, and participation requirements.

**Section 4.** Assessment of whether a licensing examination is passed shall be made accordance with Swedsec's established procedures. In respect of Licence applications, a pass grade shall apply for five years.

**Commentary:** A written certificate evincing that an examination has been passed may be obtained via the online service. Deletion of licensing examinations will take place in accordance with Swedsec's principles in force from time to time.



## ***Licence certificates***

**Section 5.** Swedsec shall issue a Licence certificate upon application by a person who fulfils the requirements for a Licence. The Licence certificate shall contain information regarding the Licence Holder and the affiliated company.

**Commentary:** Swedsec imposes no requirement that a Licence certificate be issued in respect of a Licence Holder.

**Section 6.** In the event of the loss of a Licence certificate, the Licence Holder may obtain a new certificate upon application to Swedsec, upon payment of a fee.

# Chapter 15. Confidentiality and register

## ***Confidentiality***

**Section 1.** Swedsec may not, without authorisation, disclose or utilise information regarding affiliated companies, Licence Holders, or the business circumstances or personal circumstances of any other party, which Swedsec has obtained as a consequence of the performance of its duties pursuant to these Rules and Regulations.

A person who is, or has been, connected to Swedsec as an employee or service provider may not, without authorisation, disclose or utilise information obtained in the course of the employment or service with respect to the business circumstances or personal circumstances of affiliated companies, Licence Holders or any other party.

Swedsec shall ensure that employees and service providers sign confidentiality undertakings with the content stated in the second paragraph.

**Commentary:** The provision is similar to the duty of confidentiality provisions set forth in Chapter 1, section 10 of the Banking and Financing Business Act (SFS 2004:297) and Chapter 1, section 11 of the Securities Market Act (2007:528), but applies to a wider group of individuals than those rules. The concept of non-authorisation is to be interpreted in the same way as in the banking business legislation, i.e. in the event Swedsec discloses information pursuant to a legal obligation to do so, Swedsec is not deemed to be acting without authorisation. An example of this is information to the Swedish Financial Supervisory Authority which the Authority has requested pursuant to Chapter 6, section 1(a) of the Financial Instruments Trading Act (SFS 1991:980).

**Section 2.** Swedsec shall possess internal instructions regarding the handling and storage of documents provided to Swedsec which contain information classified as confidential.

## ***Register***

**Section 3.** Swedsec shall maintain a register of information concerning Licence Holders and former Licence Holders.

**Commentary:** Swedsec shall maintain a register in the online service. In the online service, information shall be saved regarding, e.g. the Swedsec examination(s) taken by Licence Holders, annual proficiency updates, exemptions, Inactive Licences and disciplinary sanctions. Elimination of information from the online service shall take place in accordance with Swedsec's principles as applicable from time to time.

**Section 4.** Information about Licence Holders with active Licences, regarding the Licence Holder's name and affiliated company, shall be publicly available record on Swedsec's website. Swedsec may also make information regarding the basis of the Licence publicly available on the website.

**Section 5.** Information regarding the disciplinary sanctions Licence revocation, temporary Licence revocation or warning shall be saved in the register. From the day on which disciplinary sanctions are decided upon, information regarding revocation or temporary revocation shall be saved for three years and information regarding warnings for two years.

**Commentary:** As of the 1<sup>st</sup> of January 2023, the reporting obligation regarding breaches of rules have been changed to only concern Licence revocation, temporary Licence revocation or warning, however the disciplinary sanction reprimand may still be imposed by the disciplinary board. Given that a report must not be made if the breach is expected to only lead to a reprimand, the provision on how long period of time information is saved in the register only applies to Licence revocation, temporary Licence revocation or warning.

**Section 6.** Information regarding pending disciplinary matters shall be saved in the register as from the commencement of the matter until the disciplinary matter is concluded.

**Commentary:** A disciplinary matter is deemed concluded when the disciplinary board has taken a decision in the matter or when the disciplinary committee has decided to take no measures in the matter upon expiry of the appeal period within which the reporting company may request review.

**Section 7.** Information that termination of the Licence Holder's employment was connected to a violation that has been or must be notified pursuant to Chapter 8, section 8 shall be saved in the register until the disciplinary matter is commenced, however no longer than for three years from the date on which the information was provided.

