Government Bill 2009/10:30

Stability fee

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The Government presents this Bill to the Riksdag.

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Fredrik Reinfeldt

Mats Odell
(Ministry of Finance)

Main content of the Bill

The Government Support to Credit Institutions Act (2008:814) established a stability fund to finance support measures under the Act, the administration costs of the supporting authority (Swedish National Debt Office) and the Examination Board and also certain other expenses. The Government announced in the Bill that forms the basis of the support legislation that it would revert with proposals for the introduction of a 'stability fee' – to be paid by those credit institutions and other undertakings covered by the financial support system – to provide the stability fund with the necessary funds. This Bill contains a proposal for the introduction of the stability fee. It is proposed that this fee be introduced in 2009. The Bill also contains proposals that government guarantees for depositors at Swedish branches of foreign institutions be financed via the stability fund.

This Bill also proposes that secrecy should apply when reviewing owners of investment fund management companies and central securities depositories (CSDs) in the same way as when reviewing owners of other kinds of financial company.

Contents

1 Proposed Riksdag decision

The Government proposes that the Riksdag adopt the proposals made by the Government for

1. an Act amending the Government Support to Credit Institutions Act (2008:814),
2. an Act amending the Public Access to Information and Secrecy Act (2009:400).

2 Statutory wording

The Government proposes the following wording for the Act.

2.1 Proposed Act amending the Government Support to Credit Institutions Act (2008:814)

It is hereby prescribed, as regards the Government Support to Credit Institutions Act (2008:814),

first that Chapter 7, Section 1, Chapter 8, Section 3 and the heading of Chapter 7 be worded as follows,

second that six new sections (Chapter 7, Sections 2 to 6 and Chapter 8, Section 2 a) be incorporated into the Act with the following wording:

Current wording	*Proposed wording*
Chapter 7 Stability fund	Chapter 7 Stability fund *and stability fee*
	Section 1
Compensation paid under Chapter 2, Section 2 shall be deposited in an interest-bearing account with the Swedish National Debt Office. Funds recovered by the central government and which refer to support provided under this Act shall also be deposited in this account.	Compensation paid under Chapter 2, Section 2, *together with fees under Section 2 and penalty interest under Section 6 of this Chapter* shall be deposited in an interest-bearing account with the Swedish National Debt Office. Funds recovered by the central government and which refer to support provided under this Act *and also the Government Guarantees for Depositors at Swedish Branches of Foreign Institutions Act (2008:812)* shall also be deposited in this account.
Monies deposited into the account, together with the other assets acquired pursuant to this Act, constitute the stability fund.	
The central government's support expenses under this Act *together with* the administration costs of the supporting authority and the Examination Board *shall be covered by funds from the account. The same applies to such* costs *as referred to in* Chapter 6, Section 4, second paragraph *and*	*The following costs shall be covered by funds from the account:* *1.* the central government's support expenses under this Act, *2.* the administration costs of the supporting authority and the Examination Board, *3.* costs *of guardian ad litem*

costs that under the provisions of the Administrative Court Procedure Act (1971:291) as referred to in Chapter 6, Section 2 are to be borne by the central government. Unlimited credit at the Swedish National Debt office may be used to the extent that there are insufficient funds in the account.

under Chapter 6, Section 4, second paragraph,

4. costs that under the provisions of the Administrative Court Procedure Act (1971:291) as referred to in Chapter 6, Section 2 are to be borne by the central government, *and*

5. compensation paid out owing to a guarantee for depositors under the Government Guarantees for Depositors at Swedish Branches of Foreign Institutions Act.

Unlimited credit at the Swedish National Debt Office may be used to the extent that there are insufficient funds in the account.

Section 2

Credit institutions and other undertakings referred to in Chapter 1, Section 2, first paragraph ('parties required to pay the fee') shall pay a fee ('stability fee') for each financial year.

The stability fee shall be 0.036 per cent of a basis for calculation calculated in accordance with Sections 3 and 5 ('fee basis').

Section 3

The fee basis is the sum of the liabilities and provisions of the party required to pay the fee – though not untaxed reserves – at the end of the financial year according to the balance sheet adopted, unless otherwise prescribed by the second or third paragraph.

The fee basis for a party required to pay the fee where such party forms part of a group according to the Annual Accounts Act (1995:1554) shall be reduced by the corresponding liabilities to other fee-paying undertakings in the Group.

The fee basis for a credit

institution shall be reduced by the subordinated debt securities that may be included in the capital base under the Capital Adequacy and Large Exposures Act (2006:1371).

Section 4

If a financial year has encompassed a period that is longer or shorter than twelve months, the stability fee shall be increased or reduced accordingly in proportion to the length of the financial year.

Section 5

An average of the guaranteed amount for the financial year will be deducted from the fee basis under Section 3 for a credit institution to which the Swedish National Debt Office has issued a guarantee for debt securities under this Act. The calculation of the average shall be based on the credit institution's guaranteed obligations at the end of each quarter.

Section 6

The supporting authority shall decide on the stability fee for each party required to pay the fee. The fee shall be paid within one month from the date when the authority made the decision.

Penalty interest shall be charged for stability fees that are not paid on time. Penalty interest shall be calculated according to a rate of interest that each year corresponds to the reference interest rate determined by the Riksbank at any given time under Section 9 of the Interest Act (1975:635), plus eight percentage points.

Chapter 8

Section 2 a

The supporting authority shall notify the Swedish Financial Supervisory Authority if a credit institution or other undertaking does not fulfil its obligations under this Act.

Section 3

An appeal may be made to a general administrative court against a decision regarding a fee under Chapter 7, Section 6. Leave to appeal is required for appeals to an administrative court of appeal.

Appeals may not be made against decisions made under this Act.

Appeals may not be made against *other* decisions made under this Act.

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1. This Act enters into force on 30 December 2009.

2. The new provisions may only be applied for financial years that end after this Act has entered into force.

3. The stability fee shall be reduced by half for a financial year that ends in 2009 and 2010.

2.2 Proposed Act amending the Public Access to Information and Secrecy Act (2009:400)

It is hereby prescribed that Chapter 30, Section 5 of the Public Access to Information and Secrecy Act (2009:400) shall be worded as follows:

Current wording	*Proposed wording*
Chapter 30 *Section 5*	
Secrecy applies to information about the personal or financial circumstances of a private party if it may be assumed that the private party would suffer harm or damage if the information were to be disclosed and the information appeared in a matter with a central government authority concerning holdings of	
1. shares in limited banking companies, credit market companies, securities companies or limited insurance companies,	1. shares in limited banking companies, credit market companies, securities companies, *investment fund management companies* or limited insurance companies,
2. participating interests in member banks or credit market associations, or	
3. shares or participating interests in an exchange *or* clearing organisation.	3. shares or participating interests in an exchange, in a clearing organisation *or central securities depository*.
Secrecy applies neither to a decision made by the authority nor to information from another authority about this information not being governed by secrecy there.	
Secrecy applies for a maximum of twenty years for information contained in an official document.	

This Act enters into force on 1 January 2010.

3 The matter and its preparation

The introduction of a stability fee was announced in the Government Bill entitled 'Measures to strengthen the stability of the Swedish financial system' (Government Bill 2008/09:61).

This Bill contains proposals to introduce a stability fee into the Government Support to Credit Institutions Act (2008:814).

A memorandum with a draft proposal referred to the Council on Legislation for consideration has been submitted to consultation bodies for comment. The proposed legislation in the memorandum is shown in *Appendix 1*. A schedule of the consultation bodies and those that have expressed an opinion on their own initiative is shown in *Appendix 2*. The opinions expressed by the consultation bodies are available from the Ministry of Finance (file ref. Fi2009/1494).

The Government is also processing the written communications submitted by the Association of Swedish Finance Houses in this matter, in addition to its consultation responses, regarding the Government Guarantees to Banks and others Ordinance (2008:819) and the correlation of this ordinance with the Government Support to Credit Institutions Act (2008:814) (file ref. Fi2009/347).

The Council on Legislation

The Government decided on 16 April 2009 to obtain a statement of views from the Council on Legislation regarding the proposed legislation contained in *Appendix 3*.

The statement of views submitted by the Council on Legislation is shown in *Appendix 4*.

The Government has essentially accepted the proposals made by the Council on Legislation in this Bill. The views and proposals submitted by the Council on Legislation are dealt with in the explanatory comments on the proposed legislation (Section 10) and in Section 4. Furthermore, the statutory wording has also been rearranged slightly on the advice of the Council on Legislation.

Some editorial changes have also been made in relation to the proposal referred to the Council on Legislation for consideration.

Deductions for certain obligations guaranteed by the government

Following the review by the Council on Legislation, a further analysis was conducted of the proposal to allow credit institutions that have paid guarantee fees for the government's commitment for an institution's borrowing within the framework of the 'Bank Guarantee Programme' to make a deduction from the stability fee. A memorandum with a draft Bill containing a new proposal relating to this deduction has been submitted to consultation bodies for comment and a consultation meeting has been held. The proposed legislation contained in the memorandum is shown in *Appendix 5*. A schedule of the consultation bodies that were also invited

to the consultation meeting is provided in *Appendix 6*. The opinions expressed by the consultation bodies together with a schedule of views presented at the consultation meeting can be obtained from the Ministry of Finance (file ref. Fi2009/1494). The Bill proposes a different deduction method compared to the one proposed pursuant to the referral to the Council on Legislation (see Section 4.3). The change is so straightforward that it is unnecessary to consult with the Council on Legislation in this respect.

A matter of secrecy

The Bill also proposes amendments to one of the provisions contained in the Public Access to Information and Secrecy Act (2009:400). The proposal that has been drafted following consultation with the *Finansinspektionen* [Swedish Financial Supervisory Authority] means that secrecy should also encompass investment fund management companies and central securities depositories (CSDs) when owners of financial undertakings are reviewed (Chapter 30, Section 5). The rules on secrecy when reviewing owners of different kinds of financial undertaking have been subject to the examination of the Council on Legislation in several previous legislative matters. The relevant amendments are being made with a view to rectifying a previous omission, so that the rules on secrecy when reviewing owners of investment fund management companies and central securities depositories (CSDs) will be the same as when reviewing owners of other kinds of financial undertaking. The change is, against this background, so straightforward that it is unnecessary to consult with the Council on Legislation in this respect.

4 Introduction of stability fee

4.1 Introduction

The Government Support to Credit Institutions Act (2008:814) (the Support Act) empowers the Government to intervene using different kinds of support measure to counteract a risk of serious disruption to the financial system in Sweden. The preparatory works for this Act (Government Bill 2008/09:61) state that the government, in the event that a support measure is taken, will as a rule impose terms to ensure the repayment of funds released and also that compensation is obtained for the level of risk that such measure involves. Additional funds may still be required regardless of whether the consequent point of departure is that those institutions in need of support must finance the necessary support measures themselves. Experience shows that crisis solutions often entail long-term costs for the government. The Government has stated in the above-mentioned Bill that stakeholders covered by the Support Act should largely be responsible for financing these costs through the introduction of a stability fee so that the interests of taxpayers are protected and stability is strengthened in the long term.

4.2 Stability fee

Government proposal: The stability fee announced will be introduced in 2009. The fee for the first two years will be reduced by half. All credit institutions and other undertakings covered by the Government Support to Credit Institutions Act (2008:814) must pay the stability fee.

