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**THE LEGAL STRUCTURE OF**  
**SAVINGS AND RETAIL BANKS IN**  
**EUROPE**

**SEPTEMBER 2018**

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## **PREFACE BY THE MANAGING DIRECTOR**

This comparative study of the laws governing the savings banks of Finland, France, Germany, Malta, Norway, Portugal, Spain and Sweden provides information and evidence that demonstrate why savings and retail banks should be protected from the potential negative consequences of comprehensive banking reform.

The European Commission itself has acknowledged that the diversity of banking business models across the EU is beneficial to competition, enhances the overall banking system's efficiency, and helps the system overcome shocks. Despite rare instances of misfortune owed more to national or local circumstances, the savings and retail banking model has proven robust in the face of every crisis in recent years. ESBG is overwhelmingly in favour of preserving the diversity of the European banking system, because in ensuring market competition it also strengthens the business model of banks.

Moreover, and crucially, banks are the financial intermediaries of the economy, and, more specifically, savings and retail banks are the only solution for loan, credit and banking services for countless small and medium-sized enterprises across Europe – especially those based in remote areas and small towns – not to mention all the households, public authorities and other entities that fuel the real economy. The laws governing savings banks ensure their role of improving the social and economic well-being of the communities they serve.

Chris De Noose  
ESBG Managing Director

# INTRODUCTORY STATEMENT

Since 2005 the banking industry has had to face radical changes due to two major events: the global financial crisis of 2008, and the European sovereign debt crisis, which some countries have suffered with a special intensity. As with the rest of the economy, the banking industry has undergone sweeping changes that will probably shape its future. At the time of writing, the European institutions are discussing a project of banking structure reform that could completely change the European banking industry landscape, and may result in significant adaptations of the legal form and structure of savings and retail banks.

Due to these crucial changes currently affecting the environment and structures of retail banks, it appeared to be appropriate to publish a comparative study of the laws governing savings banks. The study provides ideas and proof that show why savings and retail banks should be preserved in the context of potential sweeping banking reform.

Please note that this study is based on the contributions of ESBG members regarding the legal environment in their respective countries. ESBG cannot be held responsible or liable in any way for possible omissions or inaccuracies.

## **1 A common identity which strongly binds savings and retail banks**

### **1.1 Active in providing retail services for private customers, SMEs and local authorities**

Savings and retail banks in Europe are characterised by their retail, regional and responsible approach, meaning that they are committed to broad distribution channels and to returning a contribution to the society in which they operate. Moreover, they are efficient financial institutions that command in most countries a significant share in their national domestic banking markets.

Savings and retail banks in Europe have always been especially strong in the provision of retail services to households and SMEs. They hold a great share of the loans and deposits at European level and hold quite an important share in the mortgage and SME lending businesses. Due to this presence in retail activities, savings and retail banks are key actors in the economic activity at European level. They have built their business model on the foundation of a long-term relationship with their clients that has allowed them to document personal experiences and client histories, as well as knowledge of the businesses in which their customers engage, which provides them with in-depth knowledge of their clients' activities and problems. Furthermore, this has contributed to making savings and retail banks experts in some areas of business.

The savings and retail banks might not always be the most profitable financial institutions, but they have a long record of success stories which has shown they are key providers of the main banking services that the economy needs.

### **1.2 A broad distribution network providing regional outreach and proximity services**

Another main feature that shapes the business model of savings and retail banks in Europe is their presence at local and regional level. Thanks to their large number of branches (ESBG members operate through 67,200 branches, which represent 31.2% of the total number of outlets in Europe), savings and retail banks have become key actors in the development of regional and local economies, funding businesses, customers and local and regional governments in key projects for their development

Very often, savings and retail banks happen to be the only institutions that provide services in small and remote towns or even the only institution present in a group of towns. By providing banking services in regions and small towns they contribute to fostering regional and local development, especially in more remote areas.

The local and regional presence of savings and retail banks in Europe determines their legal structure. In most cases they were created at a local or regional level. Some have merged with other similar savings and retail banks, resulting in larger financial institutions. Others remain independent financial institutions within federations that share a series of services that, due to their characteristics, are more affordable for institutions on a large scale.

Savings banks are attempting to provide services at a lower price than other institutions due to the benefits of the aforementioned long-term customer relationship, which is made possible by the physical presence of branches. A long-term relationship and intimate knowledge of clients' needs and 'financial health' result in a high level of efficiency with regards to the provision of financial services.

The majority of savings and retail banks were founded by local entrepreneurs, stakeholders and governments that decided to create these institutions in order to provide regions and towns with the banking services needed to develop proper economic activity. This is one reason that explains the non-profit orientation as a basis of the business model of savings banks; the main objective is not profit (which nevertheless is also sought) but the provision of key services to the economy. The profit that savings and retail banks can obtain from their activity is small compared with that of commercial and investment banks, which generally engage in more risky activities, corporate lending, trading activities, etc.

### **1.3 A responsible approach to business and society**

#### **1.3.1 *Serving clients***

Banking services provide a public good to the economic system, are essential to the normal functioning of the economy, and contribute to the efficient allocation of resources to the system. Therefore, they create positive 'externalities' in the system contributing to the development of regional and local economies.

Another strength of savings and retail banks is their model, which allows them to offer a wide range of services in addition to retail banking activities. Savings and retail banks often associate with other similar banks in order to offer the widest range of services and to provide them with better market conditions.

Furthermore, banks play the role of financial intermediaries in the efficient allocation of resources, which in the case of savings and retail banks is of even greater importance given that they are the only link to credit and banking services for many small enterprises and households, especially those based in remote areas and small towns. This model of financial intermediation, which has traditionally characterised the European banking model, has now been questioned by some critics due to the financial crisis. The alternative would be to resort to financial markets. This is, in our opinion, an option to assess carefully, as it could increase cost for clients and allow a less regulated system to develop.

Why? Because savers who place their money directly with investors – that is, without the assistance of financial intermediaries – lack both information and the ability to process it as well as financial intermediaries. Problems arise due to varying terms, and low diversification leads to high risks. Ultimately, financial intermediaries' role is to ensure the diversification of risk, balance differing terms

and gather and assess information. Banking system provides a highly efficient capital allocation mechanism and thus contributes to higher investment productivity and to national economic growth. The banking intermediation is therefore vital and its strength or weakness affects other sectors of the national economy.

#### **1.3.2 *Serving society and the economy***

Savings and retail banks in Europe are also a key piece of the banking system given that their mere existence increases market competition, avoiding market concentration in a small group of commercial and investment banks. However, to some extent, savings and retail banks also act as the only players; occasionally, they are the only bank in town. When this is the case, concentration in the market can even be positive in terms of economic efficiency given that there is not enough demand to grant competition in the market. New banking theory pays more attention to the peculiarities of banking markets and does not necessarily consider maximum bank competition optimal. In markets with less intense competition long-term customer-bank relationships can be created and this has a positive effect on the availability of credit.

Savings and retail banks are also traditionally known for working on providing better conditions to their clients in terms of interest rates and fees. Should these financial institutions disappear from the European banking landscape, other financial institutions would probably increase loans' spreads and toughen conditions.

Through their network of 67,200 branches, savings banks employ 920,000 people in Europe who serve 220 million customers. Amongst these customers, are mainly households and SMEs. Indeed, savings and retail banks in Europe are centres of expertise on the functioning of SMEs and households, with a long record of experience and vast knowledge regarding their needs, problems and business structures.

Moreover, savings and retail banks have been engaged in the development of corporate social responsibility (CSR) in the banking sector. They have been especially active in the development of microcredit. Savings banks have been providing credit and financial services at local level to small enterprises and low income populations for decades. Microcredit is a tool to promote local economic development, especially in the current economic and social context: firstly, as a means to create employment (in particular, self-employment), and secondly, as a way to increase financial inclusion and ultimately social inclusion.

## **2 Structural diversity aiming to serve clients and society more adequately**

### **2.1 Diversity of business models as a strength of the European banking landscape**

The European banking industry has traditionally been characterised by the diversity of its business model, a key factor for stability in the banking sector. As politicians and regulators reflect on eventual banking sector reforms, they should preserve the diversity of the European banking industry, in particular the universal and diversified banking model.

The diversity of banking business models could be good for competition and for the efficiency of the system. Despite isolated cases more related to national or local reasons, savings and retail banks have shown themselves to follow a resilient model which has all in all survived the crisis. Therefore, we strongly support the idea of preserving diversity as it ensures market competition and improves the business model of banks.

### **2.2 Daring to say that savings and retail banks are resilient**

A careful analysis shows that the failures of financial institutions since the beginning of the financial crisis were not caused by the business model itself. It is true that the financial and the subsequent economic crisis have hit all types of business models, but it is also true that there was a way of doing business which was in the origin of the crisis. To plead for the role of savings and retail banks in Europe, it can be argued that these failures and crises were not only caused by immoral or irresponsible activities, and that the roots of the crisis went well beyond. In this sense it can be argued that savings banks and retail banks in

Europe have especially suffered since the sovereign debt crisis started in Europe, as they were usually buyers of sovereign bonds and local and regional debt. In most cases the crises of savings banks have been closely linked to the crises of entire countries, so it is not fair to blame savings banks for causing a crisis in the banking system.

Some studies have recently shown that there is no significant difference in the performance of savings bank compared to that of other banks. According to these studies, commercial bank profitability is greater than that of savings banks, but the decreasing tendency is more accentuated in commercial banks than in savings banks; the same can be said for income ratio and its tendency. Ratios regarding asset quality, which is a measurement of stability, are more reassuring in savings banks, as is savings bank behaviour regarding management fees and benefits, while many investment and financial institutions, as we discovered in the middle of financial crisis, behaved shockingly. Reassurance in this case comes from savings banks refusing the short-term approach to profitability; instead, they are committed to a long-term perspective, especially when it comes to manager remuneration.

### **2.3 Savings and retail banks are constantly evolving and adapting to a new environment**

The compliance with the new capital and liquidity standards set up in the Basel III agreement, which still need to be adapted by the European Institutions, entails a great challenge for savings and retail banks, and by extension to all the financial institutions, in Europe. Generally speaking, the new standards will no doubt contribute to shaping a safer and more stable financial system, although it could entail some shortcomings in the short term given that some parts of the new regulation could be quite hard to comply with.

The savings and retail banks in Europe have already started the adaptation process to the new standards, even though the final outcome of the regulation is not yet clear and, in some aspects such as the liquidity ratios, no final decision has been reached.

Generally speaking, ESBG's members favour retail activities, as they concentrate on the core traditional activities, and avoid risky ones. Both strategic and operational orientations have been made by savings and retail banks to reach this goal. Indeed, we think that the return to retail-oriented activities by banks would help to restore confidence and will stave off activities that have damaged the financial system.

## **3 What can we reasonably expect of savings and retail banks?**

### **3.1 Back to the traditional retail business**

There was a time when the former Commissioner of DG Internal Market, Mr. McCreevy, demanded that countries build up their own 'national champions' in the banking sector. The rationale behind this was that large financial groups would find it easier to expand internationally and cross-border and therefore would encourage the formation of a single market for banks in Europe. This policy largely contributed to the build-up of huge cross-border institutions and to a concentration in the markets. Small banks and savings and retail banks were not sought after and were doomed to disappear as they were a remnant of the old times, an obstacle for efficiency and progress. In the course of time we have witnessed how wrong this approach was. The concentration and cross-border interconnectedness in European markets led to a banking landscape where big financial institutions felt free to operate and take huge risks as they felt safeguarded by the implicit promise of being bailed out in case of failure. Indeed, big institutions understood that their failure was too great a burden to governments to support.

This is why returning to the traditional retail business dedicated to local actors henceforth appears to gain ground and has been stated by most European leaders as an incomparable asset of the European banking landscape. The idea is now that regulation should help these activities, which are linked to the provision of lending to SMEs and households. Although it seems there is a general consensus for this idea, these

statements have not always been backed with logical actions. We will see if the CRD provisions on risk weights associated with SME lending and the recommendations on banking structure reform will follow a beneficial path for traditional banking activities.

Whether or not the regulation materialises these intentions, the savings and retail banks in Europe have the outright intention to follow this road as it has always (since their foundation) been the model followed by them.

### **3.2 Not being too ambitious in order to let the savings and retail banks play their role**

The European model of universal banking has survived the crisis very well compared to other models that focus much more on pure investment banking. ESBG strongly believes that the essence of the savings and retail banking model and maintaining close relationships with customers should remain the same regardless of any further changes that are applied to the EU banking system.

As it was mentioned above and stated by the ECB in their Report on Banking Structures, the universal/diversified banking model has shown to be a strong and stable model that has resisted the financial crisis much better than other business models due to the synergies between business branches and economies of scales. A substantial part of this diversified European model is the coexistence of business models, such as cooperative banks and savings banks in the banking sectors. The heterogeneous structure of the European banking sector provides diversity to the system, which is beneficial as it encourages banks to compete, improving their processes and structures in order to survive and better adapt to competition. The existence of savings and retail banks in Europe is intrinsically good for the health of the banking system. They provide stability to the system, due to their governance structure; competition in the system where commercial banks are predominant; and are essential in the provision of banking services at both local and regional levels.

Another feature that shapes the European banking system that should be preserved is the model of banking intermediation (contrary to the American one). The European banking model is different from the American and British ones, and therefore there should not be a “copy-paste” of the regulation coming from those countries. Any banking reform proposal should carefully account for the specificities of the European banking model, in particular with regard to the role retail bank intermediation plays in the system.

This is why any sweeping restructuring of the European banking system has to be avoided as the consequences could be rather negative – destroying our best asset which is a long history of customer relationships.

## **FINLAND**

### **1. General provisions**

#### **1.1 Legal Structures**

Of the 26 savings banks in Finland 21 banks are foundations governed by the depositors and 4 banks are limited-liability savings banks owned by foundations, so called savings banks foundations which are not banks. One limited-liability savings bank, Nooa Savings Bank Ltd, is owned by the other 25 savings banks.

The savings banks, except one savings bank, form an amalgamation according to the Act on the Amalgamation of Deposit Banks (2010/599, the "Amalgamations Act"). The responsibilities of the Savings Banks' Union Coop as the central institution and the joint liability within the amalgamation are described further below in section 4.3.

#### **1.2 Deposit Guarantee Schemes**

It is compulsory for all deposit banks to subscribe to the Deposit Guarantee Fund. According to the Act on Credit Institutions, compensation of up to €100,000 will be paid for the capital of and interest on a depositor's deposits in one bank in the case of the bank's liquidation, irrespective of the number of deposits. Funds obtained from the selling of one's permanent residence are safeguarded to their full amount, if the funds were deposited into the account no later than six months before the bank's insolvency. Assets for the fund are collected from banks in the form of an annual contribution, the amount of which depends on the amount of deposits covered by the funds in the bank, as well as the bank's capital adequacy.

#### **1.3 Activities**

Under the Act on Credit Institutions, a credit institution may only engage in operations and related activities as specified in the Act. The Act is based on the universal banking principle. Consequently, a credit institution may engage in a comprehensive range of banking operations, such as lending, payment transactions, foreign currency, guarantees and security functions. Only the deposit banks, i.e. the commercial banks, co-operative banks and savings banks, have the right to accept deposits from the public.

The savings banks offer their customers full-scale banking services, whereby the focus is on retail banking, ranging from payments, deposit, and credit services to investment operations.

## **2 Regional operation, branches**

The savings banks are independent regional and local banks. Together the savings banks, except one savings bank, make up the Savings Bank Group, combining local and national interests.

The savings banks maintain approximately 200 offices under their own brand and around 590 000 customers.

### **2.1 Mergers, shareholding and acquisitions**

Anyone who proposes acquiring, directly or indirectly, a holding in a credit institution which represents 10% or more of the share capital or 10% or more of the voting rights carried by its shares, or which otherwise allows the exercise of comparable influence, shall first notify the Financial Supervisory Authority of the acquisition. If an above mentioned holding is increased so that the proportion of the share capital or voting rights held reaches 20%, 30% or 50%, or so that the credit institution becomes a

subsidiary, the acquisition shall first be notified to the Financial Supervisory Authority. The credit institution shall tell the Financial Supervisory Authority the names of the shareholders or members owning the holding as well as the sizes of such holdings at least once a year, as well as immediately advising of any changes in the ownership. The Financial Supervisory Authority may, within three months of the receipt of the notification, object to the acquisition.

Mergers of savings banks are governed by the provisions of the Savings Banks Act in accordance with the principles of the general company legislation. The Financial Supervisory Authority may object to the merger, if the merger endangers the maintenance of the provisions of the authorisation of the receiving savings bank.

