THE BANKING REGULATION REVIEW

Thirteenth Edition

Editor
Jan Putnis

THE LAWREVIEWS

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PREFACE

The past year in banking regulation has been dominated, in most parts of the world, by the severe economic effects of the coronavirus pandemic. Governments and regulators have taken unprecedented steps to support businesses and individuals through the crisis. In financial terms, much of this support has been channelled through banks, and banks have had to work hard to continue to lend and to serve their customers in this difficult period.

Despite the human suffering and long-term economic damage that the pandemic has caused, there has been no significant banking crisis in the past year and, in most countries, no real sign that banks are failing to weather the storm so far. While there are of course exceptions, this is in large part a consequence of the relatively strong capital and liquidity position that banks around the world were in before the pandemic struck, which was itself a position that would not have arisen in many countries without the comprehensive prudential regulatory reforms that followed the global financial crisis of 2007–2009. Indeed, some regulators have commented that the pandemic is proving to be the first real test of those reforms and that, at least so far, the rules and institutional frameworks for banking regulation that were created after the global financial crisis have proven their worth.

As in all ongoing crises, there are causes for both pessimism and optimism. A pessimistic assessment with which it is hard to argue in many parts of the world is that we are still at an early stage in the economic damage that the pandemic has caused. The gradual withdrawal of government support programmes for businesses and the consequent further increases in non-performing loans with which banks have to deal will pose a further severe test for the banking systems of many countries at a time when governments will be relying on banks to support economic recovery. In some countries the strong links between bank viability and the ability of governments to issue sovereign debt at sustainable interest rates may re-emerge as a significant problem.

The optimistic assessment is necessarily a longer-term one given the challenges that the pandemic continues to present. The pandemic has undoubtedly provided the banking sector with an opportunity to show that it can be a force for financial stability and economic renewal at a time of crisis, in marked contrast to the blow to confidence that the sector suffered following the global financial crisis. This opportunity is closely linked to moves by many banks to consider their corporate purpose, the sustainability of their activities in environmental and social terms, and the quality, and in many cases the diversity, of their governance. This somewhat disparate collection of objectives, referred to as ESG (for environmental, social and governance) in many parts of the world, is increasingly dominating discourse between banks and their regulators and investors. Whether this would have happened in quite the way it has without the pandemic is impossible to know, but it does not seem much of an exaggeration to suggest that in many countries the banking sector that will emerge from the pandemic will have a series of cultural and business objectives that are quite different from those that existed before.

Regulators have become more assertive on these matters, particularly with regard to environmental objectives, and we will increasingly see a harder edge to the expectations that they are forming of banks' adherence to policies designed to address climate change. The repricing of many risks that is expected to take place as opinion settles on the pace at which transition to a low-carbon economy should take place will have a profound effect on the balance sheets of many banks. Shareholder pressure will force change in some banks, and banks with significant exposure to the petroleum economy will have to consider radical changes to their business models.

On social matters, financial inclusion and fair treatment of vulnerable customers are motivating legal and regulatory reform in many countries. There is a strong link between financial inclusion and the adoption of new technologies and business models, particularly in payment services. Many of the businesses that are contributing to the adoption of these technologies are not banks but rely on banks (or payment systems that are owned or controlled by banks) in order to operate. Allied to this are the increasingly serious and well-resourced attempts by firms using distributed ledger technologies to develop new means of payment, including stablecoins.

Regulators struggle to keep pace with these developments, but they hold back at their peril on addressing the implications for banks. The concept that the same or similar services and activities should be regulated in the same way is proving to be difficult to apply in practice, not least because there is a fundamental difference in financial stability terms between institutions that take deposits and those that do not. But the challenge of how to establish a level playing field on which to supervise banks and non-bank payment firms and lenders is one that must surely be addressed, and addressed soon, by regulators in a coordinated way around the world. The time for regulators to congratulate themselves on the effectiveness of financial sector reform following the global financial crisis has come to an end. It is now time to think hard about where risks lie and how risks will develop in the emerging tech-enabled financial system, and the possible causes of the next financial crisis.

It is perhaps surprising, given all the disruption caused by covid-19, that some countries have managed to push through significant legal and regulatory reforms in banking in the past year. These measures have included significant overhauls of the whole bank regulatory regime in some countries and, in other countries, further moves to implement Basel III standards. We have already seen some important changes of policy and emphasis in the United States under the new Biden administration. Legal and regulatory reform has continued in the European Union, although many initiatives have been delayed by the pandemic. The final departure of the United Kingdom from the European Union single market on 31 December 2020 and the resulting decoupling of London as a major banking centre from the European Union legal framework will continue to have reverberations and structural implications for banks operating in Europe. The long-term implications of Brexit for banks remain hard to predict; in particular, whether it will be a prelude to further fragmentation in banking regulation around the world.

This edition of *The Banking Regulation Review* covers 33 countries and territories in addition to the usual chapters on International Initiatives and the European Union. My thanks go to the authors for continuing to prepare informative chapters in the difficult and uncertain conditions in which many of them have been working over the past year. They continue to make this book the useful overview and guide to banking regulation around the world that it is.