The fee shall be calculated annually and fixed by the supporting authority (Swedish National Debt Office) using the fee basis comprising the obligations at the end of the financial year of the party required to pay the fee, with a deduction for certain group loans and subordinated liabilities.

The fee shall be based on the balance sheet adopted at the undertaking's annual general meeting (AGM).

The stability fee shall be set at 0.036 per cent of the fee basis. The fee shall be paid in arrears within one month of the supporting authority determining the fee. Unpaid fees will incur penalty interest. If a credit institution or undertaking is only covered by the Act for part of the year, the fee shall be adjusted accordingly.

The fee and any penalty interest shall be paid into the stability fund.

Assessment of the Government: The fee system should be amalgamated with the deposit guarantee system in the future. The fee system should then be designed so that the fees reflect the level of risk assumed by different credit institutions. The Government intends to revert to this issue prior to 2011 with a proposed new fee structure that will, among other things, consider the differentiation of risk.

The proposals and assessments contained in both the memorandum on a draft proposal referred to the Council on Legislation for consideration and the memorandum on a draft Bill correspond with the proposals and assessments made by the Government.

Consultation bodies: Most of the consultation bodies recommend or have no objections to the proposed introduction of a stability fee. Beyond this, the consultation bodies largely state the following:

When should the stability fee be introduced?

The *Swedish National Debt Office* rejects the proposed point in time for introducing the stability fee on the grounds that the introduction of such a fee should be postponed until the financial market situation has normalised and also because the design of the fee and size of the stability fund need to be analysed in more detail. The Swedish National Debt Office considers it inappropriate to charge a fee that reduces the capital base while at the same time offering credit institutions various support measures. Moreover, the Swedish National Debt Office considers that the funds that may be accumulated from stability fees over the next few years will be marginal in this context. Several consultation bodies (including the *Swedish Bankers' Association*, the *Confederation of Swedish Enterprise* and *Avanza Bank AB)* point out the importance of reviewing and comparing the proposed charging system with corresponding systems in other EU countries once the market has stabilised to avoid any competitive disadvantages arising in respect of, for instance, Swedish undertakings. *The Swedish Bankers' Association* emphasises that, from a long-term perspective, there is cause for analysing and evaluating in more detail the support measures taken, the scope for utilising of the stability fund and the costs incurred by the institutions for the various support measures, and that a normalised market will enable this type of analysis.

The group of entities required to pay the fee

The *Association of Swedish Finance Houses* seeks some clarification in terms of the definition by the wording of the Act of the entities liable to pay the stability fee. (These views are dealt with in the explanatory comments on the proposed legislation.) The Association of Swedish Finance Houses also considers that the group of entities required to pay the fee should be the same as the group of entities eligible for support under the Government Guarantees to Banks and others Ordinance (2008:819). Otherwise, competition will be distorted to the disadvantage of institutions (e.g. institutions that are not owned by banks) ineligible for support under the said Ordinance. The *Swedish Federation of Business Owners* objects to the fee only being charged in respect of Swedish parent companies and not, where applicable, subsidiaries abroad. The *Savings Banks Association* has stated that savings

banks/limited savings banks are not covered by the Support Act and for this reason should not have to pay a stability fee. If they are considered to be covered by the Support Act, the Savings Banks Association emphasises that these savings banks should be entitled to a capital infusion on the same terms as other institutions in the Swedish banking market.

The basis for calculating the fee ('fee basis')

Svenska Handelsbanken AB and *ICA Banken AB* consider that the fee should be based on the obligations of the entire group, as the stability of a systemically important bank is not limited to a particular country or solely to parent banks. *Nordea Bank AB* and *Avanza* are of the opinion that the risk-weighted assets of the respective institution required to pay the fee constitute a better basis for calculating this fee than obligations. The *Association of Swedish Finance Houses* is of the opinion that institutions forming part of foreign-owned groups would be discriminated against, as when the fee basis for the stability fee is calculated they would not be able to make deductions for intra-group liabilities to their foreign owners, as would be the case for institutions that form part of Swedish groups.

Risk differentiation

Several consultation bodies (including the *Swedish Bankers' Association,* the *Swedish Federation of Business Owners*, *Skandinaviska Enskilda Banken AB*, *Avanza*, *Nordea*, *Handelsbanken* and *ICA Banken*) have commented on the future risk differentiation of the fee and endorsed the proposal in this respect. However, *Nordea* and *Avanza* consider that the fee should be risk differentiated from the outset through an interim system based on risk-weighted assets. *Nordea* advocates that the risk-weighted assets of the respective institutions required to pay the fee should be used as an alternative basis for calculating the fee. This alternative constitutes a better basis for calculating the fee than obligations, as this would introduce a risk dimension into the basis of calculation and would thus avoid most of the intra-group problems that might affect a cross-border bank group. A cross-border group will be the subject of different kinds of stability measure and associated costs in each country, and there is a risk of such a group incurring double costs.

Amalgamation with the deposit guarantee system

Most of the consultation bodies welcome an amalgamation of the proposed charging system with the deposit guarantee system. The *Swedish Financial Supervisory Authority* and the *Swedish Federation of Business Owners* recommend amalgamation as soon as possible.

Other consultation comments

FAR SRS considers that the accuracy of the figures used for the fee basis should be examined and confirmed by the auditors of the respective institutions so as to ensure the reliability of the basis for calculation, in line with the practice for the deposit guarantee system.

Reasons for the Government's proposal and assessment

When should the stability fee be introduced?

The Bill containing the proposed Support Act states that the stability fee should be introduced when the market situation has normalised. Such market normalisation would entail a reduction in the guarantee fees received by the state, for which reason the Government should only introduce the fee at that stage. The decision to postpone the introduction of the stability fee was made in light of the revenues anticipated from the guarantee fees. There are now grounds for charging a stability fee, as few credit institutions have chosen to join the government's Bank Guarantee Programme and the markets have stabilised somewhat.

The *Swedish National Debt Office* considers that the introduction of the stability fee should be postponed until the financial market situation has normalised. However, the Government is of the opinion that it is necessary to start to build up the fund to enable institutions to bear the costs of managing risks in the financial system over time. On the other hand, this should be done gradually to avoid overburdening these institutions. For this reason, only half of the fee should be charged to start with.

As explained in Section 4.3, it is reasonable for institutions that have already paid fees for government guarantees within the Bank Guarantee Programme to receive some compensation for their expenditure.

The stability fund

A stability fund was established in conjunction with the introduction of the Support Act. It is intended to be used to finance the financial support system. The funds received by the government as a result of support measures taken under the Support Act should be added to the stability fund in addition to a specifically earmarked appropriation of SEK 15 billion made in 2008. These funds will be deposited in an interest-bearing account with the Swedish National Debt Office. The stability fund will consist of the balance of this account and the financial instruments and other assets acquired under the Support Act. The Government and supporting authority may, for example, use the money available in the fund for support measures and for the administration costs of the supporting authority. If a deficit should arise, an unlimited amount of funds may be borrowed from the Swedish National Debt Office.

The preparatory works (*travaux préparatoires)* for the Support Act state that the compensation and financial support systems established under the Act should be amalgamated in the long term with the deposit guarantee system under the Deposit Guarantee Scheme Act (1995:1571). Furthermore, it is considered that the funds received owing to the said regulations should be accumulated in the stability fund (Government Bill 2008/09:61, p. 48). By coordinating these systems, it should be possible to charge institutions just one fee and to use the funds accumulated from the fees in an appropriate way considering the prevailing situation. The Government shares the views of the *Swedish Financial Supervisory Authority* and the *Swedish Federation of Business Owners* that this amalgamation should take place as soon as possible. However, in the present situation, further deliberations must be conducted before the two financial support systems can be merged. The Government therefore intends to revert to the Riksdag in this respect in 2011.

The structure of the stability fee

In order to achieve a financing system that is sustainable in the long term, fund holdings must eventually correspond to the total costs that could be incurred during a major banking crisis. The preparatory works for the Support Act indicate that the method for estimating these costs must be based first on the risk of having to use the financial support system, and second the anticipated impact on the system. It is expressed in the preparatory works that these factors are difficult to estimate. The costs incurred by the government as a consequence of the 1990's bank crisis have been used by way of comparison. According to estimates, these costs amounted to three to four per cent of gross domestic product (GDP), although it was possible to recover a significant proportion of these costs afterwards. Several other European countries (including Denmark and Germany) that established crisis funds during the autumn of 2008 were mentioned as another comparison. These funds are intended to correspond to between two and four per cent of the respective country's GDP (Government Bill 2008/09:61, p. 48).

As stated above, the Government considers that the financial support systems established under the Support Act should be combined with the deposit guarantee system in the future. The preparatory works for the Support Act noted that the objective was to accumulate holdings in the stability fund that should, together with funds that it is estimated could be transferred from the account set up under Section 15 of the Deposit Guarantee Scheme Act, achieve an average value of 2.5 per cent of GDP within a period of 15 years (Government Bill 2008/09:61, p. 46). The Government also concluded that in order to achieve this objective, funds – excluding the fees to be charged under the Deposit Guarantee Scheme Act – should be deposited in the stability fund each year that in the current situation amount to at least SEK 2.6 billion (Government Bill 2008/09:61, p. 48 f.).

The guarantees that can be issued under the Support Act can at most comprise the credit institutions' total obligations, with the exception of certain subordinated liabilities, for which reason there is justification to allow these obligations to constitute a basis for calculating the stability fee. In order to be able to calculate the fee in a simple way, the circumstances reported in the balance sheet of a party required to pay the fee should normally form the basis of the supporting authority's computation.

The 'liabilities' side of the balance sheet contains two main categories: liabilities and equity. A characteristic of a 'liability' is that the undertaking has a present obligation. Liabilities that can only be measured using estimates are referred to as 'provisions'. 'Untaxed reserves' are reported between the items 'provisions' and 'equity'. Untaxed reserves are various tax-related provisions made by the undertaking (such as excess depreciation on equipment and provisions for the tax allocation reserve). Pledged assets, contingent liabilities and certain commitments are included as memorandum items on the balance sheet. These items constitute potential obligations that do not meet the requirements for being reported as a liability or a provision.

It was stated in the preparatory works for the Support Act that the fee basis should comprise the respective institution's balance sheet total, with a deduction for reported shareholders' equity, subordinated liabilities and that part of untaxed reserves that constitutes shareholders' equity (Government Bill 2008/09:61, p. 50). Another way of expressing the same thing is to say that the fee basis should constitute the company's liabilities and provisions (the company's obligations). As stated by the *Council on Legislation*, the statutory wording should explicitly state that it is exclusively the liabilities and provisions that are referred to and also that it is appropriate to use the same terminology as contained in the Annual Accounts Act (1995:1554). As regards the deduction for subordinated liabilities, it should be specified that this deduction is limited to such subordinated debt securities as can be included in the capital base of a credit institution. The following has been discussed as regards the item 'untaxed reserves'.