**Section 8.** Information pursuant to sections 5 -7 is available to the Licence Holder personally.

**Section 9.** A Licence Holder shall be entitled to obtain an extract from the register evincing disciplinary sanctions, pending disciplinary matters, and information that termination of the Licence Holder's employment was connected to a violation that has been or must be notified pursuant to Chapter 8, section 8. The Licence Holder may print out such an extract in the online service.

**Commentary:** Information regarding disciplinary sanctions and pending matters does not, *per se*, constitute such sensitive information or information regarding criminal offences and penal sanctions the processing of which is specifically regulated in the data protection rules. On the other hand, information in certain decisions from the disciplinary board may constitute such information. The information which must be available in the register comprises solely information regarding the issued disciplinary sanctions Licence revocation, temporary Licence revocation or warning, not the reason for these sanctions. Just as with other personal data, the registration must serve a purpose. In this case, the purpose is to allow affiliated companies, through monitoring pursuant to Chapter 8, section 7, to learn of sanctions, pending matters or, if there is a relevant registration pursuant to Chapter 8, section 6, whether a report of a regulatory violation pursuant to Chapter 8, section 8 has been made or is intended to be made, since these factors must be taken into

account in the suitability assessment pursuant to Chapter 8, section 4, and so that Swedsec shall take into account previous disciplinary sanctions when considering new matters, and to monitor that there are no impediments to the granting of a new Licence as set forth in Chapter 4, section 3. The information may be saved no longer than is justified in light of the purpose, and not more than three years may be considered a reasonable period of time.

**Section 10.** Swedsec may affect rectifications in the register when there is reason for so doing.

## Chapter 16. Personal data processor

### *Task of personal data processor*

**Section 1.** Processing of personal data in the online service is governed by the data protection rules. In relation to Swedsec, the affiliated company constitutes a personal data processor in conjunction with the affiliated company's processing of personal data in the online service. The processing takes place to enable the affiliated company to perform obligations in accordance with the regulations and relates to Licence Holders and other persons who, in the online service, are data subjects at the company. The affiliated company must comply with the data protection rules.

The affiliated company commits to taking appropriate technical and organisational measures to ensure the due performance of its obligations as a personal data processor as set forth in

1. these regulations;
2. documented instructions issued by Swedsec; and
3. the data protection rules.

**Commentary:** One purpose with the provisions in this Chapter 16 "Personal data processor" is to satisfy the requirements set forth in Article 28 of the General Data Protection Regulation. The scope and nature of the affiliated company's undertakings in accordance with the provisions of this chapter of the regulations are to be assessed in light of what the role as personal data processor actually entails, i.e. that it involves processing of personal data in an online service provided by Swedsec.

The regulations provide that the affiliated company has a far-reaching responsibility to perform administrative measures in the online service, e.g. in conjunction with applications for licences. The phrase "undertakings" in the provision is to be interpreted broadly and includes also non-obligatory measures which the affiliated company is entitled to take pursuant to the regulations and which are carried out through the company's measures in the online service, e.g. licence applications in conjunction with voluntary licensing.

Personal data regarding Licence Holders and other persons who are data subjects at the affiliated company in the online service shall be correct and kept updated from time to time.

(second paragraph) "Documented instructions" means instructions as to how the affiliated company shall ensure sufficient data protection, to be published by Swedsec from time to time on a place in the online service specifically intended for this purpose.

See Chapter 1, section 3 for a definition of the data protection rules.

### ***Requirement of suitable security level***

**Section 2.** The affiliated company shall take appropriate technical and organisational measures to ensure a suitable security level to protect personal data which is processed in the online service. The affiliated company shall take all measures required pursuant to Article 32 of the General Data Protection Regulation.

**Commentary:** The affiliated company thus has an independent responsibility to take appropriate technical and organisational methods to ensure that the security level is sufficient. However, when assessing what constitutes a suitable security level, consideration shall be given to the fact that it is Swedsec that is responsible for the technical operation of the online service and that the affiliated company's access to the online service is normally limited to, through the use of computers with Internet connection, having access to and being able to alter certain personal data. It is, for example, necessary for the affiliated company to have satisfactory routines for password protection for logging onto the online service. The affiliated company shall comply with Swedsec's instructions in the area as applicable from time to time. See section 1 regarding the obligation to comply with documented instructions.