## **2.2 Social and welfare aims**

A local savings bank provides customers with many benefits: easy access to banking services, quick decision-making, and familiar customer service staff. The local presence also shows in contributions towards local wellbeing, such as the annual Thrift Week, cooperation with schools and educational institutions, support and sponsorship for local culture and education, and grants from the savings bank foundations.

Local operations are also a component of the responsible way of working. Responsibility was a central concept from the founding moment of the savings banks. Responsibility to the community is also an important part of the original savings bank mission.

Economic responsibility: The overall framework for responsible operations is based on the corporate responsibility reporting standard, which is divided into economic, social and environmental responsibility. Economic responsibility comprises concerns such as good profitability, capital adequacy and liquidity, good governance and responsible leadership. The savings banks observe all sector-specific and professional codes of ethics.

A feature particular to the savings banks is that they take responsibility for promoting saving and economic wellbeing in the local population. For example, the savings banks provide their customers only with loans and credit that the customers can service without overstraining their finances.

Social responsibility: The savings banks actively promote wellbeing within their locales. They treat all of their customers equally, extend financing to local businesses, and introduce children to saving and wise spending habits at an early age, through activities such as cooperation with local schools, Thrift Week and the Savings Bank mascot Osmo.

During Thrift Week, the savings banks study the attitudes of Finns towards saving and the management of personal finances.

Fostering wellbeing in communities: The savings banks sponsor universities, sports, culture, and research which promotes saving. Since 2012, most savings banks participate in an annual vote whereby all Finns are given a chance to vote on how the savings banks allocate their support to the community. The vote is held on Facebook and through text messaging.

In 2013, the Research Foundation of the savings banks made grants of EUR 73,500 to university researchers and research undertakings.

The Savings Bank Group pays all its tax in Finland. In many localities, the savings bank is among the largest taxpayers. In 2013, the income tax paid by the Group totalled EUR 13.4 million.

Environmental responsibility: The savings banks also pay attention to the environmental impacts of banking. For example, they strive to replace business travel and face-to-face meetings with teleconferencing and videoconferencing. They also give thought to how they can develop environmentally friendly products and local wellbeing.

### **3 Supervision**

#### **3.1 Applicable Banking law**

The savings banks are credit institutions governed by the Act on Credit Institutions 2014/610) and the Savings Banks Act (2001/1502).

The main supervisory authorities in Finland are the Ministry of Finance and the Financial Supervisory Authority.

The Ministry of Finance is primarily responsible for drafting the legislation on financial markets.

The Financial Supervisory Authority supervises financial markets and participants, and issues and withdraws authorizations to/from e.g. banks and other credit institutions.

The standing of the Bank of Finland in bank supervision is based on its status as the country's central bank. It pursues the monetary policy defined by the European Central Bank. It is responsible for the reliability and efficiency of the payment and financing system (oversight supervision).

#### **3.2 Access to the savings bank activity**

A savings bank may not begin operations without having received an authorisation granted by the Financial Supervisory Authority.

The authorization can only be granted if it can be ascertained that the credit institution fulfils the preconditions provided for the activity and financial position of a credit institution and certain conditions are fulfilled, namely: professional management in charge of the operations, no obstacle for efficient supervision, main office located in Finland and initial capital of an equivalent of €5 million fully paid up.

#### **3.3 Day-to-day supervision**

The Financial Supervisory Authority is responsible for the day-to-day supervision of financial markets. It operates in connection with the Bank of Finland, but is an independent decision making body. It monitors and supervises the banks to ensure that they obey the law and the orders of the authorities and comply with their articles of association or by-laws. As an amalgamation the savings banks are supervised by the Financial Supervisory Authority on a consolidated basis.

The Financial Supervisory Authority issues regulations and guidelines and carries out various types of inspections.

##### **3.3.1 Information**

Before it begins operating, a savings bank must submit certain information to the Finance Supervisory Authority (including an extract from the Trade Register containing the Articles of Association or by-laws, names and other necessary information concerning the board of directors, the managing and deputy managing directors as well as the auditors and an account of significant engagements).

A credit institution must always meet the requirements laid down in the authorisation. Both in connection with new appointments and on an on-going basis, credit institutions should themselves ensure that directors and managers meet the fit and proper criteria. The fit and proper assessments should be submitted to the Financial Supervisory Authority no later than two weeks from the change.

A savings bank shall submit to the Financial Supervisory Authority the terms of standard contracts applied in its operations.

### **3.3.2 Means of supervision**

- **Preventive**  
After hearing the application for the authorisation to begin the activities, the Financial Supervisory Authority has the right to include restrictions on conditions concerning the business activities in the authorisation.
- The Financial Supervisory Authority may, within three months of the receipt of notification, object to the acquisition of a holding if the information obtained makes it likely that the holding would operate to the detriment of the prudent and sound management of a credit institution.
- The Financial Supervisory Authority may issue rules on establishment and maintenance of internal control and risk management. The Financial Supervisory Authority supervises the application of contracts terms and the marketing of credit institutions.
- **Corrective**  
The Financial Supervisory Authority may in certain circumstances (e.g. non-compliance with the Act, suspension of business for more than six months) withdraw the authorisation. If an acquisition is not notified or a holding is acquired despite the objection of the Financial Supervisory Authority; or if, after the acquisition, the Financial Supervisory Authority notes that the holding endangers the operation of a credit institution, the Financial Supervisory Authority may suspend the exercise of the voting rights of the holder.

The Financial Supervisory Authority may restrict the activity of a credit institution for a fixed period of time, if incompetence or carelessness has been found within the management and if it is evident that this may seriously damage the stability of the financial markets or the interests of the creditors.

Whenever the Financial Supervisory Authority notes that in the use of contract terms, a credit institution violates the Consumer Protection Act (1978/38), the Financial Supervisory Authority shall request an opinion from the Consumer Ombudsman. Where necessary, the Financial Supervisory Authority may issue an injunction forbidding it to continue a marketing operation or the use of contract terms.

- **Penalties**  
Anyone who, against the stipulations in the Act on Credit Institutions, accepts deposits from the public or who is engaged in an activity of credit institution without an authorisation or who

is misusing the name “deposit” or “bank” shall be sentenced for a “credit institution crime” to a fine or to imprisonment not exceeding one year.

## **3.4 Internal supervision by savings banks organisations**

### **3.4.1 Savings banks' own internal supervision**

For an audit of the accounts, financial statements and corporate governance, the General Meeting of Trustees/Shareholders shall annually elect at least one auditor and the necessary number of deputy auditors, who are to be independent in their task. The auditors are to be authorised auditors; at least one of them has to be an auditor or audit organisation authorised by the Central Chamber of Commerce.

The Board of Directors has to ensure that the internal audit function is organised in an appropriate fashion and operates in accordance with good internal audit practice. It also has to review internal control and the adequacy of risk management on a regular basis.

### **3.4.2 Supervision exercised by the savings banks' organisation**

Supervision exercised by the savings banks' organization is arranged through risk management and independent non-business functions. The key area of operations of supervision is risk management, the task of which in the saving bank's organization is to ensure that significant risks are identified, assessed and measured. Risk management is part of the daily management of the business operations. Risk management and internal control is organized according to a three tiered defence line principle. This principle establishes a segregation of duties between units that enter into business transactions with customers or otherwise expose to risk, units in charge of risk oversight and control, being the independent risk assessment, and the internal audit function.

The first line of defence is represented by the business. The second line of defence is represented by the independent non-business functions: independent risk control function and compliance function, and the third line of defence is represented by Internal Audit. Internal Audit is independent of the business functions.

## **4 Organisation**

### **4.1 Corporate Governance model**

The highest decision-making body of a savings bank are the trustees, elected by the savings bank's depositor customers and any holders of basic fund shares. The trustees elect the board of directors, which in turn appoints the managing director.

Savings banks in the form of the limited-liability company are owned by savings bank foundations (with the exception of Nooa Savings Bank Ltd as mentioned above under Legal Structures). The highest decision-making body of the foundation is the council, which elects the foundation's board of directors. Savings banks foundations are actively involved in decision-making at the general meetings of shareholders of the savings bank in the form of a limited-liability company. General meetings of shareholders elect the bank's board of directors, which appoints the managing director.

The purpose of savings bank foundations is to promote thrift and economic education in their respective regions. Foundations also have the purpose of supporting regional vitality and well-being as well as the cultural and economic development of the region, in addition to fostering the savings bank heritage.

### **4.2 Main bodies**

The main bodies of a savings bank are the general meeting of trustees / shareholders, the board of directors, the board of management, the managing director and the deputy managing director.

## 4.3 Special Bodies

### 4.3.1 *Demarcation Savings Bank / other credit institutions*

According to the legislation the savings banks are permitted to carry on the same business activities as other deposit banks. In practice, as regional and local banks, the scale of the business of the savings banks is smaller than that of the banks operating on national or international level. This also affects the focus of the business. The savings banks' business emphasis is on private customers, small and medium sized businesses (SMEs), and agricultural and forestry entrepreneurs. Private customers of working age, self-employed persons and small businesses make up the primary customer demographic. Through working-age customers, savings banks also reach retired people, children and young people. The role of SMEs and agricultural entrepreneurs depends on the geographical area served and particular knowhow of each specific bank.

### 4.3.2 *Savings Banks and their Central Institutions*

#### Savings Banks' Union Coop

In Finland, the national central organisation for savings banks is Säästöpankkiliitto (earlier an association 'Savings Banks Association', now a co-operative Savings Banks' Union Coop). The co-operative's domicile is Espoo. Of the 26 savings banks in Finland, 25 are members of the Savings Banks' Union Coop.

The background for the conversion of the association into a co-operative was that the savings banks decided during the year end 2013 that the savings banks shall form an amalgamation according to the Amalgamations Act and that the Savings Banks Association will be the central institution of the amalgamation. The central institution shall be a co-operative and thus the association was converted into a co-operative. The final decisions concerning the forming of the amalgamation were made in the Savings Banks Association's meeting in January 2014. 25 savings banks decided to join the amalgamation. Six savings banks decided not to join the amalgamation. Two of them have merged in Aktia Bank plc and four of them have merged together and formed a limited-liability savings bank, Oma Säästöpankki Oy / Oma Savings Bank Ltd.

In accordance with the Amalgamations Act the Savings Banks' Union Coop is responsible for issuing guidelines on risk management, corporate governance, internal control arrangements and supervision and guidelines for the application of coherent accounting principles in compiling the consolidated financial statements of Savings Bank Group to the Member Credit Institutions, with the aim of ensuring their liquidity and capital adequacy. The Savings Banks' Union Coop also supervises the Member Credit Institutions compliance with the applicable rules and regulations in respect of their financial position, any provisions issued by the relevant supervising authorities, their statutes and articles of associations.

The Savings Banks' Union Coop supports and fosters the competitiveness of the savings banks and the achievement of the Savings Bank Group's objectives. The Savings Banks' Union Coop is tasked with promoting the development and cooperation of the savings banks and acting as their lobbyist. It seeks to provide input and influence with regard to banking prerequisites and banking legislation and, to this end, maintains contacts with the authorities and banking industry organisations.

Joint savings bank policies, most importantly the strategy of the Savings Bank Group, are decided in the Savings Banks' Union Coop. It attends to the common business development, marketing, training provision and communications of the savings banks.

The highest decision-making body of the Savings Banks' Union Coop is the general meeting of the co-operative, which is attended by all member banks. The meeting elects the board of supervisors and the board of directors of the Savings Banks' Union Coop. The board of supervisors consists of the chairs of

the board of directors of the savings banks. The main part of the members of the board of directors consists of managing directors of the savings banks.

The law related to Savings Banks' Union Coop is the Co-operatives Act.

- Central credit institution

Aktia Bank Plc has since 1996 acted as the central credit institution for the savings banks and also provided other services. The savings bank customers are served by Aktia branches and vice versa. At the end of January 2013, Aktia announced the termination of the savings bank central credit institution facility at the beginning of 2015. The decision to discontinue the facility was reached jointly, and the Savings Bank Group began to build a dedicated central credit institution facility towards the end of 2012. The new central credit institution Central Bank of Savings Banks Finland Ltd is owned by the savings banks and will become operational during the changeover period, by the beginning of 2015.

The law related to central credit institution is the Act on Credit Institutions.

- Joint liability

Joint liability (the "Liability") within Savings Bank Group is based on the Amalgamations Act. The Savings Banks' Union Coop and the savings banks as its Member Credit Institutions are responsible for each other's debts and commitments in accordance with the Amalgamations Act.

On the basis of this Liability, the Savings Banks' Union Coop must pay to each Member Credit Institution an amount that is necessary in order to prevent such Member Credit Institution's liquidation. The Savings Banks' Union Coop is responsible for the payments of any debts of a Member Credit Institution that cannot be paid using such Member Credit Institution's own funds.

If the funds of any Member Credit Institution fall below the minimum set out in the Act on Credit Institutions or the Amalgamations Act, as the case may be, the Savings Banks' Union Coop is entitled to receive credit from the other Member Credit Institutions by collecting from such other Member Credit Institutions additional repayable payments to be used to support actions to prevent liquidation of the Member Credit Institution. The annual aggregate amount of the payments collected from the Member Credit Institutions on this basis may in each accounting period be a maximum amount of five thousandths of the last confirmed balance sheet total of each Member Credit Institution.

A creditor who has not received payment from a Member Credit Institution on a due receivable (principal debt) may demand payment from the Savings Banks' Union Coop, when the principal debt falls due.

A Member Credit Institution must pay to the Savings Banks' Union Coop a proportionate share of the amount which the Savings Banks' Union Coop has paid either to another Member Credit Institution as part of the support action described above, or to a creditor of such Member Credit Institution as payment of a due debt for which the creditor has not received payment from his debtor. Furthermore, upon the insolvency of the Savings Banks' Union Coop a Member Credit Institution has an unlimited liability to pay the debts of the Savings Banks' Union Coop as set out in Chapter 14 of the Cooperatives Act.

Each Member Credit Institution's liability, for the amount which the Savings Banks' Union Coop has paid on behalf of one Member Credit Institution to its creditors, is divided between the Member Credit Institutions in proportion to their last confirmed balance sheet totals

## 5 Sources

- Act on Credit Institutions 2014 / 614
- Savings Banks Act 2001 / 1502
- Act on the Amalgamation of Deposit Banks 2010 / 599
- Co-operatives Act 2013/421

# FRANCE

## 1 General provisions

### 1.1 Legal Structure

The Caisses d'Épargne (CEP) network consists of the following entities:

- The Fédération Nationale des Caisses d'Épargne (FNCE) (National Federation of Savings Banks) at national level;
- • 17 Caisses d'Épargne (CEP) (Savings Banks) at regional level and 228 Sociétés Locales d'Épargne (SLE) (Local Savings Companies) at local level: under the supervision of the central body, BPCE SA (according with the French Monetary and Financial Code (CMF) under the Articles L 511-30, L 511-31 et L.511-32);

The structure of the Caisses d'Épargne network has changed considerably with the adoption of the Savings and Financial Security Act 99-532 of 25 June 1999, followed by Act 2008-776 of 4 August 2008 on the modernisation of the economy. These legal provisions are incorporated into the CMF under Articles L. 512-85 et seq.

In January 2000, Caisses d'Épargne, initially considered as “sui generis” institutions, were turned into cooperative banks created in the form of limited companies.

At the beginning, the scope of banking activities open to Caisses d'Épargne was limited to the marketing of certain savings products and personal loans. Caisses d'Épargne only distributed Livret A, a savings book which is now widely available, the financial resources of which are used to fund social housing.

Nowadays, Caisses d'Épargne may perform all credit institution, investment service and insurance intermediary operations.

The merger between two decentralised cooperative Groups in 2009 (Caisses d'Épargne and Banques Populaires) has created the second largest banking group in France, Groupe BPCE, with the ambition to become the chosen bank of the French people and their companies.

### 1.2 Protection Systems

#### 1.2.1 1.2.1 Guarantee systems

As an affiliate of BPCE, the Caisses d'Épargne are beneficiaries of the guarantee and solidarity mechanism implemented by BPCE pursuant to Articles L.512-12, L.512-107 and L.512-86 of the CMF. Like BPCE, the Caisses d'Épargne have joined the Deposit Guarantee Fund created by the Savings and Financial Security Act of 25 June 1999. Groupe BPCE is considered as a SIFI and has to respect new European mechanisms of supervision and resolution.

### 1.3 Activities

A universal banking group for the benefit of all, BPCE Group provides banking and financial services for all customer categories, aligned as closely as possible with the needs of each area and the economy.