The item 'untaxed reserves' constitutes neither a liability nor equity in an undertaking's balance sheet. When preparing consolidated accounts, untaxed reserves are actually split into one part that refers to equity and the remainder which refers to the undertaking's tax liability. Furthermore, the 'equity portion' of untaxed reserves forms part of a credit institution's capital base (see Chapter 3, Section 2, item 3 of the Capital Adequacy and Large Exposures Act [2006:1371]). However, the fixed tax part of untaxed reserves, where there is also uncertainty about whether, and when, the tax credit will be added back as taxable income, cannot be deemed to constitute a liability or provision, either in a legal or informal sense. Untaxed reserves should consequently not form any part of the basis on which the stability fee is calculated. As stated by the *Council on Legislation*, this should also be explicitly stated in the statutory wording.

Another matter that should be taken into account when calculating the fee basis is liabilities to member companies within the same group. Loans and sales between group companies give rise to receivables and liabilities. In order to avoid fees being counted twice, liabilities to a parent company or a subsidiary that is also required to pay the fee must be deducted. For instance, a group of companies that centralises its borrowing would be adversely affected if this type of liability could not be deducted. As stated by the *Council on Legislation*, the statutory wording should also clarify the definition of the term 'group'. As the meaning of 'group' is the same as that contained in the Annual Accounts Act (1995:1554), this should be stated in the statutory wording.

In summary, it is proposed that the fee basis should comprise the liabilities and provisions of the party required to pay the fee at the end of the financial year, with a deduction for certain group loans and subordinated liabilities.

Handelsbanken and *ICA Banken AB* consider that the fee should be based on the obligations of the entire group, as the stability of a systemically important bank is not restricted to a particular country or solely to parent banks, rather the bank is expected to discharge its obligations regardless of where they have arisen in the group. As regards international boundary demarcation issues, the point of departure is that government support should only be provided to Swedish legal subjects that are subject to Swedish regulation and supervision. It follows, for example, that a company based abroad, despite being the subsidiary of a credit institution based in Sweden, cannot be covered by support measures under the Act (Government Bill 2008/09:61, p. 36). Indeed, support provided to a Swedish parent company could also indirectly benefit a foreign subsidiary. However, in the event that lending by the foreign subsidiary is financed by loans from its parent bank, the parent bank may also need to pay a stability fee for its borrowing to provide those loans. Attention within the EU is increasingly focusing on the responsibility of national authorities to act with a view to resolving cross-border crisis situations. The Government hopes that this work will result in some common rules for possible government intervention in the event of cross-border systemic crises. However, when an institution operates in several countries, this must be preceded by discussions between the countries involved and their national authorities concerning the allocation of costs. Pending this, it should only be possible for Swedish institutions to be the subject of support measures, and the stability fee should be based on the obligations of the company required to pay the fee.

The *Association of Swedish Finance Houses* considers that institutions forming part of foreign-owned groups, where the group's borrowing is guaranteed by the foreign state for a fee, are discriminated against, as when the fee basis for the stability fee is calculated, they cannot make deductions for intra-group liabilities to their foreign owners as is the case for institutions that form part of Swedish groups. The Association considers that, when determining the fee basis, intra-group liabilities should be deductible regardless of whether this involves foreign or

Swedish ownership. The type of financial support system established under the Support Act is a national system *per se*, as support can only be provided to undertakings based in Sweden and because the system is financed by the fees paid by such undertakings. In light of this, it would be unreasonable to allow deductions from the fee basis for intra–group liabilities to foreign companies even if they in their turn – for a fee paid to a foreign state – should have a guarantee for their borrowing. This would presuppose that support initiatives are co-ordinated internationally, which is not currently the case.

Charging the fee on a quarterly basis might be considered. However, this would require considerable administrative procedures where credit institutions would be obliged to compile and submit the information required to calculate the stability fee every quarter. It is also important that the basis of the fee is fixed. It therefore appears to be more appropriate to apply an annual fee, as is the case under the Deposit Guarantee Scheme Act (1995:1571). The basis should also be derived from the balance sheet adopted by the AGM and examined by an auditor.

FAR SRS considers that the accuracy of the fee basis should be examined and confirmed by the auditors of the respective institutions to ensure the accuracy of the basis in the same way as is currently done for the deposit guarantee system. According to FAR SRS, the fee basis includes information that is not directly referable to the annual accounts. For example, the calculation contained in Chapter 7, Section 5 of the Support Act for a guarantee of debt securities cannot be inferred, nor can liabilities to other group companies that are also required to pay the fee. The Government agrees that not all of the information can be drawn straight from the annual accounts. However, the Swedish National Debt Office does have some of this information in its capacity as a supporting authority. In the opinion of the Government, it is important here to also take into account the additional costs that an institution would incur if it had to undergo another auditor's examination. The Government therefore considers that there is no justification for such an examination.

According to the preparatory works for the Support Act, the objective is as stated that the fund's holding should amount to an average of 2.5 per cent of GDP within a period of 15 years. Based on the banks' balance sheets in June 2008, it was laid down in the Government Bill that the stability fee would need to be 0.036 per cent of the fee basis in order to achieve this target. The fee basis may vary slightly over time depending on the size of the deductions in respect of group liabilities and the performance of the banks' operations. The Government is still of the view that the fee should until further notice be fixed annually for each credit institution at 0.036 per cent of its fee basis in order to achieve the target for the size of the fund. As mentioned above, the amount of the fee should be reduced by half for the first two years – 2009 and 2010 – as the market situation has not completely stabilised.

Should the stability fee be risk differentiated?

It is stated in the preparatory works for the Support Act that in order to provide incentives and be fair, it is important that the fee for every credit institution reflects the probability of an institution failing. A fee that reflects the risk will reduce the institution's willingness to assume this risk, and an institution that is more likely to incur costs for the system will pay a higher fee. The fee should therefore encapsulate the risks relating to the assets of the institution and how well the assets and liabilities are matched, and similarly whether there are obligations outside the balance sheet. The fee should also embrace factors such as the potential for profitability and a functioning management structure (Government Bill 2008/09:61, p. 50).

However, further investigation and discussions are required to design an appropriate structure for the differentiation of risk. For this reason, risk differentiation of the fees should be postponed until the above-mentioned amalgamation with the deposit guarantee system can take place. The Government therefore intends to revert to the Riksdag prior to 2011 with a new proposed structure for the fee.

Most of the consultation bodies support the Government reverting with a proposal for a risk-differentiated fee. However, *Nordea* and *Avanza* consider that such a fee should already be charged from the outset, taking account of the risk assumed. They consequently propose that the fees should be based on risk-weighted assets in accordance with the applicable capital adequacy rules.

In its report entitled 'Reformed system for deposit guarantee scheme' (Swedish Government Official Reports – SOU 2005:16), the Risk Guarantee Inquiry examined different pricing models for risk differentiation. The report concluded, among other things, that capital adequacy does not encapsulate the variables that can be taken into consideration by a rating or option model, such as the earning capacity of the banks. A review is currently being conducted of the existing capital adequacy rules both within the EU and internationally, for example as a result of these rules having failed to capture the liquidity risks of credit institutions. For a fairer picture, the Government therefore considers that aspects related to earning capacity, matching between assets and liabilities, obligations outside the balance sheet and a functional management structure should also be taken into consideration, in addition to the factors currently being reviewed within the framework of the capital adequacy rules. The effects arising from intra-group transactions must also be considered. The Government therefore considers that a more in-depth investigation is required before a proposal for a risk-differentiated fee can be presented.

Which institutions should pay the fee?

It is stated in the preparatory works for the Support Act that there is strong justification for stakeholders falling within the ambit of the government support system to also finance the costs that arise

(Government Bill, 2008/09:61, p. 47). The Support Act covers credit institutions as well as such undertakings, based in Sweden, that have been set up by a credit institution as a stage of reconstruction. 'Credit institution' means banks and credit market undertakings under the Banking and Financing Business Act (2004:297). In contrast to that stated by the *Savings Banks Association*, savings banks are also included. The financial support system established under the Act may be expected to – directly or indirectly – benefit all of these institutions and undertakings. Among other things, more stable financial markets will mean an improvement in the financing opportunities for all credit institutions. It is therefore reasonable that all credit institutions and undertakings covered by the Act also participate in financing the various support measures by paying a stability fee. The *Association of Swedish Finance Houses* has objected to this in both its consultation response and written communications, and is of the opinion that the stability fee should only be paid by those institutions that actually receive support, primarily under the Bank Guarantee Programme. Otherwise, the scope of the programme, which is governed by the Government Guarantees to Banks and others Ordinance (2008:819), must be extended to cover all parties paying the stability fee. The Association also considers that the delimitation in the said ordinance would entail competitive disadvantages and comprise an impermissible restriction to the provisions of the Support Act. Finally, the Association of Swedish Finance Houses considers that the precondition under the Support Act, requiring a serious disruption of the financial system for support to be provided, should be removed. The Savings Banks Association considers that savings banks should be entitled to a capital infusion on the same terms as other institutions.

As a result of these views, the Government wishes to state the following: all institutions required to pay the stability fee can receive support. For example, a credit institution may apply to the Swedish National Debt Office for support in the form of a capital infusion under the Government Support to Credit Institutions Ordinance (2008:820). However, a precondition for being granted government support is that it is needed to counteract the risk of a serious disruption to the financial system in Sweden. This precondition ensues directly from the Support Act. The Government does not consider that any reasons have been given that justify the removal of this precondition for support.

Support under the Bank Guarantee and Capital Infusion Programmes, which is regulated in the above-mentioned Government Guarantees to Banks and others Ordinance and the Capital Contributions for Solvent Banks, etc. Ordinance (2009:46), can be provided to those categories of institution that are currently regarded as systemically important. The reason for the systemic risk in this context being assessed for each category instead of individually is to ensure that the programme is implemented in an efficient and predictable way. Furthermore, a stable financial system would benefit all market stakeholders. As mentioned, support can be provided to all credit institutions under the preconditions

prescribed by the Support Act. The fact that certain kinds of support can only be provided to certain institutions cannot be deemed to entail an impermissible restriction of the provisions of the Support Act.

Nor does the Government consider that the competition issues raised by the Association justify extending the group of entities that can receive support under the Bank Guarantee and Capital Infusion Programmes. These programmes are considered to be necessary to maintain financial stability and have as far as possible been structured to avoid any negative impact on competition. Extending the scope of these programmes will increase the central government's level of commitment and risks without having any major impact on financial stability. However, for reasons of competition, the aim of support measures should not be of a permanent nature.

The *Swedish Federation of Business Owners* objects to the fee only being charged to Swedish parent companies and not, when applicable, subsidiaries abroad, as this does not reflect the overall risk of the institution and there is also a risk of this promoting the creation of sub-optimal legal arrangements for the operation. As the Government has stated above in the section on the structure of the stability fee, the point of departure is that support should only be provided to Swedish legal subjects and consequently a stability fee should only be charged to the same group of entities. However, discussions are currently being conducted within the EU on the issue of the responsibility of national authorities to act with a view to resolving cross-border crisis situations. In this context, matters concerning the distribution of costs in the event of a potential crisis between the countries also need to be discussed.

Tax or fee?