The affiliated company's undertakings pursuant to this provision are based on Article 28(3)(c) and Article 32 of the General Data Protection Regulation. Article 32(1) provides, *inter alia*, that the controller and processor of personal data shall take appropriate technical and organisational measures to ensure a security level appropriate to the risk, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons. Furthermore, Article 32(2) provides that, in assessing the appropriate level of security, account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.

### ***Processing only within the EEA***

**Section 3.** Personal data may not, without Swedsec's written consent, be processed using equipment that is physically located outside the EEA and also may not be transmitted, e.g. by email or any other technical means, to countries outside the EEA.

### ***Processing of personal data by natural persons***

**Section 4.** The affiliated company shall ensure that each natural person who processes personal data in the online service on behalf of the affiliated company does so in conformity with the regulations and with instructions issued by Swedsec.

The affiliated company shall ensure that natural persons who process personal data on behalf of the affiliated company do so subject to confidentiality, entailing that such persons may not disclose or utilise the personal data without authority.

**Commentary:** (second paragraph) Instructions for the processing of personal data by administrators is available in the administrator manual in the online service.

(third paragraph) Processing of personal data shall take place under conditions of confidentiality. There are, however, situations in which the lifting of confidentiality is relevant. For example, it should normally be

permitted to allow employees at the affiliated company to use personal data from the online service in the company's personnel administration work.

### ***Enquiries from data subjects***

**Section 5.** The affiliated company shall assist Swedsec in Swedsec's performance of its obligation, vis-à-vis the affiliated company's Licence Holders and other persons who are data subjects at the company in the online service, to respond to requests by such persons to exercise their rights based on the data protection rules.

**Commentary:** Pursuant to the data protection rules, the rights of data subjects are set forth in Chapter III of the General Data Protection Regulation. The affiliated company's obligation to assist Swedsec pursuant to this provision normally extends no further than assisting Licence Holders and others data subjects of the company in the online service, in establishing contact with Swedsec.

### ***Reporting to Swedsec in certain cases***

**Section 6.** In the event the affiliated company learns of a personal data breach, the company shall notify such to Swedsec without delay. Such notification shall contain a sufficient description of the personal data breach to constitute the basis for reporting of a personal data breach by Swedsec pursuant to Article 33 of the General Data Protection Regulation. Upon request by Swedsec, the affiliated company shall supplement the material and also otherwise assist in the investigation of the personal data breach.

**Commentary:** See Chapter 1, section 3 for a definition of personal data breach.

**Section 7.** Where the affiliated company considers that the regulations or documented instructions issued by Swedsec violate the data protection rules or other data protection provisions, the affiliated company shall notify Swedsec thereof in writing.

**Commentary:** The provision contemplates, and thus is limited to, the affiliated company's role as personal data processor, i.e. regarding processing of personal data in the online service.

### ***Sub-processors***

**Section 8.** The affiliated company may retain a personal data processor, referred to as a sub-processor, for processing personal data. The affiliated company shall enter into an agreement with each sub-processor containing the provision or provisions issued by Swedsec from time to time. The affiliated company shall notify Swedsec regarding its plans to retain or replace a sub-processor.

**Commentary:** A sub-processor may be a consultant or other service provider. A natural person who is employed by the affiliated company and engages in the processing of personal data within the scope of her or his employment shall not be regarded as a sub-processor.

**Section 9.** The sub-processor shall, insofar as relates to duties as a personal data processor, be subject to the same data protection obligations as incumbent on the affiliated company in its capacity as personal data processor. In addition, the affiliated company shall ensure that the sub-processor commits to taking appropriate technical and organisational measures to satisfy the data protection rules. In the event the sub-processor fails to perform its data protection obligations, the affiliated company shall be liable vis-à-vis

Swedsec for the sub-processor's performance of the affiliated company's obligations as personal data processor.

**Commentary:** Swedsec's template for the affiliated company's agreement with a sub-processor provides that the sub-processor assumes the obligations pursuant to this provision.

### ***Swedsec's right to information***

**Section 10.** Upon request by Swedsec, the affiliated company shall, without unreasonable delay, provide Swedsec or an accountant retained by Swedsec with such information as Swedsec deems necessary in order to verify that the affiliated company is complying with its obligations as a personal data processor. For this purpose, the affiliated company shall allow Swedsec to conduct verifications, including inspections performed by Swedsec or by an accountant authorised by Swedsec. In conjunction with such verifications, the affiliated company shall provide the assistance required for the execution thereof.