## **1.4 Mergers, shareholding and acquisitions**

The creation or merger of a Caisse d'Épargne is subject to the approval of the French Prudential Supervisory Authority (ACPR), and the Supervisory Board of the central institution, BPCE. The area of jurisdiction of each Caisse d'Épargne is set by BPCE.

## **1.5 Social and welfare aims**

Since its creation in the 19th century, the Caisses d'Épargne network has always promoted the development of popular savings and money management and financial education.

Article L.512-85 of the CMF officially entrusts the Caisses d'Épargne network with the mission of contributing to protecting popular savings, funding social housing, improving local and regional economic development, and combatting the banking and financial exclusion of all economic, social and environmental stakeholders.

# **2 Supervision**

## **2.1 Day-to-day supervision**

Being a significant institution, Groupe BPCE is under direct supervision of the ECB with the cooperation of the national competent authority, ACPR

This Prudential Supervisory Authority ensures compliance with the legal and regulatory provisions, and can penalise any infringement found. In addition, the ACPR examines the operating mode and financial situation of credit institutions and compliance with the profession's rules of good conduct.

The Financial Markets Authority (AMF) is responsible for protecting savings invested in financial instruments or any other investment products offered by the entities that offer savings to the public, the quality of the information given to investors and lastly, the smooth functioning of the financial markets.

## **2.2 Internal supervision by savings banks organisation**

As explained above, the main differences in supervision between Caisses d'Épargne and other credit institutions can be found in the central role of BPCE as the central institution.

More specifically, BPCE is, as the central institution of the Group, the cornerstone of Caisses d'Épargne supervision. BPCE exercises a dual role of regulation and supervision in close liaison with the ECB, the French Prudential Supervisory Authority (ACPR) and Financial Markets Authority (AMF).

# **3 Organisation**

## **3.1 Caisses d'Épargne (CEP)**

### **3.1.1 *Legal status***

Caisses d'Épargne are cooperative societies in limited company form (cooperative SA) which may perform all the operations reserved for credit institutions. As such, they are bound by the rules governing credit institutions as set out in the CMF.

The rules governing commercial companies also apply to Caisses d'Epargne. They must abide by the specific constraints established by the Act of 10 September 1947 on the status of cooperatives.

Furthermore, Caisses d'Epargne are automatically affiliated to BPCE SA, the central institution shared by the Caisses d'Epargne and Banques Populaire networks, as defined by the CMF (Article L.512-105), in which they hold 50% of the capital.

### **3.1.2 Share capital and General Cooperative Shareholders' Meetings of Caisses d'Epargne**

The share capital of a Caisse d'Epargne consists of shares held by Sociétés Locales d'Epargne (SLE), which are cooperative societies with no economic activity.

The Annual Ordinary General Cooperative Shareholders' Meeting of Caisses d'Epargne:

- allocates the results of the financial year under the conditions provided for by law, acting on a proposal from the Management Board,
- sets the interest paid on Caisses d'Epargne shares, within the limits established by the legal and regulatory provisions, and, where applicable, with the agreement of BPCE by a deduction from reserves in accordance with Article 17 of the 1947 Act.
- sets the level of remuneration of shares held by Sociétés Locales d'Epargne cooperative shareholders, within the limits established by the legal and regulatory provisions.
- appoints or renews the terms of office of the statutory auditors and members of the Steering and Supervisory Board (COS) elected by it.
- deliberates on the agreements referred to in Article L.225-86 of the Commercial Code.
- determines, in compliance with the scales set by BPCE, the total amount of directors' fees for the members of the Steering and Supervisory Board.

The Extraordinary General Meetings deliberate on any amendments to the articles of association, the dissolution of the Company or its merger with another company.

### **3.1.3 Executive bodies**

The Caisse d'Epargne is managed by a Management Board consisting of between two and five members who are appointed by the Steering and Supervisory Board (COS), which oversees the Management Board in accordance with the law and the articles of association of the Caisse d'Epargne. The appointment of Management Board members is subject to the approval of the BPCE Supervisory Board.

The Management Board has the broadest powers to act on the Company's behalf in all circumstances within the limit of the corporate purpose and subject to the powers vested in the Steering and Supervisory Board and cooperative shareholder meetings by law.

The Steering and Supervisory Board of each Caisse d'Epargne has 17 members, including:

- 1 to 3 members directly elected by the local authorities and the public establishments for cooperation between local authorities with tax-levying powers, cooperative shareholders of Sociétés Locales d'Epargne affiliated to the Caisse d'Epargne under conditions established by decree;
- 1 to 3 members directly elected by and from employees of the Caisse d'Epargne, cooperative members of Sociétés Locales d'Epargne affiliated to the Caisse d'Epargne. The number of members elected by employees must be the same as the number of members elected by the local authorities and the public establishments for cooperation between local authorities with tax-levying powers;
- The remainder, i.e. 11, 13 or 15 members, are elected by the Ordinary General Meeting of

cooperative shareholders of the Caisse d'Épargne from amongst elected directors of SLE.

### **3.1.4 Délégué**

The BPCE Management Board appoints a Délégué in each Caisse d'Épargne. The Délégué is responsible for monitoring compliance by the Caisse d'Épargne of the laws and regulations in force and the rules and guidelines established by BPCE based on its remit.

## **3.2 Sociétés Locales d'Épargne (SLE)**

### **3.2.1 Legal status**

Sociétés Locales d'Épargne are cooperative societies partly governed by the Act of 10 September 1947 on the status of cooperatives, subject to the mandatory provisions set out by the Monetary and Financial Code (CMF) and the articles of association.

Unlike Caisses d'Épargne, Sociétés Locales d'Épargne are not credit institutions. Therefore, they cannot perform banking operations and do not have the status of a commercial company. They are variable capital companies, 100% of the capital of which is held by cooperative shareholders.

Under the CMF, Sociétés Locales d'Épargne are affiliated to the Caisse d'Épargne covering the area in which they operate. The creation of a Société Locale d'Épargne must be approved in advance by the Caisse d'Épargne to which it is affiliated, and by BPCE.

### **3.2.2 Share capital**

Subject to the condition of being a client of a regional savings bank, the cooperative shareholders of a local savings company may be:

- Public Establishment for Intercommunal Co-operation (EPCI);
- natural persons or legal persons that have carried out one of the operations referred to in Articles L. 311-1, L. 311-2, L. 511-2 and L. 511-3 of the CMF with the Caisse d'Épargne;
- Caisse d'Épargne employees;
- local authorities and,
- under the conditions defined by Article 3 bis of Act no.47-1775 of 10 September 1947 on the status of cooperatives, the other natural persons or legal persons mentioned in that Article.

### **3.2.3 Executive bodies**

Sociétés Locales d'Épargne are managed by a members' Meeting, which elects a Board of Directors.

### **3.2.4 Missions**

The purpose of the Société Locale d'Épargne is to:

- hold capital shares of the Caisses d'Épargne,
- contribute to preparing the general guidelines of the Caisse d'Épargne with which it is affiliated,
- promote, in the context of these general guidelines, the largest possible holding of the capital of this Caisse d'Épargne by encouraging membership.

### **3.3 BPCE**

#### **3.3.1 *Legal status***

Formed on 31 July 2009, BPCE SA is the central institution shared by the Caisses d'Epargne and Banques Populaires. Replacing the Caisse Nationale des Caisses d'Epargne and the Banque Fédérale des Banques Populaires, the central institution of the Group is incorporated as a public limited company with a Management Board and a Supervisory Board. It has the status of a credit institution.

#### **3.3.2 *Share capital and General Shareholders' Meeting***

The central institution of the Caisses d'Epargne and Banques Populaires is incorporated as a public limited company, with the Banques Populaires and the Caisses d'Epargne together holding the absolute majority of the share capital social and voting rights.

#### **3.3.3 *Executive Bodies***

BPCE SA is a public limited company with a Management Board and a Supervisory Board. The role of the Supervisory Board is to maintain constant oversight over the managerial activities of the Management Board. This oversight includes monitoring the appropriateness of actions taken and their regulatory compliance. The cooperative shareholders are represented on the Supervisory Board by the Chairmen of the Banques Populaires banks' Board of Directors and by the Chairmen of the Caisses d'Epargne Steering and Supervisory Boards.

The Supervisory Board of BPCE is comprised of 19 members:

- 7 members from the Caisses d'Epargne, 5 of whom are appointed by the Chairmen of the Steering and Supervisory Board (COS) and 2 of whom are appointed by the Chairmen of the Caisses d'Epargne Management Board;
- 7 members from the Banques Populaires, 5 of whom are appointed by the Chairmen of the Board of Directors and 2 of whom are appointed by the Chief Executive Officers of the Banques Populaires;
- 3 independent members;
- 2 members representing BPCE employers and those of the direct and indirect subsidiaries.

Five specialised committees assist the Supervisory Board in its deliberations and decisions:

- the Audit Committee;
- the Risks Committee;
- the Appointments;
- the Remuneration Committee;
- and the Cooperative Committee.

The General Management Committee (CDG) has 9 members, including 5 members of the Management Board. Management Board members are appointed by the Supervisory Board for a term of four years.

#### **3.3.4 *Missions***

The missions of BPCE are defined by the law of 18 June 2009. They build on the cooperative principles of the Banques Populaires and Caisses d'Epargne and place BPCE at the service of the Group to respond to its current and future challenges.

Under the law, the key responsibilities of BPCE are as follows (CMF Article L.512-107):

- Defining the policy and strategic guidelines of both the Group and its networks;
- Coordinating sales policies;
- Representing the Group and each of its networks before industry bodies and negotiating, on their behalf, national and international agreements;
- Representing the Group and each of its networks as an employer;
- Taking all measures necessary to manage and guarantee the Group's liquidity and capital adequacy, and to guarantee effective risk management and internal control mechanisms;
- Approving the persons called upon to determine the strategic direction of the activity conducted by the affiliated institutions.

### **3.4 Fédération Nationale des Caisses d'Epargne (FNCE)**

#### **3.4.1 *Legal status***

The Fédération Nationale des Caisses d'Epargne (FNCE) was established by the Act of 25 June 1999 amended by the Act of 5 August 2008, in the form of an Association under the law of 1901 (Article L512-99 of the CMF).

#### **3.4.2 *Organisation***

The FNCE operates through a General Meeting, a Board of Directors, a Bureau, and a Federal Council:

- The General Meeting (80 members) brings together the representatives of each of the 16 Caisses d'Epargne (3 members of the Steering and Supervisory Board, including the Chairman and two members of the Management Board, including the Chairman). It meets at least once a year to approve the accounts and hear the Board of Directors' report. The General Meeting may also be convened as an extraordinary meeting to amend the articles of association.
- The Board of Directors (32 members) is composed of all the Chairmen of the Steering and Supervisory Board and the Management Board of the Caisses d'Epargne. It is serviced by Commissions and working groups. The Board of Directors elects the Chairman and the Bureau, adopts common positions on behalf of the Caisses d'Epargne network, votes on the budget and the national guidelines on the social and environmental responsibilities of the Caisses d'Epargne and lastly, approves the Federation's action plan based on improving synergy between the Federation, the Caisses d'Epargne and their areas.
- The Chairman's Cabinet ('Bureau') consists of 10 members elected by the Board of Directors on a proposal from the Chairman. It is chaired by a Steering and Supervisory Board Chairman. The Vice-Chairman and Treasurer is a Management Board Chairman. The other members are, in equal numbers, Steering and Supervisory Board Chairmen and Management Board Chairmen. It participates in the day-to-day management of the FNCE, and monitors the work of the Commissions and working groups.
- The Federal Council (32 members) is a joint advisory body bringing together all the Steering and Supervisory Board and Management Board Chairmen. It is a place for reflection, consulted by the Board of Directors for its opinion or for information on matters identified by the latter. It puts forth nominees to represent the Caisses d'Epargne within all bodies, including, in particular, the BPCE Supervisory Board.
- The Commissions, co-chaired by two members of the Board of Directors of the Federation and composed of representatives from the Caisses d'Epargne, are responsible for developing the Federation's lines of work and action.

Under the responsibility of a Chief Executive Officer, the role of the FNCE team is to implement actions aimed at:

- promoting the identity and interests of the Caisses d'Epargne and their cooperative shareholders at national and international levels,
- contributing to developing and maintaining relationships with the cooperative shareholders and their elected representatives,
- accompanying and coordinating the Corporate Social Responsibility (CSR) guidelines of the Caisses d'Epargne network,
- training the elected shareholders' representatives in accordance with the fit and proper requirements,

developing cooperation and partnership with foreign CSR actors or institutions of similar nature.

To do this, it relies on around one hundred Caisses d'Epargne network correspondents who support and relay the actions of the Fédération Nationale.

### **3.4.3 Missions**

The missions of the FNCE are defined by the law of 18 June 2009 (CMF Article L.512-99).

The main ones are :

- To represent the common interests of the cooperative shareholders and the Caisses d'Epargne, particularly in relation to the public authorities,
- To promote the network of Caisses d'Epargne local cooperative banks, deeply rooted in the community,
- To develop and coordinate relations with cooperative shareholders,
- To train and support their elected representatives,
- To define and coordinate the Corporate Social Responsibility initiatives of the Caisses d'Epargne,
- Contribute to the cooperation between the French Caisses d'Epargne and foreign institutions of a similar nature,

Promote the history and heritage of the Caisses d'Epargne

# GERMANY

## 1 General provisions

The German Savings Banks Finance Group is composed of roughly 560 member institutions. The 390 individual savings banks (Sparkassen) are at the heart of the Group. There is no administrative district in Germany without a Sparkasse. With a nationwide network of almost 14,000 branches they provide the full range of retail services to about 50 million customers. Their market position is especially strong in private deposits and corporate lending.

The savings banks business model reflects their founding mission and their regional roots. Both have become constituent elements of the legal setting in which Sparkassen operate today: the public mandate (see 1.2) and the regional principle (see 1.3).

### 1.1 Legal structures

The German savings banks are predominantly organized under “public law”, a status which gives them legal and economic independence. Even though the savings banks sector is often referred to as ‘municipal savings banks system’ or ‘public sector banks’, Sparkassen in Germany are not state-owned. And unlike savings banks in other countries, they do not have members. Instead, they operate under ‘municipal trusteeship’ (see 1.1.1). This legal setting can be regarded as a tribute to the historic evolution of Sparkassen. Together with the public mandate and the regional principle, the municipal trusteeship is another cornerstone in the Sparkassen role model as regional retail bank with an intrinsic orientation towards public welfare, financial inclusion and sustainable growth within their business area.

After a first wave of savings banks being created as civil society projects in the late 18th century, Sparkassen were established by the municipalities from the beginning of the 19th century on. Cities and municipalities established Sparkassen in order to provide lower-income households with reliable investment opportunities that would bear a certain interest. The first Sparkassen used to be integrated into the local government organization as legally dependent government departments. In 1931, set against the backdrop of a global economic and financial crisis and in an attempt to prevent their assets from being redirected into the depleted public coffers, these Sparkassen were turned into legally independent units. Ever since, Sparkassen have been operating under market conditions as independent institutions.

#### 1.1.1 *Legal form and municipal trusteeship*

With the exemption of a few historic cases (see 1.1.2.) Sparkassen today are legally and economically independent “institutions under public law”. Their “responsible public bodies” are municipalities (town, city), districts or special-purpose associations. However, this does not mean that municipalities are share-holders or owners of *Sparkassen*. Sparkassen are not “assets” of their municipality and therefore cannot be sold by the local government. In short, Sparkassen are not state-owned banks. Instead Sparkassen are fully independent in their day-to-day business. The responsible Executive Board is not formed by local politicians, but of licensed bankers, and thus acts impartially. The legal status of Sparkassen can be compared to foundations under public law.

Special purpose associations (Sparkassen-Zweckverbände) may be formed by several local authorities which, on their own, would lack the critical size needed to operate a Sparkasse in their region or as the result of mergers of several local communities for the purpose of operating a Sparkasse. Due to this dovetailing of local authorities and Sparkassen, the German savings bank legislation occupies a special section under the German States’ laws on Municipalities (Kommunalrecht). Under the German system of legislation enshrined in Germany’s Constitution, Sparkassen legislation falls under the decentralized legal

jurisdiction of the German States (Länder). Hence, nearly all Länder have passed special state laws in order to regulate the organisation and business activities of Sparkassen.

“Municipal trusteeship” is a special legal aspect of German savings banks laws. It has historic roots which may not be directly transferrable to other legal systems. However, it can provide indications of how locally anchored banks can provide strong ties with their regions whilst remaining legally and financially independent. Municipalities and Sparkassen have a common interest in regional development. Sparkassen support their municipalities through their obligation to economic prosperity, regional development, and in social and cultural areas.