As mentioned above, the Government proposes that a stability fee should be paid by all credit institutions covered by the Support Act. However, the question is whether the stability fee should be regarded as a tax or a mandatory fee. The preparatory works for the Instrument of Government state that a tax may be characterised as a mandatory contribution to public institutions without any direct consideration in return, whereas a fee is usually paid for a specified consideration provided by the public institutions (Government Bill 1973:90, p. 213). However, it is possible for a monetary levy to have the nature of a fee in certain cases and not a tax, even if no specified consideration is provided in return; for example, if the levy is according to special rules entirely passed on to the sector of industry covered by the regulation. It is proposed that a stability fee be charged to all credit institutions covered by the Act. A precondition for a credit institution receiving support under the Act is that it "is needed to counteract a risk of serious disruption to the financial system in Sweden". The purpose of the stability fee is to build up the stability fund. Furthermore, the aim is that credit institutions adversely affected by a serious financial crisis may gain access to the monies in the stability fund. In the opinion of the Government, the credit institutions can

thereby be deemed to have consideration provided under such circumstances, and consequently the stability fee should be deemed to comprise a fee and not a tax.

Certain matters concerning fees

Penalty interest should be imposed on fees that are not paid on time and based on the amount of the unpaid stability fee. Penalty interest should be calculated according to an interest rate corresponding to the reference interest rate applied by the Riksbank at any given time under Section 9 of the Interest Act (1975:635), plus eight percentage points. Penalty interest that is paid shall be deposited in the stability fund.

A financial year shall normally comprise twelve months. If a financial year for a credit institution or other undertaking required to pay a stability fee covers a period of time that is longer or shorter than twelve months, the fee should be increased or reduced respectively in proportion to the length of the financial year.

Chapter 8, Section 1, first paragraph of the Support Act states that credit institutions and undertakings referred to in Chapter 1, Section 2 of the same Act shall provide the supporting authority with the information that it requires for its operation. This obligation to provide information also relates to such information that the supporting authority needs in order to be able to calculate and determine the stability fee.

Comparison with corresponding systems in the EU

Several consultation bodies point out the importance of conducting a review of the proposed charging system in the near future and it being compared with corresponding systems in other EU countries to avoid competitive disadvantages arising for Swedish undertakings. There is a risk of the fees and thereby the costs for Swedish undertakings being higher than they are for undertakings in other countries. However, the consultation bodies point out that such a review should be conducted when the market has stabilised. Several consultation bodies emphasise that compatibility with EU principles concerning, for instance, the freedom of establishment and competition neutrality may be questioned and should therefore be investigated. *Nordea* points out that cross-border groups will be subject to various measures in different countries with associated costs, for which reason the charging system must be structured to avoid double costs for the same measures.

The system should be compared with similar systems in other countries in conjunction with the Government reviewing the charging system for the introduction of a risk-differentiated fee and the amalgamation with the deposit guarantee system prior to 2011. However, Sweden has chosen a Bank Guarantee System that is based on the inclusion of all credit institutions and these institutions being compelled to fund the maintenance of financial stability by paying fees in advance ('*ex ante*'), unlike certain other European countries where fees are paid in arrears

('*ex post*'). A decisive reason for this choice is that it may be difficult to get the particular institution affected to finance its own situation in the event of a crisis, when funds are required. The cost will then, in any case initially, be borne by the central government (taxpayers) instead.

4.3 Deductions

Government proposal: An average of the amount guaranteed during the financial year will be deducted from the fee basis for a credit institution to which the Swedish National Debt Office has issued a guarantee for debt securities pursuant to the Government Support to Credit Institutions Act (2008:814). The average shall be calculated based on the credit institution's guaranteed obligations at the end of each quarter.

The proposal contained in the memorandum with a draft proposal referred to the Council on Legislation for consideration differs from the Government proposal. According to the memorandum, half of the amount paid under the Government Guarantees to Banks and others Ordinance (2008:819) (the 'Bank Guarantee Programme'), and which refers to the same period of time, shall be deducted from the stability fee. However, the lowest amount that a stability fee can be reduced to is SEK 0 (zero). A joint deduction should be made in some circumstances for several parties required to pay the fee and which form part of the same group according to the provisions of the Swedish Companies Act.

Consultation bodies: Several consultation bodies object to the proposal contained in the memorandum concerning a deduction for guarantee fees paid. The *Swedish Federation of Business Owners* is of the opinion that the impact analysis is inadequate in terms of how competition in the market may be affected by a credit institution that is in a rather worse state than other institutions using the Bank Guarantee Programme and consequently avoiding the stability fee that other 'more sound' institutions must pay. *Sveriges Bostadsfinansieringsaktiebolag (SBAB)* considers that deducting half of the guarantee fee should be permitted at an aggregate level within a group; that is, it should be possible to deduct the guarantee fee that one or more institutions in a group have paid in relation to the aggregate stability fee for the institutions within the group.

The *Swedish National Debt Office*, the *Confederation of Swedish Enterprise, Nordea*, *Handelsbanken* and *ICA Banken* consider that the fees are of a different nature. The fee for participating in the Bank Guarantee Programme emanates from and promotes the self-interest of the institution concerned, but will not benefit any other institution, whereas the stability fee promotes a collective benefit. If an institution that has received a state guarantee is granted the right to deduct the fee for this, or parts thereof, this will benefit this institution in relation to

institutions that do not participate in the Bank Guarantee Programme. However, the Confederation of Swedish Enterprise may accept a deduction for double administrative costs incurred as a result of processing the fees. The consultation bodies also maintain that a deduction counteracts the incentive for the institutions to resume a normal situation. For this reason, they consider that it would be unreasonable for the guarantee fee, or parts thereof, to be deducted from the stability fee. The *Finansinspektionen* has raised the issue of whether there is cause to consider also deducting from the fee-based obligations such obligations that are already covered by protection from the central government, such as deposits covered by the deposit guarantee and obligations guaranteed under the Bank Guarantee Programme, to avoid a fee being imposed twice.

The proposal contained in the memorandum with a draft Bill corresponds with the Government proposal.

Consultation bodies: The *Swedish National Debt Office* questions the point of complicating the system by introducing a deduction that has negligible effects in monetary terms. The *Confederation of Swedish Enterprise* is opposed to all deductions and considers that the Government has not taken due regard to the fundamental problem of individual institutions benefiting from the deduction. The *Association of Swedish Finance Houses* considers that the new deduction model is better than those that were previously proposed, but the Association is still fundamentally opposed to any deduction. *Sveriges Bostads-finansieringsaktiebolag (SBAB)* approves of institutions that have joined the Bank Guarantee Programme and issued guaranteed debt securities not being compelled to pay twice, but at the same time emphasises that the proposed deduction model referred to the Council on Legislation for consideration would be preferable. The *Finansinspektionen* supports the proposal contained in the memorandum and states that the rules on deduction from the fee basis for guarantees issued lie very much in line with what the Finansinspektionen previously recommended in the legislative process. *The Riksbank* considers that the proposals contained in the memorandum are an acceptable compromise, although the impact of the deduction will be smaller than desired.

Reasons for the Government proposal: The Government considers that it is reasonable for institutions that have joined the Bank Guarantee Programme to be entitled to deduct such obligations as are guaranteed within the framework of the programme from the basis on which the stability fee is calculated. The measures being taken by the central government to protect financial stability will benefit all institutions through more stable business conditions and lower borrowing costs. However, in the current situation, it is only those institutions that have joined the Bank Guarantee Programme and issue loans within the framework of this programme that pay for financial stability. The *Confederation of Swedish Enterprise* considers that a deduction will benefit individual institutions. However, if there is no deduction, the institutions participating in the Bank Guarantee Programme would

continue to have to bear a disproportionately high cost, which is unreasonable. For this reason, credit institutions that have chosen to use the central government's Bank Guarantee Programme, and consequently already help fund systems to ensure financial stability, should not have to pay as much to the stability fund via the stability fee as credit institutions that have chosen not to join the Bank Guarantee Programme.

The Government does not share the opinion of the *Swedish Federation of Business Owners* – that institutions should only be deemed to be in a worse condition if they choose to participate in the Bank Guarantee Programme – but instead considers that an institution may choose to join the Bank Guarantee Programme because it (for instance) wishes to increase its lending. Nor does the Government share the view of the *Confederation of Swedish Enterprise* that institutions will not have sufficient incentive to leave the Bank Guarantee Programme, as this programme will only exist for as long as there is a need. As regards the objection that the fees are of a different nature, the Government considers that they nevertheless constitute compensation for partly the same thing, which is further clarified by the new proposal.

In the proposal referred to the Council on Legislation for consideration, it was suggested that fees paid to the Bank Guarantee Programme could be partly deducted from the stability fee. The proposed deduction has been slightly reworked considering the EC State Aid rules. The new proposal means that the obligations guaranteed by the central government may be deducted from the fee basis used to determine the stability fee. In the assessment of the Government, the deduction model currently being proposed is a measure that is not subject to the EC State Aid rules.

A deduction of guaranteed obligations from the fee basis means that the effect of the deduction for the institutions would be less than if the guarantee fees were to be deducted directly from the stability fee, which was proposed in the referral to the Council on Legislation for consideration.

It is likely that the most appropriate method of calculating the amount of the sum guaranteed would be to determine an average based on the relevant credit institution's guaranteed obligations at the end of each quarter. The reason for this is that the guarantees may have terms of different length and that an average would thereby provide a fairer reflection of the credit institution's guaranteed obligations during the year.

As regards the issue raised by the *Finansinspektionen* concerning a deduction for deposits not subject to deposit guarantee, this will be investigated in conjunction with the forthcoming amalgamation of the present charging system with the deposit guarantee system.

5 Funding of compensation paid under the Government Guarantees for Depositors at Swedish Branches of Foreign Institutions Act

Government proposal: Compensation paid under the Government Guarantees for Depositors at Swedish Branches of Foreign Institutions Act (2008:812) shall be charged to the stability fund. Any funds that the central government may receive from a foreign guarantee system or an institution's country of origin shall be deposited in the stability fund.

The proposals contained in the memorandum on the draft proposal referred to the Council on Legislation for consideration and in the memorandum on the draft Bill correspond to the Government proposal.

Consultation bodies: The *Swedish Bankers' Association* and the *Confederation of Swedish Enterprise* question the proposal that compensation relating to Government guarantees for depositors at Swedish branches of foreign institutions should be funded from the stability fund. If funding is provided from the stability fund, there is a consequent risk that Swedish institutions, at least in theory, will have to pay higher stability fees as a result of mismanagement on the part of competitors or other countries. The Confederation of Swedish Enterprise requests a more detailed explanation as to why this should be funded from the stability fund and considers that such compensation should instead be dealt with under the deposit guarantee rules and consequently paid out by the Deposit Guarantee Board or, more appropriately, should be a central government commitment.

Reasons for the Government proposal: Through the Government Guarantees for Depositors at Swedish Branches of Foreign Institutions Act (2008:812), the Government may, under certain conditions, issue guarantees to ensure that depositors at Swedish branches of foreign institutions receive compensation corresponding to the amount that would have been paid under the system for guaranteeing deposits in the institution's country of origin. The guarantee may only be issued if there is a risk that the foreign guarantee may not be discharged and it is considered that inadequate performance of this obligation would entail disruptions to the Swedish financial system. As a result of the new Act, a new framework appropriation of SEK 1,000,000 was introduced for the 2008 budget year under expenditure area 26 (Interest on the national debt, etc.) (Government Bill 2008/09:49). After that Bill was presented to the Riksdag, a Bill entitled 'Measures to strengthen the stability of the Swedish financial system' (Government Bill 2008/09:61) was presented, after which the Riksdag made a decision on the Support Act. The stability fund was established under the Act. The Riksdag decided to appropriate SEK 15 billion into this fund. As mentioned above, the

intention is for the funds received owing to deposit guarantee rules to eventually be deposited in the stability fund.