**Commentary:** The fact that a controller of personal data shall have such right vis-à-vis the processor of personal data is set forth in Article 28(3)(h) of the General Data Protection Regulation. The second and third sentences of the provision may be thought to be far-reaching and should probably only be applied in exceptional cases.

### ***Forwarding of information from Swedsec***

**Section 11.** Upon request by Swedsec, the affiliated company shall forward information to the affiliated company's Licence Holders and other data subjects at the company in the online service.

Where a personal data breach has occurred and Swedsec is of the view that Licence Holders and other data subjects at the affiliated company in the online service are to be informed of the personal data breach, upon request by Swedsec the company shall, without delay, forward information from Swedsec to affected individuals.

**Commentary:** (second paragraph) Swedsec, as a control of personal data, is responsible for providing information regarding personal data breaches. However, in certain cases Swedsec is dependent on the affiliated company participating and forwarding the information.

### ***Impact assessment regarding data protection***

**Section 12.** Where Swedsec makes the assessment that an impact assessment regarding data protection pursuant to Article 35 of the General Data Protection Regulation is to be carried out, the affiliated company shall, taking into account the type of processing and the information to which the company has access, assist Swedsec in ensuring that Swedsec's obligations under the Article are performed. If such an impact assessment results in Swedsec conducting prior consultation with the supervisory authority for data protection issues in accordance with Article 36 of the General Data Protection Regulation, the affiliated company shall, taking into account the type of processing and information to which the company has access, assist Swedsec in ensuring that Swedsec's obligations under this Article are performed.

**Commentary:** The obligations of the personal data processor to assist Swedsec in conjunction with an impact assessment (Article 35) and prior consultation (Article 36) are set forth in Article 28(3)(f). Article 35 provides that where processing of personal data is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the

envisaged processing operations on the protection of personal data. Article 36 provides that the controller of personal data shall consult with the Swedish Data Protection Authority prior to processing where a data protection impact assessment under Article 35 indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.

### ***Deletion of copies following termination of the affiliation***

**Section 13.** After a company's obligation to be a personal data processor has ceased pursuant to Chapter 2, section 9, subsection 4, the company shall delete existing copies of personal data obtained from the online service. For the avoidance of doubt, the aforesaid shall not apply to personal data which the company has lawful grounds to use in its operations.

**Commentary:** After a company's affiliation has terminated, certain concluding measures are required in the online service before Swedsec excludes the company from access to the online service. The company thereupon ceases to be a personal data processor; see Chapter 2, section 9, subsection 4.

Article 28(3)(g) of the Personal Data Regulation provides that, after the end of the provision of services relating to processing, a personal data processor shall, at the choice of the personal data controller, delete or return all the personal data and delete existing copies. Inasmuch as the processing in the instant case takes place in the online service, return or deletion of personal data in the online service is not relevant. Instead, Swedsec shall exclude the company from access to the online service. On the other hand, the provision may be relevant if the company has saved copies of personal data outside the online service. However, the provision does not apply to the situation where the company, on lawful grounds, e.g. in its personnel administration work, uses the same information as also processed in the online service.

## Chapter 17. Amendments to the Rules and Regulations and notices

### ***Amendments to the Rules and Regulations***

**Section 1.** The Rules and Regulations are adopted by Swedsec's board of directors and, unless special circumstances otherwise dictate, are reviewed annually. Decisions regarding any amendment to the Rules and Regulations shall be posted on Swedsec's website. The website also states when a new version of the Rules and Regulations shall enter into force.

**Section 2.** Prior to any amendments to the Rules and Regulations, Swedsec shall canvas the opinions of the affiliated companies.

**Commentary:** This normally takes place through proposed amendments being distributed for consultation to affiliated companies in ample time prior to possible adoption of the proposed amendments.

**Section 3.** Communication – notifications, reports, etc. pursuant to these Rules and Regulations must take place in the manner determined by Swedsec.

Communication with Swedsec by affiliated companies and Licence Holders takes place primarily through the online service. It is in the online service that applications for Licences are filed, registration for examinations takes place, annual knowledge updates are reported, etc.

## **Entry into force**

**The Rules and Regulations shall enter into force on 1 January 2022.**

### ***Transitional provision***

1. The earlier rules on group affiliation shall continue to apply to companies that affiliated in accordance with the group affiliation rules prior to 31 December 2019.