### 1.1.2 "Free" private law savings banks

Because of historic reasons Germany currently has five so-called ‘free’ savings banks. These are *Sparkassen* that are organized under private law. They can be found e.g. in Hamburg and Bremen. These five *Sparkassen* were originally founded by merchants and prosperous citizens. Although based on self-regulation and not on a statutory obligation, their remit is largely identical with the public mandate (see 1.2.) of *Sparkassen* organized under public law. And despite their special history which sets them apart from the 385 remaining *Sparkassen* mentioned above, these five ‘free’ *Sparkassen* make use of the same brands and participate in the same *Verbund*, i.e. the dense network of cooperation activities within the German Savings Banks Finance Group (*Sparkassen-Finanzgruppe*).

## 1.2 Public mandate (social and welfare aims)

*Sparkassen* follow a sustainable business philosophy which focuses on the appropriate and adequate provision of money and credit services to all groups of customers from all parts of society. This provides for financial inclusion of private customers - regardless of their personal income and financial situation - and for a sustainable commitment to the development of local businesses, particularly to small and medium-sized enterprises in their respective business area. In Germany, this purpose has been laid down by law in the savings banks’ “public mandate”.

The savings bank laws of the German *Länder* stipulate in this respect that, whilst their operations should be based on market and competition considerations, it is the overarching role of *Sparkassen* to ensure open and accessible quality financial services to local private customers, small and mid-sized enterprises and the public sector in their business area. While private banks decide on purely economic grounds whether they will or will not offer products and services to a specific client groups, *Sparkassen* are held to serve all parts of society.

Contrary to many private banks, *Sparkassen* provide comprehensive retail banking even in remote and low-income regions – as each region or city has “its own” *Sparkasse*. Furthermore, they are held to promote savings and ensure a sufficient degree of competition amongst the banking industry.

In short: The public mandate shapes the entire business model of the *Sparkassen*. Their main purpose is not to make profits, but to serve the common good. As an example, *Sparkassen* use their generated revenues in order to sponsor a wide variety of local services of general interest, e.g. in the arts and for social, cultural, sports, scientific and educational purposes.

Whilst the *Sparkassen* have a legal obligation to serve the wider community, this does not mean that they are not entitled to generate profits. On the contrary: *Sparkassen* have to generate surpluses to fulfil their public mandate. Because after all they are fully exposed to the market forces and their survival depends on their intrinsic capacity to generate the necessary funds for their business operations. Yet, their prime goal is compliance with their public mandate. Satisfying the municipal trustee through dividends for the municipal budget is subordinate to this goal and not part of the public mandate.

## 1.3 Regional principle (Regional operation, branches)

The *Sparkassen* have strong regional roots. They originated from local initiative and still today, there is no administrative district in Germany without a Savings Bank. Their network of almost 14,000 branches is a visible sign of this wide-spread presence.

The regional focus of savings banks is mirrored and fostered by the so-called “regional principle”. The regional principle is primarily anchored in German constitutional law and additionally declarative mentioned in the savings bank laws of the *Länder*. Above all the regional principle stipulates that savings banks organized under public law are only authorized to operate branches within the territory of their municipal trustee and that, essentially, they shall only extend loans in that region. An activity of the *Sparkassen* beyond the territory of their municipal trustee is - like it is for the municipal trustee itself - only possible, if there is a sufficient connection to the local community, most notably the population of the community.

The legal background for this is the fact that municipalities are constitutionally only competent to act insofar as the local community is affected. Since *Sparkassen* are facilities of their municipal trustees (see 1.1.1. to this special legal aspect of German savings banks laws) they are bound by the same constitutional limitations.

From an economic point of view the prime motivation behind the regional principle is risk mitigation. Since *Sparkassen* are local players, they also have a profound knowledge of their local customers. This intimate knowledge allows them to gain a much clearer understanding of the risks involved in extending a loan to a specific client. It is a kind of knowledge that will rarely be found at the level of remote company headquarters. *Sparkassen* will therefore be capable of realistically offering loans that could not be extended by banks with a more centralized organisational structure. This facilitates not only investments for those regions that have already become economic powerhouses but it also provides financing opportunities for economical weak regions. The *Sparkassen's* regional principle ensures that local funds that have been mobilized in a given region will also be available for reinvestment in the same region thus preventing economic impoverishment of regions. This, again, makes a contribution towards sustainable development.

#### 1.4 Business Activities

As far as business activities are concerned, *Sparkassen* are obliged to apply the diligence of a prudent businessman. Hence, under the respective state legislation, a number of transactions featuring a particularly high risk are either ruled out or subject to certain restrictions. Legislators of the *Länder* can choose between two different regulatory approaches. Most of the legislators use a black list approach (the so-called ‘qualified universal principle’), only a few a white list approach (so-called ‘enumeration principle’). Basically, under the white list approach, the *Sparkassen* may only engage in types of transactions that are specifically included on said list. If they want to carry out a transaction

that is not included on the white list, they need to apply for a waiver from the competent supervisory authority. Whenever *Länder* legislators use a blacklist approach (qualified universal principle), the *Sparkassen* located on the territory of this State may freely engage in any banking transaction or, moreover, transactions that are usually carried out by banks, as long as such transaction has not been specifically included on the State's list of blacklisted banking transactions. This blacklist may either contain an absolute ban on certain banking transactions or it may impose certain restrictions upon such transactions.

*Sparkassen* offer an extensive range of financial services. Sometimes, they may not have the technical or financial capacity to deliver these services themselves. This may, for instance, be the case whenever a financial product is extremely complex and requires very specific expert know-how or where the provision of a certain service through the *Sparkassen's* in-house staff would no longer be financially viable (e.g. foreign transactions, lease financing, factoring, clearing and settlement of securities transactions etc.). These are cases where *Sparkassen* draw upon services provided by their partner companies from the German savings banks group (Verbundprinzip).

## 1.5 Institutional Protection Scheme

The *Sparkassen-Finanzgruppe* can also draw upon an intrinsic protection scheme ensuring member institutions' continuation of business operations (*Institutssicherung*). These protection facilities come in the form of support funds, risk monitoring, information and intervention rights.

All *Sparkassen*, *Landesbanken* and *Landesbausparkassen* (regional building societies) are members of this protection scheme which is based on three pillars: the savings bank guarantee funds of the regional savings banks associations, the Landesbanken Guarantee Fund and the Regional Building Society Guarantee Fund. The bylaws stipulate the joint and several liability of the members of this protection scheme. The assistance provided by these protection schemes depends on the special needs of the respective case at hand (individual case ruling).

With the implementation of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes by the German Deposit Guarantee Act on July 3, 2015, the *Sparkassen-Finanzgruppe* modified its proven IPS to meet the statutory requirements, and, consequently, the scheme has been recognised as a deposit guarantee scheme ("DGS") under the Deposit Guarantee Act. In this way, the IPS is able to fulfil a dual role: it safeguards the solvency and liquidity of its member institutions to prevent a failure within the legal framework. Furthermore, being legally recognized as a DGS, it serves as a fall-back solution to guarantee mandatory deposit compensation.

The IPS consists of several individual guarantee schemes with their own funds but related to each other: there are 11 Regional Savings Banks Guarantee Funds (*Sparkassenstützungs-fonds*), the Landesbank Guarantee Fund (*Sicherungsreserve*) and the Regional Building Society Guarantee Fund (*Sicherungsfonds der Landesbausparkassen*).

Pursuant to the articles of association, each of these 13 protection schemes, which are subunits of the IPS, ensures the solvency and liquidity of its member institutions. Only if the respective fund runs out of finance, it will be supported by the other protection schemes. In particular, each subunit manages the funds provided to the IPS by the subunit's member institutions. Financial support for a subunit's member is taken from these funds and, if necessary, from additional contributions made by the member institutions. When the funds of one subunit are insufficient (even after additional contributions), the funds of the other subunits can be used for support.

Each subunit is managed by its own decision-making body. When decisions affect more than one subunit they are made by the supervisory body of the IPS. The supervisory body of the IPS includes CEOs of savings banks, Landesbanken and Landesbausparkassen, high level representatives of regional savings banks associations, and German Savings Banks Association (DSGV) as well as local authorities. If support by the IPS for an individual member in-stitution is necessary, the decision-making body of the relevant subunit takes charge. It determines whether the individual member's solvency or existence is threatened, and whether and what kind of support is required for the member to avert the threat. Support beyond the scope of the relevant subunit is determined by the supervisory body based on similar criteria. Available support measures within the IPS consist of capital injection, guarantees, liability take-over, fulfilment of obligations, and mergers.

The IPS is characterised by ex-ante payments from its members according to their total assets and risk profile. Therefore, the fund is able to grant necessary support whenever it is needed. IPS funds derive from annual member contributions and additional contributions, which can be requested by the IPS if needed. They are held by the 13 subunits of the IPS in accordance with the legal requirement that they be easily accessible within at most seven days. Contributions are determined via a risk-based method that takes into account both the amount of covered deposits held by a member, as well as the member's risk profile (RWA).

For the purpose of deposit protection, two executives of the IPS have power to execute the instructions of the national competent authority (BaFin) and may directly access the funds of all 13 protection schemes in case of compensation.

The IPS has in place a suitable and uniformly stipulated system of the proactive monitoring and classification of risk by means of performance indicators and qualitative analyses, which gives a complete overview of the risk profile of all individual members and the institutional protection scheme as a whole. It is based on both decentralised and centralised components, which are highly interlinked. Hence, the structure of the risk management process reflects the general subunit structure of the IPS. While regular reporting is mainly done within the decentralised systems, it is ensured that a holistic view of the total risk borne by the IPS is provided on a regular basis.

## **1.6 Mergers and acquisitions**

The Länder's laws on Sparkassen also contain provisions on potential Sparkassen mergers. Basically, the legislation only provides for cases where there is a merger between two neighbouring savings banks. This is due to the fact that such a merger is very much in line with the regional principle (see 1.3.). However, there are no legal provisions allowing the acquisition of a Sparkasse by a private investor. This is due to the fact that such an acquisition would be incompatible with the Sparkassen's public remit.

## **2 Supervision**

### **2.1 Applicable banking law**

Like all other credit institutions in Germany, the Sparkassen are subject to federal legislation, i.e. the German Banking Act (KWG). Due to their special legal nature, they are also subject to state legislation, i.e. state laws, rules and regulations as well as bylaws. Similar to the legal provisions on other credit institutions, i.e. the Cooperative Societies Act (GenG) which regulates the internal structure of credit cooperatives and the stock corporation act (AktG) which regulates joint stock banks, the Savings Banks Acts notably regulate the internal corporate structures of Sparkassen organised under public law.

### **2.2 Banking license**

Sparkassen, like all other credit institutions in Germany, require a banking license (cf. sections 32 ff. of the German Banking Act (KWG)).

### **2.3 Competent supervisory authorities**

Sparkassen are subject to the general banking supervision exercised by the German Federal Financial Supervisory Authority (BaFin), the German Central Bank (Bundesbank) and indirectly by the European Central Bank (ECB). Yet, they are also, at Länder level, subject to additional supervision by the competent state supervisory authorities according to the special savings banks laws. Depending on the state, this responsibility may lie with the State Ministry of Finance, Economics or with the Home Affairs Ministry (supervisory authority for savings banks).

BaFin and the Bundesbank monitor compliance with the general banking law provisions, notably but not limited to the German Banking Act (KWG) and the Capital Requirements Regulation (CRR). The supervisory authorities for savings banks of the Länder are responsible for monitoring compliance with the state law on Sparkassen. For auditing purposes, the supervisory authorities are entitled to draw upon the services of third parties, particularly of those services provided by the audit units (see 2.5.2).

## 2.4 Means of supervision

The supervisory authorities for savings banks have the right to use both, preventive measures (especially information and disclosure rights) and also repressive measures, i.e. supervisors may demand that certain decisions that have been in breach of law be revoked. In extreme cases supervisors will be entitled to enforce this at the expense of the liable person (Ersatzvornahme). Whenever there is a breach of prudential supervision legislation or in order to prevent or overcome certain shortcomings within an institution that may constitute a risk for the assets with which the credit institution is entrusted or that could have a negative impact on the proper conduct of business transactions, BaFin shall have the right to issue instructions to a credit institution and its executives that are needed for remedial action.

## 2.5 Auditing

### 2.5.1 *Internal audit*

Like all other credit institutions, every Sparkasse is required to have a functioning internal audit system. The internal audit unit reports directly to the Executive Board. The Sparkassen's internal audit shall cover all business operations and transactions. The internal audit shall also take account of the scope and the risk sensitivity of the business operation or transactions.

### 2.5.2 *Audit units of the regional savings banks associations*

The regional savings banks associations maintain audit units (Prüfungsstellen). These audit units carry out those Sparkassen audits that are required by law or have to be carried out at the special request of the competent supervisor. The audit of the annual financial statements and the audit of the consolidated financial statements are of pivotal importance in this regard. The audit units are appointed by law (long-term mandate) as statutory auditors of the Sparkassen.

The audit units are independent entities of the regional savings bank associations generally organized under public law. Their directors and deputy directors need to be certified public accountants. The audit units are subject to the statutory and professional requirements applicable to audit firms. As far as their audit function and reporting capacity is concerned, the audit units are independent from any instructions issued by the savings banks associations' bodies. The audit units need to comply with the same standards and legal provisions that are also applicable to the audits of other credit institutions. They are subject to the German Chamber of Public Accountants' external quality assurance system. The audit reports ("long reports") are sent to the BaFin, the Bundesbank and to the competent state supervisory authority for savings banks.

## 3 Organisation

Sparkassen have a two-tier board system. The bodies of a Sparkasse consist of the Executive Board (Vorstand) and the Supervisory Board (Verwaltungsrat).

### 3.1 Executive Board

The Executive Board is solely responsible for conducting the savings banks' business; it also represents the Sparkasse vis à vis third parties. In doing so the board acts impartially as it is not formed by local politicians. The Executive Board consists of at least two persons. Under the German Banking Act (KWG), these persons must be qualified managing directors (Geschäftsleiterqualifikation), i.e. licenced bankers. The term of office depends on the respective savings banks law of the Länder (5 or 6 years). Most state

legislation also calls for the appointment of deputy members to the Executive Board.

## **3.2 Supervisory Board**

The Supervisory Board monitors the Executive Board. It appoints the members of the Executive Board and their deputies (the intended appointment has to be notified to the legal supervisory authority). Furthermore the Supervisory Board defines the principle guidelines for the Sparkassen's business policy. The head of the municipal administration (mayor, district administrator) usually – by act of law – serves as chairman of the Sparkassen's Supervisory Board. One third of the Supervisory Board members are generally employee representatives (in certain regions: business representatives). The remaining members (two thirds of the Supervisory Board) are elected by the local council. Their term of office is linked to the legislative period of the local council (4, 5 or 6 years - depending on federal law). All members work in an honorary capacity, exercise a personal mandate, are independent, not bound by instructions and are not ac-countable to the municipal trustee.

## **4 Savings Banks and their Central institutions**

Due to their organizational size, Sparkassen cannot provide all financial services on their own. They have to rely on the Verbund, a dense network of all Sparkassen, Landesbanken, Landesbausparkassen and several specialized companies which take over the special tasks on behalf of the constituent Sparkassen. This Verbund is primarily based on the Landesbanken, functioning as central service institutions for the Sparkassen but it also includes investment firms, regional building societies, insurance companies, special finance firms (leasing, factoring, venture capital), IT centres as well as special entities offering securities services. However, the Verbund does not constitute a corporation or consolidated Group, and it is not equivalent to a holding structure.

Furthermore, Sparkassen organized under public law are members of the regional savings banks associations. Together with the Landesbanken, these regional savings banks associations are - as are the Landesbanken - again members of the German Savings Banks Association, registered association (DSGV e.V.).

### **4.1 Central credit institutions**

#### **4.1.1 *Landesbanken***

Germany has six groups of Landesbanken. These banks are universal banks which have specific mandate. Most of the Landesbanken are “institutions under public law”, but one of them is organized as a stock corporation. The shares in the Landesbanken are held by Germany's Länder and the regional savings banks associations. The Landesbanken are subject to regulation by the Länder. Some Landesbanken deliver services across several German Länder. In such cases, they are subject to regulation in the form of corresponding state agreements that are signed between the Länder concerned.

The Landesbanken are state banks and commercial banks; in addition to this, they also serve as central banks for the Sparkassen. Whilst the Landesbanken have a strong profile as regional players with strong local roots, they also support their own clients and the clients of their constituent savings banks in foreign transactions. This is why Landesbanken also operate foreign branches. Concerning the liability regime of Landesbanken, please cf. the earlier paragraph on the Protection Systems (1.5.)