It is reasonable that the stability fund also funds the form of support measures entailed by the government guarantees for depositors at Swedish branches of foreign institutions. The main reason for this is that the aim of such a support measure is to lead to financial stability that will in turn benefit Swedish institutions. Any funds that the central government may receive from a foreign guarantee system or an institution's country of origin as a result of such a support measure being taken should be deposited in the stability fund.

The following can be added as a result of comments made by the *Swedish Bankers' Association* and the *Confederation of Swedish Enterprise*. When establishing the stability fund, the central government deposited SEK 15 billion into the fund. For this reason, it is not only the Swedish institutions that will have contributed to the fund. The stability fund has been established as a step towards ensuring financial stability, and possible compensation resulting from a guarantee to depositors in a foreign branch can only be paid with the aim of ensuring financial stability in Sweden. The stability fund is also based on an insurance approach, where the institutions contribute a premium. The fees paid by institutions are consequently not their own funds, but are deposited there to be used for various support measures.

6 Appeals

Government proposal: It should be possible to make an appeal to a general administrative court against a decision regarding stability fees made by the Swedish National Debt Office in its capacity as a supporting authority.

Leave to appeal is required for consideration at the administrative court of appeal.

The proposals contained in the memorandum on the draft proposal referred to the Council on Legislation for consideration and in the memorandum on the draft Bill correspond to the Government proposal**.**

The consultation bodies did not make any comments on the proposal.

Reasons for the Government proposal: According to the current wording of Chapter 8, Section 3 of the Support Act, appeals may not be made against decisions made under the Act.

According to the proposal referred to here, the supporting authority (Swedish National Debt Office) will make a decision on a fee (stability fee; see Section 4). In the opinion of the Government, it should be possible to make an appeal to a general administrative court against such a decision, in the first instance to the county administrative court. Leave to appeal ought to be required when making an appeal to the administrative court of appeal.

The system now proposed corresponds with the system applicable to the decisions of the guarantee authority on fees under the Deposit Guarantee Scheme Act (1995:571).

7 Entry into force and transitional provisions

Government proposal: Amendments to the Government Support to Credit Institutions Act (2008:814) shall enter into force on 30 December 2009. The stability fee for 2009 and 2010 shall be reduced to half of the amount calculated.

The proposals contained in the memorandum on the draft proposal referred to the Council on Legislation for consideration and in the memorandum on the draft Bill correspond to the Government proposal.

The consultation bodies did not make any comments on the proposal.

Reasons for the Government proposal: As indicated by the statements of the Government referred to above (Section 4.2), it is important for the stability fee system to enter into force as soon as possible. For this reason, the provisions should enter into force on 30 December 2009. As a consequence of this, the supporting authority will be able to make decisions on the imposition of the stability fee with reference to the situation in financial years ending after this date. As also indicated in Section 4.2, the stability fee for 2009 and 2010 will be reduced by half.

8 Secrecy when reviewing owners of investment fund management companies and central securities depositories

Government proposal: Secrecy shall apply to information about the personal or financial circumstances of a private party if it may be assumed that the private party would suffer harm or damage if the information were to be disclosed and the information appeared in a matter with a central government authority concerning holdings of shares in investment fund management companies or shares or participating interests in central securities depositories.

Reasons for the Government proposal: The Investment Funds Act (2004:46) contains provisions on reviewing owners of investment fund management companies. Owners are reviewed when the Finansinspektionen is considering whether a company should be granted a licence to conduct fund operations and thereby become an investment fund management company (Chapter 2, Sections 1 and 2). A licence for a Swedish limited liability company to run an investment fund operation can only be granted if there are reasons to assume that the party that has, or may be expected to obtain, a certain holding in the company will not impede the operation being conducted in a way that complies with the Investment Funds Act and other legislation governing the company's operation, and is also generally suitable to exercise significant power over the management of an investment fund management company. Owners should also be reviewed in the event of major changes to the ownership of investment fund management companies (Chapter 11). Provisions on reviewing owners of investment fund management companies are also contained in the Finansinspektionen's Investment Fund Regulations (FFFS 2008:11) (Chapter 5 and Appendices 1 a and 1 b). In conjunction with the review of owners, the Finansinspektionen will compile information from, among others, the National Police Board, the Swedish Companies Registration Office, the Swedish Tax Agency, the Enforcement Service and Upplysningscentralen (UC) AB. In this connection, the Finansinspektionen may also ask foreign supervisory authorities to provide it with information. The provisions on reviewing owners of investment fund management companies correspond to those that apply when reviewing owners of limited banking companies and securities companies under the Banking and Financing Business Act (2004:297) (Chapter 3, Section 2 and Chapter 14; see also Sections 4-6 of the Finansinspektionen's Ownership and Management Review Regulations [FFFS 2007:22] and Appendices 1 a and 1 b) of the Securities Market Act (2007:528) (Chapter 3, Sections 1 and 2 and Chapter 24; see also Chapter 5, Sections 3-5 of the Finansinspektionen's Securities Business Regulations [FFFS 2007:16] and Appendices 3 a and 3 b)). Earlier this year, the Government proposed amendments to the provisions on the review of owners of credit institutions and securities

companies without proposing corresponding amendments for investment fund management companies (Government Bill 2008/09:155, p. 104 ff.). However, the amendments are irrelevant to the current context. There are also provisions on reviewing owners in respect of membership banks, limited insurance companies and credit market undertakings (see, for instance, the Finansinspektionen's Ownership and Management Review Regulations). Investment fund management companies are also treated in the same way as other kinds of financial undertakings in the Finansinspektionen's Regulations and General Advice on the reporting of an owner's qualified holdings and ownership interests (FFFS 2004:17).

Secrecy provisions covering information received in conjunction with the review of owners have been included in Chapter 30, Section 5 of the Public Access to Information and Secrecy Act (2009:400) since 1 July 2009. These provisions were transferred from Chapter 8, Section 5, second paragraph of the Secrecy Act with only a linguistic modernisation having been made (Government Bill 2008/09:150, p. 373). According to Chapter 8, Section 5, second paragraph of the Secrecy Act, secrecy applied to information about the personal or financial circumstances of a private party if it could be assumed that the private party would suffer harm or damage if the information were to be disclosed and the information appeared in a matter with a central government authority concerning holdings of shares or participating interests, among other things, in certain specified types of financial undertaking. This provision was introduced following a request from the Committee on Industry and Trade in conjunction with the Committee's deliberations on a proposal from the previous government to introduce rules according to which the Finansinspektionen would be given powers to consider the appropriateness of major owners of banks (see Government Bill 1992/93:89, Report 1992/93:NU9, Riksdag Communication 1992/93:109 and SFS 1992:1474). The Committee concluded here that the Finansinspektionen, when dealing with matters concerning the review of owners, will compile information from other authorities; for example, may obtain extracts from criminal records, central personal and criminal records held by the National Police Board, and from the Disqualification Register. According to the Committee, such information should also be subject to secrecy at the Finansinspektionen to the extent that it is classified as strictly secret at the disclosing authority and refers to the personal or financial circumstances of a private party. In line with this, the Committee proposed that a new provision on secrecy in matters at government authorities concerning the holding of shares in limited banking companies and credit market undertakings should be included in Chapter 8, Section 5 of the Secrecy Act as a new second paragraph (see a. Report, p. 5). This secrecy provision has subsequently been supplemented in conjunction with the rules on reviewing owners of other kinds of financial undertaking having been introduced in different contexts (see, for instance, Government Bill 1994/95:50, p. 141 f. and 330, Government Bill 1994/95:184, p. 123 and 311 f. and Government Bill 1996/97:114, p. 52). Rules on reviewing owners of investment fund management companies were introduced when the Investment Funds Act

replaced the Mutual Funds Act (1990:1114) (see Government Bill 2002/03:150, p. 160 ff.). However, no proposal was made to amend the secrecy rules when reviewing the owners in this context. Investment fund management companies were consequently not mentioned in the list contained in the provisions of Chapter 8, Section 5, second paragraph of the Secrecy Act, despite the fact that it is the same kind of information about the personal or financial circumstances of a private party that is compiled when reviewing owners of investment fund management companies as in connection with reviewing owners of other kinds of financial undertaking. The same reasons for secrecy as currently apply as regards an owner of, for example, a bank or a securities company consequently also apply as regards an owner of an investment fund management company. In light of this, the fact that investment fund management companies were not included in the list contained in the provision of the Secrecy Act appears to be a simple omission.

Chapter 2, Section 2 of the Act on Registration of Financial Instruments (1998:1479) and Chapter 9, Section 1 of the same Act, together with the provisions contained in Section 24 of the Securities Market Act, contain provisions on reviewing the owners of central securities depositories. Earlier this year, the Government proposed amendments to these provisions that are basically the same as the amendments that were simultaneously proposed in the provisions on reviewing owners of credit institutions and securities companies (Government Bill 2008/09:155, p. 102 f.). Nor were central securities depositories included in the list of financial undertakings contained in Chapter 8, Section 5, second paragraph of the Secrecy Act. The same reasons for secrecy also apply as regards reviewing owners of central securities depositories as for other kinds of financial undertaking.

Secrecy should consequently also apply to information about the personal or financial circumstances of a private party if it may be assumed that the private party would suffer harm or damage if the information were to be disclosed and the information appeared in a matter with a central government authority concerning holdings of shares in an investment fund management company or shares or participating interests in a central securities depository. The secrecy rules when reviewing owners of financial undertakings will thereby be the same for investment fund management companies and central securities depositories as for other kinds of financial undertaking.

9 Consequences of the proposals

9.1 The stability fee

Why introduce this fee?

A financial crisis can result in significant socio-economic costs. The central government therefore plays a key role in protecting financial stability and working to achieve functional credit markets for companies, households and other stakeholders. Important work is being conducted within the EU to reinforce crisis management efforts both nationally and jointly. As a consequence of the global financial crisis, different support programmes have been developed to meet national needs that prevail both within individual institutions and within the financial market sector as a whole. It is probably impossible to identify completely uniform systems that would effectively deal with the problems experienced by all Member States. At the same time, support programmes should be designed to as far as possible avoid different conditions for competition. Sweden is at the forefront of work to take the support measures necessary. In the autumn of 2008, the Government presented the Support Act as a key tool for dealing with the crisis. The Government has taken several measures under the Act to promote increased financial stability. For example, in October 2008 the Government decided on support in the form of a central government Bank Guarantee Programme, and in February 2009, a decision was taken on a central government Capital Infusion Programme.

It is unreasonable if taxpayers have to bear the costs of the support measures taken, which would be the case if the costs were funded through the central government budget. Credit institutions depend on the stability of the financial system for their operation and for this reason it should be these institutions that primarily contribute to the funding.

Impact on the central government's budget

The aim of introducing a stability fee is to ensure that the support measures taken and those that may be taken under the Support Act will, in the first instance, be funded by the credit institutions and consequently not charged to the central government budget and thus taxpayers. When the stability fund was introduced, the central government contributed financially by transferring SEK 15 billion into the fund. The intention is to combine the deposit guarantee and financial support systems into a joint fund in 2011. The objective is for the fund's holding to amount to an average of 2.5 per cent of GDP within a period of 15 years to create a financing system to deal with financial crises that is sustainable in the long term.

The cost of support measures, including the administration costs of the Swedish National Debt Office, will be charged to the fund. If monies in the fund are insufficient to fund the support measures that have been

decided, an unlimited loan facility is linked to the fund. Court costs are expected to be covered within existing frames.

For central government finances, the introduction of a stability fee entails improving net lending, and similarly increasing the central government budget balance. The central government borrowing requirement will decrease, as will consolidated central government debt.

In its consultation response, the *Swedish National Debt Office* stated that annual revenues from the stability fee will be significantly higher if the former proposal for a deduction of guarantee fees paid is removed. Nor does the Debt Office consider that regard has been taken to the inflow of guarantee fees or the increase in value of the stability fund's holdings at Nordea. The Swedish National Debt Office estimates that these factors altogether mean that the stability fund, including the fee rules now proposed, would correspond to 2.5 of GDP within a period of ten years. The Swedish National Debt Office therefore proposes that the percentage rate of the fee could be reduced or that the fee basis is adjusted downwards in the event that the Government does not wish the fund to be built up quite as quickly. The Government considers that the long-term objective should be a holding corresponding to 2.5 per cent of GDP. In the opinion of the Government, there is therefore no justification to amend the rules for calculating the stability fee at the present time on the basis of short-term events.

Consequences for credit institutions and undertakings

Undertakings that have to pay a stability fee include the credit institutions referred to in the Banking and Financing Business Act (2004:297) and such undertakings based in Sweden that have been set up by a credit institution as a stage of reconstruction. These entities must pay a stability fee amounting to 0.036 per cent of the fee basis for each fee year. The fee basis shall be based on information taken from the undertakings' annual reports and capital adequacy reports. For this reason, the new rules will probably not entail any increase in the cost of producing the necessary information.

A preliminary calculation, based on information from the Swedish Financial Supervisory Authority concerning the relevant credit institutions' balance sheet total, capital base and group liabilities as at 30 September 2008, shows that the aggregate full fees charged, without a deduction for guarantee fees, is approximately SEK 2.5–2.7 billion, depending on how much of the group liabilities refer to Swedish institutions. Penalty interest is payable on unpaid fees. The fee is to be adjusted in the event that a credit institution or undertaking is only covered by the Support Act for part of the year. Fees and any penalty interest shall be deposited in the stability fund.

As previously stated, the objective is for the fund's holding to amount to an average of 2.5 per cent of GDP within a period of 15 years. According to Government Bill 2008/09:61, monies in the form of

stability fees and guarantee fees and any yield on capital infusion that, excluding the fees imposed under the Deposit Guarantee Scheme Act, currently amount to SEK 2.6 billion should be deposited into the fund annually in order to be able to achieve this objective. An individual institution will pay a fee in relation to its outstanding obligations, with the exception of subordinated debt securities that may be included in the capital base. An institution that receives guaranteed deposits will consequently pay both the deposit guarantee fee and the stability fee, while those institutions that do not receive guaranteed deposits will only pay the stability fee. There is a risk of institutions passing part of their stability fee onto customers. However, some of this amount will certainly need to be taken out of the institution's profits or equity. The Government considers that this represents a more reasonable distribution of the burden than the taxpayer bearing the costs of future crises. As the economy has not yet recovered from the financial crisis and as some institutions also pay guarantee fees that are deposited into the fund, it is proposed that the stability fee should be charged at half the amount during the first two years to mitigate any negative consequences as regards the provision of credit. In addition to this, a deduction from the fee basis for guaranteed obligations is permitted for those credit institutions that choose to participate in and issue securities within the Bank Guarantee Programme. The scope of the fee that the undertakings will pay to the stability fund over the next two years will consequently partly depend on how much is issued under the Bank Guarantee Programme.

The *Swedish Federation of Business Owners* have stated in their consultation response that the competition situation in the market may be affected negatively by credit undertakings, which utilise and pay for the Bank Guarantee Programme, having a lower stability fee than credit institutions that cannot utilise the Bank Guarantee Programme. However, this deduction does not mean that the institution pays a lower total fee, as the institution will also be paying the guarantee fee. Indeed, an institution that pays a guarantee fee will have a lower funding cost but, according to the Finansinspektionen and the Riksbank, even those that do not pay a guarantee fee will have lower funding costs as a consequence of the programme's general stabilising effect. It is consequently difficult to design a system that is completely competition neutral. The Government considers that the proposed system is reasonably competition neutral.

9.2 Secrecy when reviewing owners of investment fund management companies and central securities depositories

The proposal entailing that the secrecy applying to information in matters concerning the review of owners should also apply to investment fund management companies and central securities depositories is not

considered to involve any higher costs or have any other negative impact on the authorities or undertakings.

10 Explanatory comments on the proposed legislation

10.1 Proposed Act amending the Government Support to Credit Institutions Act (2008:814)

Chapter 7
Section 1

The proposal has been dealt with in Section 4.2.

In the *first paragraph* of the section, references were introduced to Chapter 7, Section 2, which regulates the stability fee, and Section 6, which regulates penalty interest; see in more detail below under the respective section on the implication of the provisions. The references imply that stability fees and any penalty interest will be deposited into the stability fund. Any funds received from abroad as a consequence of compensation having been paid out as a result of the Government providing a guarantee to depositors at Swedish branches of a foreign institution shall also be deposited into the stability fund.

Besides editorial changes, a supplementary provision has been made in the *third paragraph* of the section, meaning that funds from the stability fund should also cover compensation paid out as a result of a guarantee to a depositor at a foreign branch of a credit institution in Sweden under the Government Guarantees for Depositors at Swedish Branches of Foreign Institutions Act (2008:812). It may be deemed to ensue from item 2 of the third paragraph that the costs for the supporting authority and the Examination Board, which may be funded by the stability fund, shall be limited to dealing with matters under the Support Act. The last sentence of the current third paragraph has been made into a new *fourth paragraph*.

Section 2

The proposal has been dealt with in Section 4.2.

This section, which is new, stipulates the principles for charging a stability fee.

The *first paragraph* states that credit institutions as referred to in the Banking and Financing Business Act (2004:297), and such undertakings based in Sweden that have been set up by a credit institution as a stage of reconstruction, must pay a stability fee for each financial year. Liability to pay the fee will not be conditional upon any assessment that the credit institution or undertaking could present a potential risk to the system. Instead, all undertakings covered by the definition will be required to pay the fee. A Swedish credit institution that forms part of a foreign group is expected to pay the Swedish stability fee even if the group's borrowing is guaranteed by the foreign government for a fee, as long as the institution is a Swedish legal entity and is covered by the definition contained in the Banking and Financing Business Act, as such an institution may receive support under the Support Act.

The *Association of Swedish Finance Houses* considers that the statutory text contained in the memorandum does not give a clear indication of which entities should pay the stability fee. The Government agrees with this and has therefore clarified the wording in the statutory text in this respect. The Association of Swedish Finance Houses would also like clarification as to whether a Swedish credit institution that forms part of a foreign group, where the group's borrowing is guaranteed by the foreign government for a fee, is expected to pay the Swedish stability fee. The Government considers that this is indeed the case if the institution is a Swedish legal entity and is covered by the definition contained in the Banking and Financing Business Act, as such an institution may receive support under the Support Act.

The *second paragraph* states that the stability fee shall be a fixed charge of 0.036 per cent of a basis calculated according to Sections 3 and 5.

Section 3

The proposal has been dealt with in Section 4.2.

This section, which is new, stipulates how the fee basis should be calculated.

The *first paragraph*, which has been rewritten and formulated according to the proposals made by the *Council on Legislation*, states that the point of departure is for the liabilities and provisions of the party required to pay the fee at the end of the financial year according to an adopted balance sheet to serve as the basis for the fee charged. 'Liabilities and provisions' mean such items that according to the applicable rules for annual accounts (e.g. the Annual Accounts Act [1995:1554]) are reported as such in the undertaking's balance sheet. Such possible items that are included as memorandum items on the balance sheet and that do not meet the requirements for being reported as a liability or provision are consequently not included. The item 'untaxed reserves' constitutes neither a liability nor equity in an undertaking's balance sheet and should therefore not be included in the fee basis; for the sake of clarity, this should be indicated by the statutory wording. An 'adopted balance sheet' means the balance sheet that has been adopted by an annual general meeting (AGM) that was held within six months from the end of the financial year (see, for instance, Chapter 7, Sections 10 and 11 of the Swedish Companies Act [2005:551], together with Chapter 10, Section 1 of the Banking and Financing Business Act [2004:297]). If the undertaking has the calendar year as its financial year, this means that the fee for 2009 will first be paid after the AGM held in 2010.

The *second* and *third paragraphs*, which have been rewritten and formulated according to the proposals made by the *Council on Legislation*, stipulate what should be excluded from the fee basis. The second paragraph states that the fee basis should not include liabilities to group companies that are subject to an obligation to pay a stability fee. A 'group company' means a parent company or a subsidiary according to the definition contained in Chapter 1, Section 4 of the Annual Accounts

Act. It is also indicated by the third paragraph that the fee basis should be reduced by the subordinated debt securities that may be included in a credit institution's capital base according to the Capital Adequacy and Large Exposures Act (2006:1371). An undertaking that is not a credit institution is unaffected by the latter deduction.

Section 4

The proposal has been dealt with in Section 4.2.

This section, which is new, governs how the stability fee should be determined when the financial year for the entity paying the fee is longer or shorter than twelve months; the latter may, for instance, be the case if the operation commences partway through a calendar year. In such cases, the stability fee should be increased or reduced respectively considering the actual length of that financial year. For example, the stability fee should be reduced by half if the financial year only covers six months.

Section 5

The proposal has been dealt with in Section 4.3.

This section, which is new, has been partly rewritten and formulated according to the proposal made by the *Council on Legislation.*

This section states that for a credit institution to which the Swedish National Debt Office has issued a guarantee for debt securities under this Act, an average of the guaranteed amount during the financial year shall be deducted from the fee basis in accordance with Section 3. The average is calculated on the basis of the credit institution's guaranteed obligations at the end of each quarter. The guarantees referred to are regulated in the Government Guarantees to Banks and others Ordinance (2008:819).

Section 6

The proposal has been dealt with in Section 4.2.

This section, which is new, states in the *first paragraph* that it is the supporting authority that makes decisions on the stability fee and that the fee must be paid within one month from the authority's decision. The *second paragraph* states that penalty interest shall be charged if the fee is not paid on time. The section stipulates how penalty interest should be calculated.

Chapter 8

Section 2 a

This section, which is new, imposes an obligation on the supporting authority to notify the Finansinspektionen if any credit institutions or undertakings do not fulfil their obligations under the Act. There is a corresponding provision in Section 20 of the Deposit Guarantee Scheme Act (1995:1571).

Section 3
The proposal has been dealt with in Section 6.

This section has been amended in such a way that an appeal may be made against certain decisions made under the Act.

A possibility has been introduced into the *first paragraph* of this section for appeals to be made to a general administrative court (that is, in the first instance to the county administrative court) against decisions about the stability fee made by the supporting authority. It is also stated that leave to appeal is required for the administrative court of appeal to be able to seek a reconsideration of a decision made by the country administrative court.