Landesbanken are subject to supervision by the competent ministerial state supervisor according to state law. The statutory audits and those requested by the supervisory authorities are performed by auditing firms. The Landesbanken's executive bodies are the Executive Board and the Supervisory Board.

#### **4.1.2 *DekaBank***

DekaBank is the Sparkassen-Finanzgruppe's central securities firm. The Sparkassen hold a 100% interest in DekaBank which is organized as “institution under public law”.

### **4.2 Savings banks associations**

#### **4.2.1 *Regional savings banks associations***

There are twelve regional savings banks associations, each with their own area of activity, which is in principle tied to the area of the respective German State. In two cases the area of activity extend over several German States (Länder). These two regional associations are respectively regulated in an agreement between the corresponding Länder. The remaining regional associations are regulated in the appropriate Länder legislation on savings banks (Landessparkassengesetze) as well as in the associations' bylaws.

The regional associations' members are the Sparkassen and their municipal trustees. The regional association's prime mandate is the protection of the interests of its member Sparkassen, the provision of advisory services to its members, the operation of vocational training facilities for Sparkassen-Finanzgruppe staff (savings bank academies), promotion of or participation in joint ventures and shared facilities and operation of an independent audit unit (Prüfungsstelle). In terms of their organisation, regional associations usually have a chairman (association president), an association board and a general meeting.

#### **4.2.2 *German Savings Bank Association***

The German Savings Banks Association (Deutscher Sparkassen- und Giroverband e.V., DSGV) is a registered association. It is an umbrella organisation representing the members of the Sparkassen-Finanzgruppe at a federal level. Its members are the regional savings bank associations and the Landesbanken. The tasks of the DSGV particularly include advocacy for its members' interests towards the German government and the European Union as well as the public at large, advisory services for its members and the development of common projects and strategies.

Furthermore, there is a series of organizations with various remits:

- DSGV operates the University of the Sparkassen-Finanzgruppe, the “University of Applied Sciences” in Bonn. This is a training centre where employees of the institutions belonging to the German Savings Banks Finance Group may study and acquire an internationally recognized academic degree in parallel to their vocational training or professional activity.
- DSGV runs the Deutsche Sparkassenakademie in Bonn. This academy is the Sparkassen-Finanzgruppe's central further vocational training centre. It is a learning platform for executive board members, senior executives and experts helping them to further enhance their vocational skills and fostering a dialogue and exchange of experience across regional boundaries.
- The Sparkassenstiftung für Internationale Kooperation e.V. (Savings Banks Foundation for International Cooperation, SBFIC) implements projects worldwide which are designed to give broad sections of the population access to financial services. The Foundation’s work is focused on building up microfinance services, as well as improving established Savings Bank organisations, providing further education and supporting the development of the financial sector. To this end, the Foundation provides training courses and consulting services. In many cases, German experts with practical experience in German Sparkassen are sent to developing countries and emerging markets to help build up these capabilities.
- The *Wissenschaftsförderung der Sparkassen-Finanzgruppe e.V.* (Sparkassen-Finanzgruppe academic sponsorship association) shall facilitate and further intensify the dialogue between academia and the

Sparkassen-Finanzgruppe. It supports academia and research in the field of monetary systems, banking and stock-exchange systems and especially of the Sparkassen system.

## 5 Sources

- Kreditwesengesetz (federal German Banking Act)
- Sparkassen laws and Landesbank laws (state legislation)
- Rules and regulations issued on the basis of the Länders' Sparkassen laws
- Bylaws of Sparkassen, Landesbanken and DekaBank (Sparkassen bylaws are sometimes modelled on templates drafted at state level)
- Bylaws of the regional savings bank associations
- Bylaws of the Deutscher Sparkassen- und Giroverband e.V.

# MALTA

## 1 General provisions

### 1.1 Legal form

There is no distinction between savings banks and banks or credit institutions in Malta.

### 1.2 Social and welfare aims

Bank of Valetta is committed to playing an active role within the communities in which it operates, not only by providing financial services to meet customers' needs but also by supporting initiatives which contribute towards social and cultural development, e.g. supporting initiatives that foster the promotion of arts and culture, the preservation of heritage, the conservation of the environment and the promotion of education and sports.

### 1.3 Activities

Banks such as Bank of Valetta p.l.c. carry on the traditional business of banking which is defined under the Banking Act as: The business of a person who accepts deposits of money from the public withdrawable or repayable on demand or after a fixed period or after notice or who borrows or raises money from the public (including the borrowing or raising of money by the issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness), in either case for the purpose of employing such money in whole or in part by lending to others or otherwise investing for the account and at the risk of the person accepting such money.

A person shall be deemed to be accepting deposits of money if, whether as principal or as agent, he accepts from the public, deposits of money as a regular feature of his business, or if, whether as principal or as agent, he advertises or solicits for such deposits, without regard to the terms and conditions under which such deposits are solicited or received and without regard to whether certificates or other instruments are issued in respect of any such deposits: Provided that the acceptance of money against any issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness offered to the public in accordance with any law in force in Malta shall not of itself be deemed to constitute acceptance of deposits of money for the purposes of the Banking Act and any regulations or Banking Rules made thereunder:

The following additional activities are also authorised under the Banking Act, namely:

1. Financial leasing;
2. Payment Services as defined in the Financial Institutions Act;
3. Issuing and administering other means of payment (travellers' cheques bankers' drafts and similar instruments) insofar as this activity is not covered by activity 2 above;
4. Guarantees and commitments;
5. Trading for own account or for account of customers in:
  - (a) money market instruments (cheques, bills, certificates of deposit, and similar instruments);
  - (b) foreign exchange;
  - (c) financial futures and options;
  - (d) exchange and interest-rate instruments;
  - (e) transferable securities.
6. Participation in securities issues and the provision of services related to such issues;
7. Advice to undertakings on capital structure, industrial strategy and related questions and advice as

well as services relating to mergers and the purchase of undertakings;

8. Money broking;
9. Portfolio management and advice;
10. Safekeeping and administration of securities;
11. Credit reference services;
12. Safe custody services;
13. Issuing electronic money.

## **1.4 Regional operation, branches**

Maltese legislation does not make a distinction between savings banks and other banks. There are no specific legal or regulatory provisions related to the opening of branches anywhere in Malta by savings banks. Thus, savings banks, like any other banks, would have to comply with the relative provisions which are based on EU principles and, consequently, compliant with EU legislation.

## **1.5 Guarantee systems in general**

The Maltese deposit guarantee scheme provides a mechanism whereby depositors may be entitled to compensation in the event of a bank failure. The Scheme is funded by cash contributions and the pledging of securities from the banks themselves. In case a bank participating in the Scheme is unable to meet its obligations towards depositors or has otherwise suspended payment, the Scheme pays compensation to depositors up to a maximum amount established by law (currently set at a maximum of €100,000 or its equivalent in any EEA currency of a depositor's total deposits held with such bank).

In any such event, a bank's net liability to a depositor is the aggregate of all accounts in the name of that depositor in euro or other EEA currency, including the depositor's share in a joint account or a client's account, less any amounts owed to the bank.

More information can be found on: <http://compensationschemes.org.mt/pages/default.aspx>

# **2 Supervision**

## **2.1 Applicable banking law**

The Banking Act (Chapter 371 of the Laws of Malta) (the Act) has modernised banking legislation for Malta. It has replaced the Banking Act 1970 and brought Maltese banking law in line with international standards. It came into force on 15 November 1994 through Legal Notice 155 of 1994 and is modelled on a number of relevant European Union Directives; in as far as these are applicable to the local banking scenario.

In drafting the Act, which formed part of the 1994 Financial Legislative Package, unanimously approved by Parliament, attention was strongly given to the fact that the Act had to be internationally accepted, in order to attract foreign banking institutions to seek to establish business in Malta. On the other hand, it had to safeguard and yet upgrade the culture of domestic credit institutions. The Act continues to be updated to remain in line with EU and other internationally recognised standards.

## **2.2 Day-to-day supervision**

This is carried out by the Malta Financial Services Authority which is the competent authority for banking supervision.

### **2.2.1 Information**

A bank must provide the Malta Financial Services Authority with detailed information on its finances, along with other information relevant to its position as an authorised institution.

### **2.2.2 Means of supervision**

The Malta Financial Services Authority, the unified regulator for Banking, Insurance and Investments, monitors the activities of licensed institutions on a regular basis and it enforces minimum standards of reporting in order to maintain a healthy banking environment.

- Penalties  
The Banking Act provides for a number of penalties, whether administrative or otherwise, under the Penalties for Offences Regulations issued thereunder.

## **3 Organisation**

### **3.1 Main bodies**

The day-to-day business of the Bank is controlled by a board of directors, whilst the day-to-day management is carried out by the executive management.

### **3.2 Special bodies**

The Bank also has the following committees: the executive committee, the audit committee, the risk management and compliance committee, the credit committee, the remuneration committee and the asset and liability management committee.

## **4 Sources**

The laws and regulations governing credit and financial institutions in Malta are found on the Malta Financial Services Authority and the Central Bank of Malta web sites [www.mfsa.com.mt](http://www.mfsa.com.mt) and [www.centralbankmalta.com](http://www.centralbankmalta.com).

# **NORWAY**

## **1 General provisions**

### **1.1 Legal form**

As of 1 January 2018, there were 99 savings banks and 21 savings bank foundations in Norway. Savings banks can be organized in three ways.

Norwegian savings banks have traditionally been organized as independent foundations without external owners, and whose equity essentially consisted of ownerless capital build up of retained profits.

In 1987 the legislation was amended to enable savings banks to bring in capital from the market, by issuing primary capital certificates, now termed “Equity Certificates” (ECs). The capital brought in by this means counts as Core Tier 1 capital under the provisions governing capital adequacy. Equity certificates have been issued by 32 of 112 savings banks. The majority of the EC savings banks are listed on the Oslo Stock Exchange.

It is also possible to convert a savings bank to a private limited company. However, the authorities can set requirements that part of the shares are controlled by a savings bank foundation. As of 1 January 2018 three Norwegian savings banks are organized as limited companies, including the largest Norwegian bank, DNB, alone having about 40 percent of the deposits in the Norwegian market.

The EC savings banks core capital consists of one “ownerless” part and the equity share capital, the latter being owned by the EC holders. The ownerless capital is divided into different funds; mainly the Basic Fund, the Gift Fund and the Compensation Fund. The equity share capital consists of the Equity Certificate Capital, the Premium Fund and the Equalization Fund.

### **1.2 Social and welfare aims**

The savings bank foundations contributes to charitable causes in Norway, thereby continuing the traditions pursued by Norwegian savings banks of donating their profits to the local communities in which they have operated.

Neither the Financial Companies Act nor the savings banks’ articles of association impose any obligations to pursue specific social or welfare aims. Savings banks are expected to fulfil their commitments towards the communities in which they operate by carrying out prudent banking.

### **1.3 Activities**

There is full equality under the law between savings banks and commercial banks regarding what business they may engage in. This applies both to business conducted over the individual bank’s own books and via subsidiaries. All major savings banks offer a full range of services. Many savings banks have reinforced their full-service character by setting up subsidiaries in bank-related activities, for instance insurance, money transfer, capital and real estate brokerage, leasing, factoring, etc.

### **1.4 Regional operation, branches**

The Norwegian savings banks are local institutions concentrating their activities in local districts or regions, with a network of branches covering their business-areas very effectively.

### **1.5 Protection Systems**

### **1.5.1 *Guarantee systems in general***

All savings banks in Norway are obliged to be members of the Norwegian Banks' Guarantee Fund, and each bank pays an annual contribution to the Fund according to criteria laid down in the provisions.

The guarantee fund will cover losses incurred by depositors and other financial institutions on their deposits, limited to a maximum of NOK 2 million per depositor per bank. The guarantee fund can also provide a member bank with financial support to enable it to meet its commitments. The guarantee system is at present undergoing some amendments due to the implementation of new EU rules (the Bank Recovery and Resolution Directive (2014/59/EU) and the Deposit Guarantee Schemes Directive (2014/49/EU)).

### **1.6 *Mergers, shareholdings and acquisitions***

Any resolution to merge the business of a savings bank or transfer it to another bank needs to be adopted by the committee of representatives. In savings banks organized as limited liability banks resolutions are adopted by the general meeting. Merger with or transfer to another bank may not be undertaken unless all known liabilities have been secured. The book value of a savings bank's holding of shares and participations may not exceed a certain percentage of the savings bank's assets based on last year's account. The Financial Supervisory Authority of Norway may grant dispensation from this provision.

## **2 *Supervision***

### **2.1 *Applicable banking law***

Savings banks' organizational set-up, activities etc., are as of 1 January 2016 regulated primarily by the Financial Companies Act which repeals the former Savings Banks Act. the aim of this step is to ensure a uniform regulatory framework for all financial institutions, savings banks have been brought within the scope of parts of the Financial Institutions Act.

### **2.2 *Access to savings bank activity***

A savings bank may not commence business until its articles of association have been approved by the Government. Such approval shall be withheld if the conditions (minimum capital, number of founders, residence requirement for members of the savings bank's bodies) imposed by the articles on Savings Banks in the Financial Companies Act are not met.

### **2.3 *Day-to-day supervision***

All Norwegian financial institutions, including savings banks, are supervised by the Financial Supervisory Authority of Norway.

#### **2.3.1 *Means of supervision***

- Preventive  
Certain decisions need the approval of the Ministry of Finance or of the supervisory authority. The latter's approval is for instance required for decisions to amend the articles of association or the election of the members of the board of board/senior management (fit & proper requirements). The Ministry may lay down regulations, for example governing the election of

members to the committee of representatives. The supervisory authority may also lay down regulations, for example regarding the form of the certificates of deposit, the procedure for deposits and withdrawal and keeping accounts.

- **Corrective**  
The supervisory authority may declare an election of the members of the committee of representatives void and order a new election if errors in connection with the election may have influenced its outcome.
- **Penalties**  
The Ministry of Finance may revoke approval of a savings bank's articles of association if it is considered there is reason to do so because the board of directors or other bodies of the savings bank are not functioning in accordance with the provisions of the Financial Companies Act or the savings bank's articles of association, or if irregularities in the management or activity of the savings bank come to light. If any part of a savings bank's profit is employed in any other way than authorized, those who have participated in the unlawful decision are obliged, jointly and severally, to compensate the bank for the unlawfully disbursed amount.  
Contravention of the law is punishable by fines or in particularly aggravating circumstances by imprisonment for up to three months.

## **2.4 Internal supervision by savings banks organizations**

### **2.4.1 *Savings banks' own internal supervision***

Each savings bank shall have an auditor who is an authorized or registered accountant.

The annual financial statements (profit and loss account, balance sheet, annual report) shall be signed by the board of directors and submitted together with the auditor's report and the control committee's statement and report on its activities to the committee of representatives. After approval, the annual accounts and balance sheet are published.

In addition, the bank must have an internal audit function which report directly to the board of directors. To some extent this function can be outsourced to the bank's audit firm.

As of 1 January 2016, savings banks must also have a designated risk function and a compliance function integrated in the management of the bank. For smaller banks these functions can to some extent be outsourced to third parties

### **2.4.2 *Supervision exercised by the savings banks' organization***

The Norwegian Savings Banks' Association has no supervisory obligations in relation to member banks. However, the Norwegian Banks' Guarantee Fund is entitled to examine its member banks' accounts and to audit and evaluate their administration. For that purpose, the Fund may require a member bank to furnish documents etc., and provide information which the Fund considers necessary.

## **3 Organisation**

### **3.1 Main bodies**

The main bodies are the committee of representatives and the board of directors. In savings banks which have been converted to limited liability savings banks, the general legal provisions governing commercial banks apply. In such cases, the principal bodies are the general meeting and the board of

directors. The highest body in Norwegian savings banks is the committee of representatives. In savings banks which have not issued primary capital certificates (ECs), three-eighths of the members of the committee of representatives are elected by the bank's depositors. The same fraction is elected by the municipalities, and one quarter by the employees.

In savings banks which have issued ECs, 20 % - 40 % of the committee of representatives are elected by EC holders in accordance with the bank's articles of association. One quarter are elected by the employees. The remainder is elected by and from depositors and municipalities, each contributing an equal number.

The board of directors (at least four members) of the savings bank is appointed by the committee of representatives. In larger banks the election is made upon a recommendation from the nomination committee elected by the general meeting/committee of representatives. The board of directors is responsible for the day-to-day management and matters concerning organization and administration.

A savings bank must have the following advisory bodies composed by some of the members of the board of directors:

- Audit committee,
- Risk committee.