Entry into force and transitional provisions

The proposal has been dealt with in Section 7.

Item 1 states that the Act amending the Government Support to Credit Institutions Act enters into force on 30 December 2009.

Item 2, which was added following a proposal made by *the Council on Legislation*, means that the stability fee will be charged as of 2009, subject to the precondition that the end of the financial year for the party required to pay the fee falls after the statutory amendment has entered into force.

Item 3 states that half the stability fee will be charged for 2009 and 2010; that is, for financial years that end after the Act's entry into force in 2009, or 2010.

10.2 Proposed Act amending the Public Access to Information and Secrecy Act (2009:400)

Chapter 30
Section 5
The proposal has been dealt with in Section 8.

By amendments contained in the *first paragraph, items 1* and *3*, secrecy also applies when reviewing owners of investment fund management companies and central securities depositories. Secrecy when reviewing owners on matters relating to holdings of shares in investment fund management companies or shares or participating interests in central securities depositories should be applied in a corresponding way as when reviewing owners on matters relating to other kinds of financial undertaking, such as limited banking companies, securities companies and exchanges.

The memorandum's proposed legislation contained in the draft proposal referred to the Council on Legislation for consideration

Statutory text

Proposed Act amending the Government Support to Credit Institutions Act (2008:814)

It is hereby prescribed, as regards the Government Support to Credit Institutions Act (2008:814),

first that Chapter 7, Section 1 and Chapter 8, Section 3 shall have the following wording,

second that three new sections (Chapter 7, Sections 2 and 3 and Chapter 8, Section 2 a) be incorporated into the Act, and that Chapter 7 shall have a new heading with the following wording.

Current wording	*Proposed wording*
Chapter 7	
Stability fund	Stability fund *and stability fee*
	Section 1
Compensation paid under Chapter 2, Section 2 shall be deposited in an interest-bearing account with the Swedish National Debt Office. Funds recovered by the central government and which refer to support provided under this Act shall also be deposited in this account.	Compensation *and fees* paid under Chapter 2, Section 2 *and* Section 2 *of this Chapter, together with penalty interest under Section 3* shall be deposited in an interest-bearing account with the Swedish National Debt Office. Funds recovered by the central government and which refer to support provided under this Act *and also the Government Guarantees for Depositors at Swedish Branches of Foreign Institutions Act* (2008:812) shall also be deposited in this account.
Monies deposited into the account, together with the other assets acquired pursuant to this Act, constitute the stability fund.	
The central government's support expenses under this Act *together with* the administration costs of the supporting authority and the Examination Board shall be covered by funds from the account. *The same* applies to *such*	*The following* costs shall be covered by funds from the account: *1.* the central government's support expenses under this Act, *2.* the administration costs of the supporting authority and the

costs as referred to in Chapter 6, Section 4, second paragraph and costs that under the provisions of the Administrative Court Procedure Act (1971:291) as referred to in Chapter 6, Section 2 are to be borne by the central government. Unlimited credit at the Swedish National Debt Office may be used to the extent that there are insufficient funds in the account.

Examination Board,

3. costs *of guardian ad litem* under Chapter 6, Section 4, second paragraph,

4. costs that under the provisions of the Administrative Court Procedure Act (1971:291) as referred to in Chapter 6, Section 2 are to be borne by the central government, *and*

5. *compensation paid out owing to a guarantee for depositors issued under the Government Guarantees for Depositors at Swedish Branches of Foreign Institutions Act.*

Unlimited credit at the Swedish National Debt Office may be used to the extent that there are insufficient funds in the account.

Section 2

Credit institutions and undertakings referred to in Chapter 1, Section 2 ('parties required to pay the fee') shall pay a fee ('stability fee') for each financial year. The fee shall constitute 0.036 per cent of the obligations of the party required to pay the fee at the end of the financial year according to an approved balance sheet, with a deduction for

1. obligations that refer to group companies required to pay the fee under this Act, and

2. subordinated debt securities that may be included in a credit institution's capital base according to the Capital Adequacy and Large Exposures Act (2006:1371).

If a financial year has covered a period that is longer or shorter than twelve months, the stability fee shall be increased or reduced

respectively in proportion to the length of the financial year.

For a credit institution, half of the amount paid by the institution in fees under the Government Guarantees to Banks and others Ordinance (2008:819) for the same period of time shall be deducted from the stability fee. The maximum deduction that can be made is the full amount of the stability fee.

Section 3

The supporting authority shall determine, in accordance with the grounds stated in Section 2, the amount that each party is required to pay. The fee shall be paid within one month from the date when the authority made the decision.

Penalty interest shall be charged for fees that are not paid on time. Penalty interest shall be calculated according to a rate of interest that each year corresponds to the applicable reference interest rate determined by the Riksbank at any given time according to Section 9 of the Interest Act (1975:635), plus eight percentage points.

Chapter 8

Section 2 a

The supporting authority shall notify the Finansinspektionen if a credit institution or undertaking does not fulfil its obligations under this Act.

3 §

An appeal may be made to a general administrative court against a decision regarding a fee under Chapter 7, Section 2. Leave to appeal is required for appeals

	to an administrative court of appeal.
Appeals may not be made against decisions made under this Act.	Appeals may not be made against *other* decisions made under this Act.

1. This Act enters into force on 1 July 2009.

2. The stability fee under Chapter 7, Section 2 shall be reduced by half for a financial year that ends in 2009 and 2010.

Consultation bodies

Consultation bodies and other bodies which on their own initiative have expressed their views on the draft proposal referred to the Council on Legislation for consideration regarding the introduction of a stability fee:

Riksbank (Swedish central bank), Swedish Export Credits Guarantee Board, Swedish National Debt Office, Finansinspektionen (Swedish Financial Supervisory Authority), Nasdaq OMX Stockholm AB, Swedish Competition Authority, Swedish Bankers' Association, Association of Swedish Finance Houses, Swedish Bar Association, Confederation of Swedish Enterprise, Swedish Federation of Business Owners, Swedish Insurance Federation, FAR SRS, Swedish Better Regulation Council, Sveriges Bostadsfinansieringsaktiebolag (SBAB), Avanza Bank AB, Skandinaviska Enskilda Banken AB, Nordea Bank AB, Svenska Handelsbanken AB, ICA Banken AB and Swedbank AB.

The proposed legislation referred to the Council on Legislation

Proposed Act amending the Government Support to Credit Institutions Act (2008:814)

It is hereby prescribed, as regards the Government Support to Credit Institutions Act (2008:814),

first that Chapter 7, Section 1, Chapter 8, Section 3 and the heading of Chapter 7 shall be worded as follows,

second that three new paragraphs (Chapter 7, Sections 2 and 3 and Chapter 8, Section 2 a) shall be incorporated into the Act with the following wording.

Current wording	*Proposed wording*
Chapter 7 Stability fund	Chapter 7 Stability fund *and stability fee*
	Section 1
Compensation paid under Chapter 2, Section 2 shall be deposited into an interest-bearing account with the Swedish National Debt Office. Funds recovered by the central government and which refer to support provided under this Act shall also be deposited into this account.	Compensation paid under Chapter 2, Section 2, *together with fees under* Section 2 *and penalty interest under Section 3 of this Chapter* shall be deposited into an interest-bearing account with the Swedish National Debt Office. Funds recovered by the central government and which refer to support provided under this Act *and also the Government Guarantees for Depositors at Swedish Branches of Foreign Institutions Act (2008:812)* shall also be deposited into this account.
Monies deposited into the account, together with the other assets acquired pursuant to this Act, constitute the stability fund.	
The central government's support expenses under this Act *together with* the administration costs of the supporting authority and the Examination Board *shall be covered by funds from the*	*The following costs shall be covered by funds from the account:* *1.* the central government's support expenses under this Act, *2.* the administration costs of the

account. The same applies to such costs *as referred to in* Chapter 6, Section 4, second paragraph *and* costs that under the provisions of the Administrative Court Procedure Act (1971:291) as referred to in Chapter 6, Section 2 are to be borne by the central government. Unlimited credit at the Swedish National Debt office may be used to the extent that there are insufficient funds in the account.

supporting authority and the Examination Board,

3. costs *of guardian ad litem* under Chapter 6, Section 4, second paragraph,

4. costs that under the provisions of the Administrative Court Procedure Act (1971:291) as referred to in Chapter 6, Section 2 are to be borne by the central government, *and*

5. *compensation paid out owing to a guarantee for depositors under the Government Guarantees for Depositors at Swedish Branches of Foreign Institutions Act.*

Unlimited credit at the Swedish National Debt office may be used to the extent that there are insufficient funds in the account.

Section 2

Credit institutions, like undertakings based in Sweden that have been set up by such a credit institution as a stage of reconstruction (parties required to pay the charge), must pay a fee (stability fee) for each financial year. The fee shall constitute 0.036 per cent of the obligations of the party required to pay the fee at the end of the financial year according to an approved balance sheet, with a deduction for

1. obligations that refer to group companies that are required to pay the fee under this Act, and

2. subordinated debt securities that may be included in a credit institution's capital base according to the Capital Adequacy and Large Exposures Act (2006:1371).

If a financial year has covered a period that is longer or shorter than twelve months, the stability fee shall be increased or reduced

respectively in proportion to the length of the financial year.

A deduction shall be made from the stability fee of half the amount paid by the credit institution as fees for such government guarantees for debt securities issued by the Swedish National Debt Office under this Act for the same period to which the stability fee refers. The maximum deduction that can be made is an amount corresponding to the full stability fee. If half of the amount that the institution has paid in fees for government guarantees for debt securities exceeds the stability fee, the excess amount shall be deducted from the stability fee for the same period for other parties required to pay the fee that, together with the institution, form one and the same group according to the Swedish Companies Act (2005:551) and that have concluded a contract concerning the above-mentioned guarantees.

3 §

The supporting authority shall decide, in accordance with Section 2, the amount that each party is required to pay. The fee shall be paid within one month from the date when the authority made the decision.

Penalty interest shall be charged for fees that are not paid on time. Penalty interest shall be calculated according to a rate of interest that each year corresponds to the reference interest rate determined by the Riksbank at any given time according to Section 9 of the Interest Act (1975:635), plus eight

percentage points.

Chapter 8

Section 2 a

The supporting authority shall notify the Finansinspektionen if a credit institution or undertaking does not fulfil its obligations under this Act.

Section 3

An appeal may be made to a general administrative court against a decision regarding a fee under Chapter 7, Section 3. Leave to appeal is required for appeals to an administrative court of appeal.

Appeals may not be made against decisions made under this Act.

Appeals may not be made against *other* decisions made under this Act.

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1. This Act enters into force on 1 August 2009.
2. The stability fee under Chapter 7, Section 2 shall be reduced by half for a financial year that ends in 2009 and 2010.

Statement of views from the Council on Legislation

Extract from the minutes of a meeting held on 28 April 2009

Those present: Nina Pripp (former Justice of the Supreme Court), Nils Dexe (Justice of the Supreme Administrative Court) and Lars Dahllöf (Justice of the Supreme Court).

Introduction of a stability fee

In accordance with a proposal referred to the Council on Legislation for consideration on 16 April 2009 (Ministry of Finance), the Government decided to obtain a statement of views from the Council on Legislation on the proposed Act amending the Government Support to Credit Institutions Act (2008:814).