In smaller banks, the tasks of the Audit and Risk committee can be executed by the full board of directors

## **3.2 Central Institutions**

### ***3.2.1 Law related to savings banks associations***

Sparebankforeningen (the Norwegian Savings Banks Association) is the national association of the Norwegian savings banks and foundations. All savings banks and most foundations in Norway are members of the association.

The association's main role is to be a spokesman for savings banks and foundations towards the authorities and the general public in specific savings banks topics like the Equity Certificates (EC) and Corporate Social Responsibility (CSR). The association is involved in lobbying activities and in laying the basis for, and promoting, collaboration among savings banks and foundations in Norway.

## **4 Sources**

- Financial Companies Act
- Act on Norwegian Banks' Guarantee Fund
- Financial Supervision Act

## PORTUGAL

To understand the present structure of the savings banks sector within the Portuguese banking system it is necessary to look at the precedent legal regime organised by the Decree-law 41.403 of 27 November 1957.

At that time, the range of the Portuguese credit institutions was composed of the State's own institutes, issuing banks, commercial banks and special credit institutes, those composed by investment banks, savings banks, credit cooperatives and the Companhia Geral do Crédito Predial Português, the latter being a specialised mortgage credit institution. As state-owned credit institution existed, the Caixa Geral de Depósitos, which inherited the functions and activities of the ancient Caixa Económica Portuguesa, which was a typical savings institution set up in 1880 with the aim of collecting deposits.

After the 1974 revolution, legislation was enacted which allowed the Caixa Geral de Depósitos, the Caixa Económica de Lisboa (presently Caixa Económica Montepio Geral) and the Crédito Predial Português to expand the scope of their activities to grant mortgage loans under a new legal framework. The Caixa Geral de Depósitos found its natural partners – namely in international contacts – among the savings banks, and the same happened with the Crédito Predial Português. Neither at the time held connections with the Portuguese commercial banks.

Two important subsequent developments were the return to the private sector of the Portuguese banking industry, and the reform of Portuguese banking legislation through the “Regime Geral das Instituições de Crédito e Sociedades Financeiras” approved by the Decree-Law 298/92 on 31 December 1992. The first attracted the Crédito Predial Português to the field of the newly privatised commercial banks, and the second organised the Portuguese credit sector in a different way.

Under this new organisation, the Caixa Geral de Depósitos was in an isolated position as a State-owned institution, but forming with the banks (there was no longer a difference between commercial and investment banks), the savings banks, the Caixa Central de Crédito Agrícola Mútuo and the agricultural credit cooperatives, investment cooperatives, investment companies, leasing companies, factoring companies, and some other entities, the general category of credit institutions. It was clear that the Caixa Geral de Depósitos and the Crédito Predial Português were not considered savings banks by Portuguese law.

Following the reform of the said “Regime Geral” on 26 September 2002, the Caixa Geral de Depósitos is now simply considered a bank, with the form of a commercial limited company whose capital is totally owned by the State. Any special reference to this institution has disappeared from the general banking law.

## 1 General Provisions

### 1.1 Legal form

According to the Banco de Portugal the only Portuguese savings banks are: (code 59) Caixa Económica da Misericórdia de Angra do Heroísmo, (code 57) Caixa Económica do Porto, (code 36) Caixa Económica Montepio Geral, and (code 58) Caixa Económica Social.

Portuguese savings banks have no shares, and they belong to their founder, who may transmit the savings banks (as a whole, not just its assets and liabilities) only if it is transformed from an incorporated foundation into a share holding company. On the reverse the savings banks have the possibility to

acquire shareholdings and enterprises.

Presently (after Decree-Law 225/2008) the savings banks must adopt one of the corporate governance models regulated in the Código das Sociedades Comerciais (Commercial Corporations Code). The three fundamental models have, as common body, a general meeting, and they present alternatively a directors board and a board of auditors, a general and supervisory board and a directors' executive board, or a board of directors with an audit commission.

The Portuguese savings banks are subject to the general discipline of the "Regime Geral" (corporate governance, by-laws regarding reform and winding up, registrar, code of conduct, prudential rules, supervision, penalties, etc.), but must also obey rules specific to them that are contained in the Decree-Law 136/79 from 18 May 1979, which is the section unique to credit institutions, whose regulation did not change after the publication of the "Regime Geral".

According to the Decree-law 136/79 (Article 1), the savings banks are special credit institutions – a category that no longer exists – which perform reduced banking activities, namely receiving deposits, which they use for granting credit and other permitted operations linked to titles of credit. They also carry out the banking services compatible to their nature and that the law does not forbid. Nothing is said about the legal nature of these entities, that is only revealed by their statutes and some dispersed legal rules.

All these existing institutions have the form of entrepreneurial incorporated foundations and are legal persons, according to private law, that were set up by mutualities (except Caixa Económica da Misericórdia de Angra do Heroísmo), or by non-profit institutions according to canon law (the mentioned exception), with the aim of improving the social and welfare activities of their founders through their banking activity. As a secondary aim, all the statutes of these institutions declared their purpose to encourage the spirit of saving.

The law does not assign any social or welfare role to the savings banks, but as setting up new savings banks in the form of limited companies, with the aim of giving profits to their owners, is forbidden by the law, and considering that mutual benefit societies and "misericórdias" (ecclesiastical benefit institutes) are allowed to set up savings banks, it can be concluded that these institutions must have a social or benefit purpose in the application of their profits, as it effectively results from their by-laws.

There are no savings banks in Portugal in the form of limited companies. All the others are incorporated foundations.

Considering their capacity there are three different regimes. The general regime, and most restrictive one – as said above - limits the granting of credit to operations secured by mortgages or pledges, while not setting any special limitations on the receipt of deposits.

The second intermediary regime is specific to the savings banks with headquarters in the autonomous regions (the Azores and Madeira archipelagos), who are allowed to make commercial discounts, to give credit to investment, to have running accounts and to establish special accords to achieve the viability of enterprises in difficulties. The third and more liberal regime was introduced by the Decree-Law 319/97 (25 November 1997). It gives Banco de Portugal, after consideration of the level of own funds, solvency, liquidity, internal organisation and human and technical expertise, the scope to grant to a special savings bank the capacity to practise all or some operations permitted to the banks. According to this new regime, the Caixa Económica Montepio Geral is allowed to practice the full range of banking operations.

The general law is also very restrictive in the area of exchange operations, which are practically limited to manual exchange. The Caixa Económica Montepio Geral, however, as it is authorised to practice the full range of banking operations, has no limits in this field, and has opened several representative offices abroad.

## 1.2 Activities

### 1.2.1 *Regional operation, branches*

The revocation of a disposition of the Adhesion Treaty of Portugal to the European Community gives Caixa Económica Montepio Geral the scope to enjoy the freedom of establishing branches and granting services all over the European Union.

The Portuguese savings banks are not necessarily local institutions and they can open branches wherever it is convenient for them. The general regime requires the special authorisation of the financial authorities to open a branch, but the more liberal regime merely requires a registration of the branch in the central bank. There is no State guarantee for savings banks. All credit institutions, including savings banks, participate in and contribute to the same deposit guarantee system.

### 1.2.2 *Mergers, shareholding and acquisitions*

Merger and transformations of savings banks must be authorised by the Finance Minister. In recent years, several savings banks have been liquidated following the acquisition of all their assets and liabilities by other institutions.

## 2 Supervision

### 2.1 Day to day supervision

The Central Bank (Banco de Portugal) is responsible for monitoring all credit institutions and therefore savings banks. To this end, all the credit institutions are subject to a special register opened at the Central Bank which must include a series of elements including the name, the date of establishment, the location and the main offices, the authorised capital and the paid up capital, as well as the names of the board of directors and fiscal board.

#### 2.1.1 *Means of supervision*

- Preventive  
The Central Bank can give the savings banks instructions regarding the accounting plans and the way they should be drawn up, the form of the balance sheets, the criteria to be adopted regarding the assets and the constitution of provisions for bad debts and other forms of asset depreciation.  
They are obliged to establish legal reserves to cover all losses or depreciation. Pursuant to the law, at least 10% of the profit must be allocated to the building-up of legal reserves.
- Corrective  
There are minimum provisioning requirements of credit overdue (loans that were not paid by the obligor at maturity) and there are internal control requirements to ensure compliance with legal obligations and duties and to the proper management of risks inherent in their activities.



The Central Bank can require savings banks to remedy infractions by setting down specific recommendations and provisions.

- Penalties  
Rules and a system of penalties are provided for in the general law applicable to all credit institutions.

## **2.2 Internal supervision by savings banks organisations**

### **2.2.1 Savings banks' own internal supervision**

Generally the management of savings banks is monitored by a board of auditors comprising three members elected by the general meeting. These members are elected for a period of three years and are eligible for re-election. The existence of a general and supervisory body or a board of auditors are also allowed.

## **3 Organisation**

### **3.1 Main bodies**

Traditionally, the main bodies are the general meeting (assembleia geral), the board of directors (conselho de administraçao), the management and, as said, the body of internal supervision. The board of directors is made up of at least three members and is elected by the general assembly every three years. The number of deputy members who are also elected by the general assembly is equal to the number of full members. Presently other governance systems are admitted, as mentioned.

### **3.2 Special bodies**

(Regarding supervision – see above).

## **4 Law related to savings banks associations**

### **4.1 National association**

There is a national association, presently without activity, whose members are: the Caixa Geral de Depósitos, Caixa Geral Montepio Geral and the Caixa Económica da Misericórdia de Angra do Heroísmo, with the specific purpose of representing its members before international representative bodies.

### **4.2 Regional associations**





There are no associations at regional level. However, there does not seem to be anything to prevent the constitution of associations of any type, pursuant to the general right of association.

## **5 Sources**

### **5.1 General**

“Regime Geral das Instituições de Crédito e Sociedades Financeiras” approved by the Decree-Law 298/92 de 31 de Dezembro.

### **5.2 Special**

- Decree-Law n° 136/79 of 18 May 1979, modified by:
- Decree-Law n° 231/79 of 24 July 1979 (articles 5 n° 2 a) ii) e 13°)
- Decree-Law n° 281/80 of 14 August 1980 (articles 3°, 8°, 18°, 23°, 28°, 29° e 30°)
- Decree-Law n° 79/81 of 20 April 1981 (article 5°)
- Decree-Law n.° 49/86 of 14 March 1986 (article 4°)
- Decree-Law n° 212/86 of 1 August 1986 (article 8°)
- Decree-Law n° 182/90 of 6 June 1990 (article 4°)
- Decree-Law n° 319/97 of 25 November 1997 (article 12°-A)
- Decree-Law n.° 188/2007 of 11 May 2007 (article 28°)



## SPAIN

### 1 General provisions

#### 1.1 Legal structures

The sector is currently (September 2017) composed of 10 entities or groups of entities.

The regime of the savings banks sector has been rewritten in Law 26/2013 of 27 December of the Savings Banks and Banking Foundations. Under this new law these three figures are differentiated and regulated:

Savings banks are credit institutions with social purpose and foundational character, whose financial activities are targeted mainly on the repayable funds and the provision of banking and investment services to retail customers and small and medium enterprises. Its scope is limited to the territory of an Autonomous Community or to adjoining provinces, with a maximum of 10.

Banking Foundations are foundations that maintain a holding in a credit institution to reach, directly or indirectly, at least 10% of the capital or voting rights, or that allows it to appoint or dismiss any member of its Board of Directors. Its purpose is the development of their welfare project and management of their stake in the entity.

The Confederación Española de Cajas de Ahorros (CECA - Spanish Association of Savings Banks) is a national partnership and may consist of the savings banks, the banking foundations and credit institutions that can integrate, and maintain the functions and purposes which holds under this regime. CECA lost its status of credit institution, subjecting it to provide its services through a bank engaged by it, in the terms established in the statutes.

#### 1.2 Protection systems:

##### 1.2.1 *Deposit Guarantee schemes*

The Spanish Deposit Guarantee Scheme is a legally recognised system which accomplishes the purposes of deposit insurance and financial support for recovery and resolution. It covers deposits up to an amount of 100.000 EUR, for which a fund has been created. The target level is the 1% of the eligible deposits of all institutions, and the contributions to the fund are structured in the following manner:

- Annual ex ante contributions (3 per thousand of the guaranteed deposits).
- Under certain circumstances defined by law, extraordinary contributions from the institutions.

The contributors are all credit institutions, which, in the case of Spain, involves 126 entities (as at 6 September 2018): 61 banks, 2 savings banks, and 63 rural savings banks. The pay-out period is 20 days. In the case of resolution of credit institutions, the Fund may adopt measures for its support.

##### 1.2.2 *Guarantee systems in general*

Within the Banking Union Project, and as the third pillar (Harmonised Deposit Guarantee Schemes (DGS), a provisional political agreement with the European Parliament has been reached on December 17, 2013 on the revised Deposit Guarantee Directive.



The aim of the Directive is to ensure sufficient financial means in the DGS funds and fast payouts to depositors in case of bank insolvency or resolution.

Under the DGS Directive, all credit institutions will be required to join DGSs. All DGSs will be supervised on an on-going basis and will have to perform regular stress tests of their systems. The proposed Directive will ensure that information regarding DGS protection is provided to depositors in a clear and understandable manner.

The target level of the DGS funds has been set at 0.8% of the covered deposits. Use of these funds for early intervention and resolution was also enabled with the efficient safeguards and control mechanisms curtailing such alternative uses.

### **1.3 Activities**

Regarding savings banks, the financial activities are targeted mainly on the repayable funds and the provision of banking and investment services to retail customers and small and medium enterprises.

The activities of banking foundations will focus on the care and development of social work and the proper management of their participation in a credit institution.

### **1.4 Regional operation, branches**

The scope of saving banks is limited to the territory of an autonomous region or provinces bordering each other, provided they do not exceed ten.

After the rationalisation and restructuring process that has taken place in recent years, the number of branches of savings banks has decreased to 11,887 on 30 June 2018, which implies a reduction of 45% since the beginning of the financial crisis.

### **1.5 Mergers, shareholding and acquisitions**

The General Assembly approves the dissolution and liquidation of the entity, a merger or integration with another, and its transformation into a common or banking foundation.

The resolutions of the General Assembly shall be adopted as a rule by a simple majority vote of those present. It will be necessary, in addition, the affirmative vote of at least two-thirds of the voting rights of the participants.

The savings bank mergers are subject to the authorisation procedure provided on the regional rules of development. The denial of authorisation may be produced only when the resolution could breach any of the objective requirements under that legislation.

### **1.6 Social and welfare aims**

The restructuring process of the savings banks sector has transformed the legal form of the entities, but not their social and environmental compromise and governance.

The newly created banks promote a responsible and sustainable business approach, while savings banks continue to develop their social work in their home areas.



The contents of the CSR activity is based on three pillars: financial inclusion, local development and governance.

Regarding investment in Social Welfare (Obra Social), which is one of the founding pillars of our institutions; in 2016 it continued being an engine for social development of the regions with an inversion of 800,88 million euros (provisional data), all with special focus on social assistance and cultural and heritage projects.

This is just a sample of many other initiatives and policies that are being carried out by the savings institutions, and it confirms the interest of the sector on sustainability whatever the economic, regulatory and social situation is.

Financial inclusion, the hallmark of our industry, focuses on a model of proximity banking, financial education, and products and services suited to this purpose, as microcredits.

## **2 Supervision**

### **2.1 Applicable banking law**

After a full deployment of the Savings Banks throughout the Spanish geography in recent years, the consequences of the economic crisis on the Spanish financial sector have affected the savings banks and it has been necessary to exhaustively rethink their legal regime into a more integrated one.

The regulatory and operational changes that have taken place in the sector have been historic with an unprecedented speed and depth. In fact, almost all of the Spanish savings banks have participated or are participating in a process of integration; and it has created the new concept of the savings indirectly exercise, carrying out their financial activities through banks and thus, several organisations have begun trading on regulated markets.

Indeed, this process has been accompanied by a profuse legislation that has offered a response to events that were taking place with extraordinary velocity. These legislations, among which should strongly be emphasised the “Royal Decree Law 11/2010, of 9 July, of government bodies and other aspects of the legal regime of the savings banks” has sought to promote, facilitate and streamline the Savings Banks restructuring process.

The result is a set of rules which, in a scattered manner, contains regulations affecting savings banks. Having made this effort, it is time for the new law that sets up with stability and in a single text, the legal regime for savings banks. It is a new regime which combines the classic values of the savings, social and territorial roots, with historical lessons that recent events have shown. Therefore the regime of the savings banks sector has been rewritten through Law 26/2013 of 27 December of Savings Banks and Banking Foundations.

### **2.2 Access to savings bank activity**

With the new law of Savings Banks and Banking Foundations, the scope of activity of a savings bank is limited to an Autonomous Community or to adjoining provinces, with a maximum of 10. The main activity of savings banks will be centred on taking deposits and granting loans, also with a focus on welfare projects.



Also, a system of incompatibilities is established. In particular, those persons holding executive positions in political parties, trade unions and professional associations, elected representatives of Public Administrations, or senior positions of Public Administrations, or that have done so in the last two years, will not be allowed to be members of the Boards of Directors.

Additionally, a temporary compatibility has been approved for people who are simultaneously members of the board of trustees of the banking foundation and the board of directors of the bank participated by the banking foundation, with the following limitations:

- They shall not exercise executive functions in either the bank or the foundation.
- The compatibility may not exceed 25% of the members of the bank's board of directors.
- The compatibility of each member is maintained until his current term at the bank expires, and in any event no later than June 30th, 2016.

On the other hand, a banking foundation is understood as being one that has a stake in a credit institution of, directly or indirectly, at least 10% of the capital or voting rights, or that allows it to appoint or dismiss any member of its Board of Directors.

The main function of these foundations shall be the management of their welfare projects and their stake in the credit institution.

If a savings bank exceeds, at a consolidated group level, the following parameters:

- a value of more than 10bn euros in total consolidated assets, or
- a market share in deposits in its Autonomous Community of more than 35%,

it shall have to transfer its financial activity to a credit institution, and enter into a banking foundation transformation agreement, approving new Articles of Association and appointing the Board of Trustees, within a term of 6 months from when the conditions are met.

### **2.3 Day-to-day supervision**

In the context of the Banking Union project, and its first pillar SSM (Single Supervisory Mechanism), Regulation 1024/2013 ECB attributes to the European Central Bank (ECB) specific functions related to the prudential supervision of credit institutions of the participating Member States in order to contribute to the financial stability of the European Union.

The SSM is composed by the ECB (independently of its monetary functions) and the national competent authorities.

The ECB will be assigned supervisory and investigatory powers (requests for information, general investigations, site inspections) on credit institutions that meet the following conditions: (i) the total value of its assets exceed 30 billion euros, (ii) the ratio of total assets to GDP of the participating Member State of establishment exceeds 20%, unless the total value of its assets is less than 5 billion euros, (iii) the credit institution has significant importance for the national economy.

Spanish national supervisor, Bank of Spain (Banco de España), will continue to play all oversight functions on less significant credit institutions and will keep functions not attributed to the ECB as those related to consumer protection, prevention of money laundering, payment and supervision of branches of credit institutions from third countries.



### **3 Information**

The Bank of Spain organises periodic inspections to monitor compliance with applicable standards.

The ECB is currently working on the “Supervisory Model” and “Supervisory Manual” and defining the Supervisory Reporting Issues, Reporting template and Supervisory team.

Also, regarding the banking foundations, and according the Law on Savings Banks and Banking Foundations, the Bank of Spain may conduct inspections and checks to require the banking foundation has all the information necessary to perform its functions.

### **4 Means of supervision**

#### **4.1 Preventive**

Main tasks and powers conferred on the ECB and main prudential supervisory tasks on credit institutions:

- Authorisation and withdrawal of authorisation of credit institutions;
- Assess applications for the acquisition and disposal of qualifying holdings;
- Ensure the compliance with prudential requirements (own funds, large exposure limits, liquidity, leverage and disclosure etc.), the adequacy of internal capital and apply requirements on governance arrangements;
- Carry out supervisory reviews, including stress tests, and on the basis of the review to impose specific additional prudential requirements; and
- Carry out supervision on a consolidated basis.

Spanish national supervisor, Bank of Spain, will continue to play all oversight functions on less significant credit institutions and will keep functions not attributed to the ECB as those related to consumer protection, prevention of money laundering, payment and supervision of branches of credit institutions from third countries.

#### **4.2 Penalties**

The Central Bank may impose penalties for slight and serious infringements or suggest penalties to the Ministry of the Economy and Finance, Industry and Competitiveness in the event of very serious infringements in accordance with the legislative provisions.

### **5 Internal supervision by savings banks organisations**

#### **5.1 Savings banks’ own internal supervision**

In Spain, there is a special body which is responsible for internal audits. This is the Audit Commission. This Commission’s task is to ensure that the board of directors carries out its management duties with the greatest possible efficiency and accuracy, complying with the course of action laid down by the general meeting and the directives contained in the financial standard.



Due to several and important reforms in Spanish Securities Markets Law a new regulation was published Royal Legislative Decree 4/2015, of 23 October, approving the consolidated text of the Securities Market Law. It is compulsory to set up an audit committee within those credit institutions issuing securities which are negotiable on official secondary markets. The functions of the aforesaid audit committee are the following: providing information to shareholders, supervising internal audit services and relations with the institution's external auditors, as well as making proposals with regard to its competitive environment.

We must also mention Law 26/2003, of 17 July (Transparency Law), just applicable to savings banks, which instituted the compulsory setting up of a salaries committee (the purpose of which is to offer information about general salary policy and incentives for members of the board of directors and for management personnel) within savings banks and the investments commission (whose purpose is to propose and inform the board of directors about strategic investments and disinvestments, along with their financial feasibility and how well they meet the institution's founding objectives). However, all Spanish credit institutions should actually have an appointment and remuneration committee, as it is an obligation recently introduced by the CRD IV.

Finally, Order ECC/461/2013, dated 20 March, sets out specific obligations to provide information which must be complied with by all entities issuing securities which are negotiable on Official Securities Markets. On the one hand it sets out the minimum content of its corporate governance annual report and, on the other, it obliges the credit institutions which are affected to publish the relevant information on their web pages. Moreover, this Order also states that the credit institutions quoting on secondary markets and the savings banks should publish, on an annual basis, a remunerations report.

## **5.2 Supervision exercised by the savings banks' organisation**

The Spanish regulation appoints CECA as the one in charge of the dialogue between the Authorities and its associate credit institutions.

Thus, although CECA does not directly supervise its member entities, it helps them on the exchange of information and the reporting to the authorities when performing their supervisory tasks.

# **6 Organisation**

## **6.1 Corporate Governance model**

Savings banks must draw up and submit an annual corporate governance report, its minimum content being described, granting the Ministry of Economy, Industry and Competitiveness the power to determine the content and structure. The failure to draw up or publish the report or the submission of false or misleading information shall imply a serious infringement in accordance with the Securities Market Law.

Banking foundations shall also have to draw up an annual corporate governance report, detailing the minimum content.

## **6.2 Main bodies**



The Law of Savings Banks and Banking Foundations establishes that the administration, management, representation and control of the savings correspond to the following governing bodies:

- The General Assembly shall be legally established between a minimum of 30 and a maximum of 150 general members, who must fulfil certain requirements (commercial and professional reputation, compatibilities, etcetera) distributed in the following way:
  - Between 50 and 60% representing the depositors. They shall be renewed by halves, being distributed by constituencies and in proportion to the figure for deposits acquired by the savings bank in each one. At least 50% shall be assigned to major depositors, and the rest, chosen by the delegates system, shall be appointed from among the depositors by notary. By means of an annual report the Control Committee and the Bank of Spain shall be informed of the measures adopted by the entity to ensure the independence of the general members of this group.
  - A maximum of 25% representing the public administrations;
  - A maximum of 20% representing the workers;
  - A maximum of 20% representing the credit institutions representing the collective interests.
- The Board of Directors shall be composed by a number of members from 5 to 15, most of whom shall be independent. The general members are not able to be independent members.

All members shall all be persons of recognised commercial and professional reputation, with specific knowledge and experience for the proper performance of their duties, and in a position to exercise a good governance of the savings bank.

The exercise of the position of Executive Chairman of the Board of a savings bank requires exclusive dedication and shall be incompatible with any paid activity. The income obtained from the activities carried out on behalf of the savings bank (other than assistance allowances) must be transferred to the latter or deducted from the remuneration received therein.

There is also a general manager appointed by the board of directors and confirmed by the general meeting, who is responsible for the day-to-day and administrative management.

- The Control Committee has the objective to supervise the electoral procedure and the social welfare (obra social) of the savings banks, and is also in charge of any other functions related to the Board of Directors that could be delegated on it.

The components of the governing bodies shall serve the sole benefit of the interests of the savings bank. In particular, the members of the board of directors and general managers or similar, as well as those responsible for internal control functions and other key positions for the daily development of the activity of the entity must meet the requirements of respectability, experience and governance required by law.

The exercise of a member of the governing bodies of a savings bank is inconsistent with all elected political and executive charge in any political party, trade association or union.

It will also be incompatible with a high charge of the General State Administration, the Administration of the Autonomous Communities and local government as well as public sector entities, public or private, linked or dependent on those.

Such incompatibility will be spread over the two years following the date of termination of senior



staff referred previously.

Regarding the Banking Foundations, the governing bodies will be:

- The Board of Trustees is the maximum governance body and representation of the banking foundations. It is for the trustees to fulfil the foundational aims and diligently manage the assets and rights that comprise the assets of the foundation. The board of trustees is also responsible for controlling, monitoring and reporting to the Bank of Spain.

It shall be composed by a maximum of 15 trustees, in proportion to the stake in the credit institution. The number of trustees representing the public sector cannot exceed 25%, and the trustees can be individuals or legal entities that are relevant in the foundation's welfare projects' scope of activity, and that come from:

- Founding entities of the savings bank from which the banking foundation's assets proceed;
- Entities representing collective interests;
- Individuals or legal entities that have contributed resources to the foundation;
- Independent persons of recognised professional reputation;
- Persons with knowledge and experience in the finance sector, in proportion to the stake in the credit institution (the larger it is, the higher the number of trustees that will have to fulfil these requirements).

The position of trustee shall be unpaid, without prejudice to the duly justified expenses incurred by the position. The trustees shall have to meet commercial and professional reputation requirements as well as specific knowledge and experience.

There are incompatibilities with the exercise of equivalent positions in the financial institution of which the foundation is a shareholder or in other entities controlled by the banking group.

The trustee appointment process and the number and length of the terms of office shall be legally established.

- The executive committees provided by the statutes.
- The CEO and others that, where appropriate, are provided by their statutes in accordance with the general rules of foundations.

### **6.3 Special bodies**

In the case of savings banks, three additional bodies have to be taken into account:

- **Investment Committee:**  
The Investments Committee is in charge of reporting to the Board of Directors on the strategic and stable investments and disinvestments of the savings bank, as well as on the financial viability of those investments and their adequacy to the budget and to the strategic plan of the entity.
- **Remuneration and Nomination Committee:**  
This Committee has two main functions: a) to report on the general policy of remunerations and incentives to the members of the Board of Administration and the Control Committee,



as well as of all other management positions, and to monitor the compliance with this policy;

b) to guarantee the compliance with the requirements established to the members of the Board of Administration, the Director General or equivalents, and the persons that assume internal control functions or that occupy strategic positions to the daily development of the banking activity.

- Social Welfare (Obra Social) Committee:  
In order to guarantee the compliance with the social welfare, this Committee is created, which is composed of the members of the Board of Administration that the General Assembly shall have appointed.

## 7 Demarcation Savings Bank/other credit institutions

In Spain there are 3 types of Credit Institutions: Banks, Savings Banks and Credit Unions:

- Banks: their Legal Nature is Limited Liability Companies with a minimum initial capital of 18,030,363 euros. They are profit corporations. The Founders/Owners are Partners with significant shareholdings (at least 5% of capital). Their social purpose is limited to the activities of a credit institution (e.g. deposits and lending activities);
- Credit Unions: their Legal Nature is a Cooperative Association. The founders are the partners themselves. The number of members of the Credit Unions may be unlimited; liability for the debts is limited to the capital they bring. These entities can be: rural banks (the most number),  
credit unions (such as Caja Laboral Popular) and professional banks (such as Lawyers or Engineers banks). They perform all the activities of the credit institutions with special attention to the needs of their partners (3rd active transactions may not exceed 50% of total resources).

## 8 Savings Banks and their central institutions

### 8.1 Law related to central institutes (national and regional)

#### 8.1.1 *National association:*

According the Law on Savings Banks and Banking Foundations, the Confederación Española de Cajas de Ahorros (CECA - Spanish Confederation of Savings Banks) is a national partnership and may consist of the savings banks, banking foundations and credit institutions that can integrate, and maintain the functions and purposes which are held under this regime. CECA lost its status as a credit institution, subjecting it to provide their services through a bank engaged by it, in the terms established in their statutes.

The fundamental purpose of CECA is to strengthen the position of savings banks and other affiliated credit institutions, helping them to be among the most important and valued credit institutions of the Spanish and international financial system, and helping in the exercise of their socially responsible activities.



To achieve this goal, CECA provides a forum for strategic thinking to all savings banks and other affiliated credit institutions, with the compromise to disseminate, defend and represent their interests, to advise them, and to provide competitive products and services to promote the important mission they must perform in society.

The Confederation adopted as a fundamental principle and rule of conduct in its performance the utmost respect for the personality and independent savings banks and other affiliated credit institutions, both in its organisation and operations regime.

### **8.1.2 Regional associations:**

Legal form, members, organisation: Savings banks in Spain can join together to form federations on a regional level. The bodies are the general council which is the management body and is made up of two representatives per associated savings bank and two representatives of the autonomous region, and the general secretariat which is the administrative body responsible for management and coordination and which carries out the tasks of the federation.

Tasks: The purpose of the regional federation is to represent the savings banks vis-à-vis the local public institutions and ensure cooperation with the latter as well as to offer common technical and financial services for member institutions at regional level.

Due to all changes experienced with the reform and restructuring process of the savings banks, nowadays, there are only 2 federations left.

## **8.2 Law related to savings banks associations (national and regional)**

The Spanish Confederation of Savings Banks (CECA) shall be composed by the savings banks, banking foundations and credit institutions that can integrate in it, and shall maintain the functions and objectives stated in the legal regime and the Articles of Association.

With the Law on Savings Banks and Banking Foundations, CECA shall submit to the Ministry of Economy and Competitiveness a proposal to adapt its Articles of Association to the new legal regime, for its approval.

CECA lost its condition as credit institution once the new Articles of Association entered into force. Nevertheless, it is able to undertake its financial services through a bank participated by it, according to the terms set in the new Articles of Association.

Cecabank came into existence in 2012, taking over the financial businesses and services of CECA. After obtaining authorisation from the Minister of Economy and Competitiveness in the Order of 1 October 2012, the new bank was established in November, and by December it had assets valued at €15,016 million, equity of €704.6 million and a principal capital ratio of 18.4%, one of the highest on the market. This information updated to December 2016 is as follows: total assets valued at 10,091 million, equity of 836,1 million and the capital ratio is 31,8%.

## **8.3 Relation between savings banks and the national association**

As a result of the new composition of the sector, the Confederation had to adapt its Articles of Association to contemplate the new types of financial institutions, which unquestionably belonged to the savings bank sector, as deduced from their recent regulation. Accordingly, the Articles of Association of the Confederation of Spanish Savings Banks were altered by virtue of a resolution



adopted at an Extraordinary General Assembly on 20 July 2011, duly authorised by the Ministry of Economy and Finance and entered in the Madrid Trade Register. This reform established a new composition of the Confederation's governing bodies to reflect the new operating and organisational situation in the savings sector.

The following changes were incorporated, among others:

- Adapting CECA's governing bodies to the Royal Decree-Law 2/2012. Its Control Committee, Remuneration and Nomination Committee, Investment Committee and Audit Committee have disappeared and now all the savings banks and savings bank groups are represented on the Board of Directors.
- As a result of the disappearance of the association's share certificates, the rights of the legitimate holders who still have share certificates are adapted to the liquidation of CECA and no new share certificates may be issued.
- The full members of CECA are now savings banks, indirectly exercising savings banks and banks created by the savings banks. Special foundations will be associated members of CECA. The latter group sits on the Foundations and Social Work Committee and may be invited to General Assemblies.

The shareholders of CECA's new bank, Cecabank, are CECA, holding 89% of the capital, and the holders of the former association's share certificates, which have been converted into shares according to the valuation made by an independent expert, which hold the remaining 11%.

#### **8.4 Tasks of the national association**

The main tasks of the Spanish Association of Savings Banks are as follows:

- Institutional Representation, through which it defends its members' interests in national and international forums.
- Economic and Regulatory Analysis: CECA carries out a comprehensive analysis of regulations in all the fields that can have a potential impact on its partners. Furthermore, it conducts economic studies that will be of interest to its members.
- Social Investment: one of the principal hallmarks of the companies affiliated to CECA is that they carry out their activities in a responsible way. The association works to disseminate and promote Social Investment, both in terms of Obra Social and CSR, from a sectorial perspective.
- Work Relations: the objective of CECA, as the employers' association of savings banks and institutions, is to defend the associated institutions that are bound by the Savings Banks and Financial Institutions Collective Agreement.