The proposal was presented to the Council on Legislation by Louise Conradi (legal advisor).

The proposal resulted in the following statement of views from the Council on Legislation:

In the proposal referred to the Council on Legislation for consideration it is proposed that credit institutions and other undertakings based in Sweden that have been set up by such an institution as a stage of reconstruction should pay an annual fee called the 'stability fee'. This fee shall be deposited in the stability fund.

Section 2

This section, which comprises three paragraphs, contains the main provisions governing the stability fee. These provisions are complex. In the view of the Council on Legislation, they should be broken up into several sections and, in many places, should be reworded to clarify the meaning and make it easier to read.

The provisions of first paragraph should, in the view of the Council on Legislation, form two sections instead: Sections 2 and 3.

As regards the first paragraph, second sentence of the proposed legislation referred for consultation, the wording states that the stability fee should be calculated on the basis of the 'obligations' of the party required to pay the fee at the end of the financial year according to the balance sheet adopted. The formal consultation states that this word refers to provisions and liabilities in accordance with the terminology used in, for instance, the Annual Accounts Act (1995:1554). It is emphasised that untaxed reserves should be excluded. The Council on

Legislation considers that this should be explicitly stated in the statutory wording.

The term 'group company' has also been used in the second sentence of the first paragraph without any further qualification. The explanatory comments on the proposed legislation indicate that 'group' means the same as in Chapter 1, Section 4 of the Annual Accounts Act. According to Chapter 1, Section 4 of the Annual Accounts Act for Credit Institutions and Securities Companies, this definition shall also apply to credit institutions that must apply the latter Act instead of the Annual Accounts Act. The term 'group' is also used in the final paragraph of the proposed legislation referred for consultation, but here it is explicitly stated that it refers to the term used in the Companies Act (2005:551). As the definition of 'group' contained in the Companies Act does not completely correspond with that of the Annual Accounts Act, the second sentence of the first paragraph should, in the opinion of the Council on Legislation, include a clarification of what is meant by this term.

In light of this, the Council on Legislation proposes that the first paragraph be replaced by Sections 2 and 3, worded as follows:

Section 2 Credit institutions and other undertakings referred to in Chapter 1, Section 2, first paragraph ('parties required to pay the fee') shall pay a fee (stability fee) for each financial year.

The stability fee shall be 0.036 per cent of a basis calculated in accordance with Section 3 ('fee basis').

Section 3 The fee basis is the sum of the liabilities and provisions of the party required to pay the fee – though not untaxed reserves – at the end of the financial year according to the balance sheet adopted, unless otherwise prescribed by the second or third paragraph.

The fee basis for a party required to pay the fee where such party forms part of a group according to the Annual Accounts Act (1995:1554) shall be reduced by the corresponding liabilities to other fee-paying undertakings in the group.

The fee basis for a credit institution shall be reduced by the subordinated debt securities that may be included in the capital base under the Capital Adequacy and Large Exposures Act (2006:1371).

The second paragraph of the proposed legislation referred for consultation should, in the opinion of the Council on Legislation, constitute a section on its own (Section 4). A minor adjustment should be made so that the provision ends with the following wording: "… reduced accordingly in proportion to the length of the financial year".

The third paragraph of the proposed legislation referred for consultation comprises three sentences intended to regulate the possibility of making deductions from the stability fee for fees paid for guarantees issued by the Swedish National Debt Office.

As previously mentioned, the term 'group' is mentioned in the last sentence of the paragraph, with a meaning that deviates from the meaning in the first paragraph. It follows from this regulation that the special possibility of a deduction from the stability fee that it should be possible to make within groups according to the last sentence can only benefit those that form part of a ‘group’ according to the Swedish Companies Act. No reasons were given in the formal consultation as to why undertakings that do not meet this requirement, but that are group companies according to the broader definition contained in the Annual Accounts Act, are to be excluded. In the view of the Council on Legislation, this should be explained in future legislative work.

The provisions of the proposed third paragraph should instead be included as three paragraphs in Section 5 of the Act. They may be given the following wording, subject to a reservation concerning the Council on Legislation's above question about the proposed definition of 'group':

For a credit institution to which the Swedish National Debt Office has issued a guarantee for debt securities under this Act, a deduction shall be made from the stability fee of half the amount paid by the institution as a fee for the guarantee for the same period to which the stability fee refers.

If the amount to be deducted according to the first paragraph exceeds the stability fee and the party required to pay the fee forms part of a group according to the Swedish Companies Act (2005:551), the surplus amount shall be deducted from the stability fee for the same period for the other undertakings in the group that are required to pay the fee with which the Swedish National Debt Office has concluded contracts concerning such guarantees as referred to in the first paragraph.

A deduction according to the first or second paragraph may be made of at most an amount corresponding to the stability fee from which the deduction is made.

If the breakdown into sections proposed here is approved, Section 3 of the proposed legislation referred for consultation should be redesignated Section 6. Furthermore, consequential changes should be made to the section references contained in that section and in Chapter 7, Section 1 and Chapter 8, Section 3.

Entry into force and transitional provisions

It is proposed that the Act enters into force on 1 August 2009. According to Chapter 7, Section 2, the undertakings in question are liable to pay a stability fee for each financial year. In the opinion of the Council on Legislation, payment liability shall be deemed to commence when the financial year ends. With reference to the prohibition on retroactivity contained in Chapter 2, Article 10, second paragraph of the Instrument of Government, the Council on Legislation considers that a transitional provision should be included stating that the new provisions may only be applied for financial years ending after the Act has entered into force.

The proposed transitional provision should be included as item 2, for which reason the item 2 that was contained in the proposal referred to the Council on Legislation for consideration should be redesignated as item 3.

The memorandum's proposed legislation contained in the draft Bill

Proposed Act amending the Government Support to Credit Institutions Act (2008:814)

It is hereby prescribed, as regards the Government Support to Credit Institutions Act (2008:814),

first that Chapter 7, Section 1, Chapter 8, Section 3 and the heading of Chapter 7 shall be worded as follows,

second that six new sections (Chapter 7, Sections 2 to 6 and Chapter 8, Section 2 a) shall be incorporated into the Act with the following wording.

Current wording	*Proposed wording*
Chapter 7 Stability fund	Chapter 7 Stability fund *and stability fee*
	Section 1
Compensation paid under Chapter 2, Section 2 shall be deposited into an interest-bearing account with the Swedish National Debt Office. Funds recovered by the central government and which refer to support provided under this Act shall also be deposited into this account.	Compensation paid under Chapter 2, Section 2, *together with fees under Section 2 and penalty interest under Section 6 of this Chapter* shall be deposited into an interest-bearing account at the Swedish National Debt Office. Funds recovered by the central government and which refer to support provided under this Act *and also the Government Guarantees for Depositors at Swedish Branches of Foreign Institutions Act (2008:812)* shall also be deposited into this account.
Monies deposited into the account, together with the other assets acquired pursuant to this Act, constitute the stability fund.	
The central government's support expenses under this Act *together with* the administration costs *of* the supporting authority and the Examination Board *shall be covered by funds from the*	*The following costs shall be covered by funds from the account:* *1.* the central government's support expenses under this Act, *2.* the administration costs of the

account. The same applies to such costs *as referred to in* Chapter 6, Section 4, second paragraph *and* costs that under the provisions of the Administrative Court Procedure Act (1971:291) as referred to in Chapter 6, Section 2 are to be borne by the central government. Unlimited credit at the Swedish National Debt office may be used to the extent that there are insufficient funds in the account.

supporting authority and the Examination Board,

3. costs *of guardian ad litem* under Chapter 6, Section 4, second paragraph,

4. costs that under the provisions of the Administrative Court Procedure Act (1971:291) as referred to in Chapter 6, Section 2 are to be borne by the central government, *and*

5. *compensation paid out owing to a guarantee for depositors under the Government Guarantees for Depositors at Swedish Branches of Foreign Institutions Act.*

Unlimited credit at the Swedish National Debt office may be used to the extent that there are insufficient funds in the account.

Section 2

Credit institutions and other undertakings referred to in Chapter 1, Section 2, first paragraph ('parties liable to pay the fee') shall pay a fee ('stability fee') for each financial year.

The stability fee is 0.036 per cent of a basis calculated according to Section 3 ('fee basis').

Section 3

The fee basis is the sum of the liabilities and provisions of the party liable to pay the fee – though not untaxed reserves – at the end of the financial year according to the adopted balance sheet, unless otherwise prescribed by the second or third paragraph.

The fee basis for a party required to pay the fee where such party forms part of a Group according to the Annual Accounts Act (1995:1554) shall be reduced by the liabilities to other

undertakings in the Group that are required to pay the fee.

The fee basis for a credit institution shall be reduced by the subordinated debt securities that may be included in the capital base under the Capital Adequacy and Large Exposures Act (2006:1371).

Section 4

If a financial year has covered a period that is longer or shorter than twelve months, the stability fee shall be increased or reduced respectively in proportion to the length of the financial year.

Section 5

An average of the guaranteed amount for the financial year will be deducted from the fee basis under Section 3 for a credit institution to which the Swedish National Debt Office has issued a guarantee for debt securities on the basis of this Act. The average is calculated on the basis of the credit institution's guaranteed obligations at the end of each quarter.

Section 6

The support authority shall decide on the stability fee for each party required to pay the fee. The fee shall be paid within one month from the date when the authority made the decision.

Penalty interest shall be charged for stability fees that are not paid on time. Penalty interest shall be calculated according to a rate of interest that each year corresponds to the reference interest rate determined by the Riksbank at any given time

	according to Section 9 of the Interest Act (1975:635), plus eight percentage points.
Chapter 8	
Section 2 a	
	The supporting authority shall notify the Finansinspektionen if a credit institution or another undertaking does not fulfil its obligations under this Act.
Section 3	
	An appeal may be made to a general administrative court against a decision regarding a fee under Chapter 7, Section 6. Leave to appeal is required for appeals to an administrative court of appeal.
Appeals may not be made against decisions made under this Act.	Appeals may not be made against *other* decisions made under this Act.

1. This Act enters into force on 30 December 2009.
2. The new provisions may only be applied for financial years that end after this Act has entered into force.
3. The stability fee under Chapter 7, Section 6 shall be reduced by half for a financial year that ends in 2009 and 2010.

Consultation bodies

Consultation bodies and other bodies which on their own initiative have expressed their views on the draft Bill regarding the introduction of a stability fee:

Riksbank (Swedish central bank), Swedish National Debt Office, Finansinspektionen (Swedish Financial Supervisory Authority), Swedish Bankers' Association, Association of Swedish Finance Houses, Confederation of Swedish Enterprise, Swedish Federation of Business Owners, FAR SRS (professional institute for accountancy sector professionals), Sveriges Bostadsfinansieringsaktiebolag (SBAB), Nordea Bank AB and the Savings Bank Association.

Ministry of Finance

Extract from the minutes of the Cabinet meeting held on 8 October 2009

Those present: Reinfeldt (Prime Minister and Chair) and the following Ministers: Olofsson, Odell, Ask, Husmark Pehrsson, Larsson, Torstensson, Carlgren, Hägglund, Björklund, Carlsson, Littorin, Borg, Sabuni, Billström, Tolgfors

Minister presenting the matter: Odell (Minister)

The Government hereby approves Bill 2009/10:30 Stability Fee.