#### **8.5 Law related to other central bodies**

There is a joint training centre (Escuela de Formación Bancaria). The EFB's mission is to provide training service aimed at the financial institutions market, with a view to developing professionalism and adapting to European standards. It specialises in regulatory and legislative training, financial training and management training.

The savings banks also have the Foundation of Confederated Savings Banks (Fundación de las Cajas de Ahorros Confederadas para la Investigación Económica y Social - FUNCAS), a think tank which numbers among the leading economic, financial and social research services in Spain.



FUNCAS is a private non-profit organisation created and financed by CECA, as part of its social-charter investments, to carry out activities that will benefit Spanish society, promote a culture of saving and help raise awareness of the services savings banks offer to the community. FUNCAS is particularly active in the promotion and publication of research and studies on economic and social issues.



## SWEDEN

### 1 General provisions

#### 1.1 Legal structures

The Swedish savings banks sector consists of 60 savings banks and Swedbank AB (“Swedbank”). The Savings banks are in most cases self-owning institutions but some of them have been transformed to limited liability companies (“Limited’s”), where the shares are owned by savings banks foundations and, in some cases, partly also by Swedbank.

Out of the total number of savings banks 13 have become Limited’s; 1 savings bank is owned by a consortium of 6 local foundations, another one by a consortium of 3 local foundations. Furthermore

10 savings banks are owned by one foundation each. In addition to these Limited’s, there are 48 institutions that are savings banks by statute / by-laws. In all, 59 out of 60 savings banks in Sweden are members of Sparbankernas Riksförbund (the National Association of Swedish Savings Banks).

Swedbank is on the other hand a joint stock company listed on the stock exchange in Stockholm. Swedbank is firmly rooted in the Swedish savings bank history, and acts in many respects in accordance with the fundamental savings banks ideology, being a bank for the many and with strong links with the local community. Totally around 9 % of the shares in Swedbank are owned by the savings banks and savings banks foundations.

#### 1.2 Protection systems

##### 1.2.1 *Deposit guarantees schemes*

There is a mandatory deposit guarantee scheme established by the Act on Deposit Guarantee Scheme. Institutions covered by the Act are (Swedish or foreign) bank companies and (Swedish or foreign) securities companies licensed to receive deposits from clients provided they are operating from Sweden. Deposits in the savings banks and Swedbank are covered by the Act. A depositor which is itself a bank or a securities company is not entitled to compensation. The Deposit guarantee covers deposits in all types of accounts, regardless if the account is available for immediate withdrawal or not. When a deposit is covered by the scheme, a depositor will be entitled to compensation of an amount equal to the deposit and accrued interest until the date when the right to compensation came into existence. For the deposit insurance the maximum compensation is 100 000 euro per customer and institution. The right to compensation commences if the institution is declared bankrupt or by a decision from the Swedish Financial Supervisory Authority (“SFSA”). The scheme is financed by fees paid by the institutions and administered by the Swedish National Debt Office (Sw.Riksgäldskontoret).

##### 1.2.2 *Investor Compensation*

Another form of guarantee is the Investor Compensation established by the Investor Compensation Act. The Investor Compensation is a protection in case an institution goes bankrupt and covers securities handled by certain securities companies, securities brokers and some other institutions on behalf of customers in the course of providing investment services (such as the purchase, sale and deposition of financial instruments).



Securities means shares, bonds and various types of derivatives. The scheme also covers funds that an institution receives in conjunction with providing an investment service for which it is accountable.

A customer may be compensated for lost assets up to a value of 250 000 SEK per institution.

The Investor compensation scheme was introduced in Sweden in 1999 based on an EC directive. Institutions belonging to the investor compensation scheme pay a fee to the Swedish National Debt Office (Sw.Riksgäldskontoret).

### **1.3 Activities**

All banks, banking companies as well as member banks and savings banks, are entitled to engage in all types of banking activities. In the case of the savings banks and Swedbank, the services are mainly: savings, lending, securities trading and payments. The basis for the operations is the proximity to customers. The savings banks and Swedbank therefore has an extensive retail network and well- developed telephone, internet and mobile services.

Swedbank has an important co-operation with the savings banks. The savings banks as well as Swedbank are very active regionally in Sweden and work in close geographical cooperation with their customers. The cooperation contributes to economies of scale and makes it possible for the savings banks to fully serve customers with all kinds of financial and payment products.

In the field of investments, Swedbank has two subsidiaries, Swedbank Robur AB, which is Sweden's largest fund manager, and Swedbank Försäkring AB, a provider of unit-linked insurance. In the area of lending, Swedbank provides loans for its customers either via the bank itself or through its subsidiary, Swedbank Mortgage AB, the largest mortgage lending institution in Sweden. In the lending area, Swedbank also provides factoring and leasing through its subsidiary Swedbank Finans AB. Swedbank's payments business unit markets several types of bank cards and payment solutions.

### **1.4 Regional operation, branches**

The Swedish Savings banks are not a bank group but a group of independent banks with more than 3300 employees working in approximately 240 branches around Sweden. The savings banks have more than 2 million customers.

Swedbank is a modern bank firmly rooted in Swedish savings bank history and have, in its home markets, about 8 million private customers and more than 600 000 corporate and organizational customers. This makes Swedbank Sweden's largest bank in terms of number of customers and the bank has a leading position in the bank's other home markets of Estonia, Latvia and Lithuania. Swedbank has 361 branches primarily in our home markets, but the bank also has branches in Luxemburg, Finland, Denmark, Norway, USA and China.

### **1.5 Mergers, shareholding and acquisitions**

There are general regulations in the Banking and Finance Business Act as to mergers, holdings and acquisitions of banks (savings banks, banking companies and member banks).

Any resolution to merge a bank with another bank needs the authorisation of the SFSA. However,



mergers involving matters of principle or of exceptional importance shall be determined by the Government and the Competition authorities. A bank may, with some exceptions, acquire all assets that are needed for the financial activity without any authorisation. Regarding acquisitions of shares in non-financial companies, it is possible for a bank to acquire shares equal to 60% of the capital base without any authorisation. In a single non-financial company, the possession of shares may not without authorisation exceed 15%.

## **1.6 Social and welfare aims**

The savings banks and Swedbank have a significant part of the financial system and play an important role in the local communities. One of our main purposes is to promote a sound and sustainable financial situation for the many households and businesses. The inclusion of sustainability in the banks' purpose is just as much a reflection of our history as a declaration for the future. Both the savings banks and Swedbank has a strong tradition of corporate social responsibility and ethical standards. We engage in issues related to social problems, the environment and growth is part of our business idea as the banks can never be stronger than the society in which we do business.

## **2 Supervision**

### **2.1 Applicable banking law**

Savings banks, banking companies and member banks are all permitted to perform the same kind of banking activities as set out in the Swedish Banking and Finance Business Act. The establishment and the organisation of the savings banks are regulated in the Savings Banks Act. As many banking companies in Sweden are limited liability companies, the fundamental regulations on the establishment and organisation of limited liability companies set out in the Companies Act are applicable to such banks. In addition there are specific regulations on the formation and organisation of limited liability banking companies in the Banking and Finance Business Act.

### **2.2 Access to savings banks activity**

Banking business may only be conducted following authorisation (charter). Charter applications shall be determined by the SFSA except in cases involving matters of principle or of exceptional importance where they shall be determined by the Government. The SFSA keeps a register of all banks.

### **2.3 Day-to-day supervision**

All banks are subject to supervision by the SFSA.

#### **2.3.1 Information**

The banks shall provide the SFSA with information on its business and other circumstances connected therewith as required by the SFSA.

Representatives of the SFSA may be present at general meetings and such board meetings convened by the SFSA and may take part in the deliberations.



### **2.3.2 Means of supervision**

- Preventive

The government or, pursuant to the authorisation by the government, the SFSA may issue regulations regarding (i) information which a bank shall provide to its customers and other business relations, (ii) which items the bank may consider when its initial capital is fixed, (iii) which limitations apply to the bank's possession of its own shares or shares in a parent company, (iv) information which a bank shall provide to the SFSA and (v) specific fees for the supervision.

The decision of a bank to acquire another bank's business or part thereof shall be notified to the SFSA without delay. The Banking and Finance Business Act states that a bank must notify the SFSA in cases of outsourcing bank activities, which must be done by sending a copy of the written outsourcing contract to the SFSA.

- Corrective

The SFSA may conduct investigations at a bank at such times as it considers necessary.

The Board of directors of all banks is obliged to immediately cause a separate balance sheet to be prepared where there is reason to assume that the bank is unable to fulfil the capital adequacy requirements pursuant to the Capital Adequacy and Large Exposures (Credit Institutions and Securities Companies) Act. The balance sheet shall be examined by the auditors. Where the assumption regarding the savings banks or the members bank's financial position is confirmed, the Board of directors shall immediately inform the SFSA.

The SFSA may, at such times as it deems necessary, convene a meeting of the Board of directors of a bank. In the event, the Board of directors has not complied with a request by the SFSA to convene an extraordinary general meeting, such general meeting may be convened by the SFSA.

- Penalties

The SFSA may give a reprimand or a warning to a financial institute. They may also decide on penalties or injunctions. The SFSA may issue orders to take measures within a certain time or injunctions against executing a decision, or the filing of a notation in accordance with the Banking and Finance Business Act on pain of a conditional fine. The SFSA may refrain from intervening where a violation is of minor significance or excusable, where the institution effects rectification, or where any other authority has taken measures against the institution and such measures are deemed sufficient.

A Swedish bank's charter may, in certain circumstances, be revoked. Issues regarding revocation of charters shall be determined by the SFSA. However, cases involving matters in principle or of exceptional importance shall be determined by the Government.

Where a founder, trustee, member of the Board of directors or delegate of a savings bank or of a members bank either intentionally or negligently causes a loss to the bank in the performance of his duties, such person shall compensate for such loss.

## **2.4 Internal supervision by savings banks organisations**

### **2.4.1 Savings banks' own internal supervision**



A savings bank shall have no less than one auditor elected by the general meeting according to the Savings Banks Act. If a savings bank is to have more than one auditor the statutes may prescribe that one or more of them, but not all, shall be elected otherwise than by the general meeting. Each person entitled to vote in a savings bank is entitled to propose that a request be made to the SFSA to appoint an auditor (additional auditor) to participate in the audit together with the other auditors. At least one of the auditors that are elected by the general meeting shall be a chartered or approved accountant.

The auditors of a savings bank shall, to the extent compatible with generally accepted auditing practice, audit the savings bank's annual report and financial statements and the management by the Board of directors. Following completion of the audit by the auditors of a savings bank, such persons shall write a reference to the auditor's report in the annual report and, in respect of a parent bank, to the group financial statements. The auditors of a savings bank or a member bank shall submit an auditor's report to the general meeting in respect of each financial year.

The regulations regarding internal supervision of commercial banks are set out both in the Companies Act and in the Banking and Finance Business Act.

The Board of directors has the ultimate responsibility for operations and processes involving risk management and control at Swedbank. The foundation for Swedbank's internal control is based on the bank's culture as well as the organisational structure, policies and instructions established by the Board of directors and CEO/executive management. In an overarching policy document, the Board of directors has decided on the principles for internal control. Furthermore, Swedbank's CFO has issued a directive with guidelines specifically for internal control over financial reporting. This creates an environment that supports reliable and accurate reporting.

The purpose of Swedbank Internal Audit is to create improvements in operations by evaluating risk management, governance and internal control. Internal Audit is directly subordinate to the Board of directors and is therefore a review function independent of the CEO/executive management. All of the bank's activities and Group companies are the purview of Internal Audit, which evaluates whether the executive management, through the internal controls and governance structures it has implemented, has ensured that (1) the controls in business operations are effective, (2) risk management processes are effective, and that (3) governance processes and the organisation are appropriate, functional and support the purpose of the business.

### **3 Organisation**

#### **3.1 Corporate Governance model**

The traditional Swedish savings banks have no owners. Instead of shareholders voting at the general meeting that power is exercised by persons directly and indirectly elected by the municipalities and county councils in the area(s) where the savings bank is conducting its operations.

Swedbank and some of the savings banks are limited liability companies. The Swedish corporate governance model for limited liability companies is distinct from both the one-tier Anglo-American model and the two-tier Continental European governance model. It is characterised by the three mandatory decision-making bodies (in hierarchical order the shareholders meeting, the Board of directors and the CEO) and a controlling body (the statutory auditor) appointed by the



shareholders meeting. The Board of directors has a unitary structure and is made up predominantly by non- executive directors. Furthermore, in accordance with the Swedish Banking and Financing Business Act the role of the chairman and the CEO cannot be combined, separating the roles and responsibilities of the two.

### **3.2 Main bodies**

The savings banks (not being limited liability companies) are under the supervision of at least 20 trustees. These trustees shall represent the interests of the banks depositors. A saving bank´s Board of directors shall consist of at least five members elected by the banks assembly.

In the case of savings banks that are limited liability companies, such as Swedbank, the main bodies are the Board of directors, the General Meeting and the Chief Executive Officer (CEO).

A limited liability company shall have a Board of directors comprising one or more members. In a public company the Board of directors shall consist of at least three members. According to Swedbank´s Articles of Association the Board of directors shall consist of no less than seven, and not more than eleven members. The CEO is not a member of the Board, but has the right to be present at the Board meetings. The Board of directors shall be elected by the shareholders at a General Meeting for the period until the end of the subsequent ordinary General Meeting.

At the General Meeting each shareholder is entitled to speak and exercise voting rights for the full number of shares owned. The General Meeting of Swedbank shall be convened by a public notice inserted in the official Swedish Gazette (Sw.Post och Inrikes Tidningar) and by way of the notice being made available at the bank´s web site. Information that the notice has been made shall be made public in the newspaper Dagens Nyheter at the time of the notice.

### **3.3 Special bodies**

#### ***3.3.1 Specialised committees of the Board of directors***

The overarching responsibility of the Board of directors cannot be delegated in a limited liability company. On the other hand, the Board can have subcommittees that monitor, prepare and evaluate issues within their respective areas for resolution by the Board. Swedbank has the following committees:

- Risk & Capital committee - supports the Board in its risk management work.
- Remuneration committee - controls that remuneration systems in the bank generally conform to effective risk management and are designed to reduce the risk of excessive risk-taking.
- Audit & Compliance committee – provides the Board with access to information on business activities. Its purpose is to identify any deficiencies in routines and in the organisation in terms of governance, risk management and control.

## **4 Demarcation Savings bank /other credit institutions**

A traditional savings bank is a local community-based bank, unlike other banks that have local branches. All decisions are made locally. Instead of individual shareholders a traditional savings bank has locally elected principals or a savings bank foundation which decides at the general assembly, among other things, how the profits are distributed. Another example of what a local



savings bank means is that the profit is retained locally for the benefit of the bank, its customers and the community in which it operates. A savings bank can be said to live in symbiosis with the local community, which means that the bank is dependent on how it goes for the area in which it operates. This creates a strong incentive to contribute to local community development.

Both the savings banks and Swedbank plays an important role in the local communities, in order to promote a sound and sustainable financial situation for the many households and businesses. They have a strong tradition of corporate social responsibility and ethical standards and engage in issues related to social problems.

## **5 Saving banks and their Central Institutions**

### **5.1 Law related to central institutions (national and regional)**

There are no specific law related to central institutions, hence the relation between the members and the association is regulated in the association's statutes.

### **5.2 Law related to savings banks associations (national and regional)**

The savings banks are mainly regulated by the Savings Banks Act. There are inter alia rules regarding establishment of a savings bank, the Board of directors of such banks, the general assembly and the members of the assembly.

### **5.3 Relation between savings banks and the national association**

The National Association of Swedish Savings Banks (Sw. Sparbankernas Riksförbund) is an industry association of savings banks and savings bank foundations.

### **5.4 Tasks of the national association**

The aim of The National Association of Swedish Savings Banks is to protect its members' common interests and promote their common good. The association which was formed in 1985, represents member companies interests towards authorities and organizations and is also a referral body and negotiator on issues of importance to member banks

### **5.5 Law related to other central bodies**

There are no specific law related to other central bodies that what is regulated in the Savings Banks Act. The relation between the members and the National Association of Swedish Savings Banks is regulated in the association's statutes.

## **6 Sources**

- The Banking and Finance Business Act,
- The Act on the Deposit Guarantee Scheme,
- The Capital Adequacy and Large Exposures (Credit Institutions and Securities



- Companies) Act
- The Companies Act
  - The Savings Banks Act
  - The Investor Compensation Act