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Jan Putnis
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Chapter 10

FINLAND

Janne Lauha, Hannu Huotilainen and Heidi Lumme[1]

I INTRODUCTION

The Finnish banking sector is characterised by a strong presence of pan-Nordic banking groups in Finland coupled with robust local financial and banking groups, and specialised institutions. Finland suffered a severe banking crisis between 1991 and 1994 that thoroughly reshaped the banking sector. Partly because of this experience and ensuing structural changes, Finnish banks were able to weather the global financial crises that began in 2008 more resiliently than some of their European peers. Also, in the continuing covid-19 pandemic, Finnish banks' ability to absorb losses and provide credit has remained strong. According to the Finnish Financial Supervisory Authority (FIN-FSA), the Finnish banking sector's capital ratios have remained stronger than the European average even if the capital rations weakened slightly during 2021.[2] Banks are well-capitalized, liquid, and profitable, and the lowering of structural capital buffer requirements at the onset of the pandemic provided additional lending and loss-absorbing capacity. However, the banking sector is large and highly concentrated, and banks are highly exposed to residential and commercial real estate, the latter facing headwinds from the pandemic.[3]

According to the Ministry of Finance, in the forecast, the deterioration of the pandemic is expected to slow down the recovery of the economy temporarily. The recovery of the economy will continue strong in 2022 in sectors where production has not yet reached its pre-pandemic level. In spite of the slowing down of growth, the economic outlook of the business sector has remained good and confidence in the future is strong. Employment is improving rapidly, and the unemployment rate is declining. Acceleration of inflation is expected to remain temporary. Rapid growth and the end of spending on managing the pandemic will quickly reduce the general government deficit in 2021–2023. However, the deficit will not be fully eliminated during the period of rapid economic growth, as public expenditure is structurally higher than revenue. Finland's gross domestic product is expected to grow by 3.4 per cent in 2021. The deterioration of the covid-19 pandemic in late 2021 increases uncertainty for economic decision-makers and will temporarily slow down economic growth around the turn of the year. Finland's GDP growth will remain at 3 per cent in

1 Janne Lauha is a partner, Hannu Huotilainen is a counsel and Heidi Lumme is an associate at Castrén & Snellman Attorneys Ltd.

2 Source: The Finnish Financial Supervisory Authority press release 3 December 2021.

3 Source: 'Finland: Staff Concluding Statement of the 2021 Article IV Mission' by IMF on 19 November 2021.

2022, as production in many sectors is still below the pre-pandemic level.[4] During the fourth quarter of 2021, the number of loans granted to corporations was slightly higher than in the same period of 2020.[5] Finnish households drew down €1.4 billion of new housing loans in January 2022, up by about €30 million on the same month last year. At the end of January 2022, the stock of housing loans stood at €107.1 billion, and the annual growth rate of the stock was 4 per cent. The stock of Finnish households' deposits at the end of January 2022 stood at €109.4 billion, and the average interest rate on the deposits was 0.03 per cent.[6]

The largest credit institutions in Finland measured by total assets as at 31 December 2021 were Nordea Group with €570.4 billion, OP Financial Group (previously OP Pohjola Group, including 121 cooperative banks) with €174.1 billion, Municipality Finance Plc with €46.4 billion, the Savings Bank Group with €13.1 billion and Aktia Group with €11.7 billion.

Regulatory measures adopted during 2021 were comprehensively still defined by the crisis caused by the covid-19 pandemic, which caused unforeseen market turbulence in both the global and the Finnish financial markets. The year saw Finnish banks playing an important role in supporting the real economy by way of, for example, offering more funding to businesses and households in order to alleviate the impacts of the economic crisis caused by covid-19. 2021 saw Finnish banks abandon certain alleviating acts adopted in the previous year, such as grace periods to borrowers. Certain trends that have been prominent in the Finnish financial market for some years now, such as digitalisation, public efforts to curb household debt and a focus on sustainable business and growth, also influenced the Finnish financial markets in 2021 with the pandemic contributing to the development of some of them. For example, the Financial Supervisory Authority has encouraged banks to refrain from granting particularly large and long loans. Covid-19 has accelerated the adoption of digital banking with more Finnish customers choosing – or rather being forced to choose – digital channels for their interactions. The Finnish banks have also continued to focus more on sustainability factors influencing their operations and sustainable financing. For example, Nordea Group has launched green loans at reduced rates for small and medium-sized enterprises in Finland and Sweden in collaboration with the European Investment Fund. Further, the implementation of the EU's second banking package (CRR II/CRD V[7] and BRRD II/SRM II[8]) aiming to further reinforce banks' ability to withstand potential shocks was commenced in the Finnish parliament, which adopted the amendments in March 2021.

4 Source: 'Economic Survey', Winter 2021 by the Finnish Ministry of Finance, published on 20 December 2021.
5 Source: Bank of Finland, 28 February 2022.
6 Source: Bank of Finland, 1 February 2022.
7 Regulation (EU) 2019/876 and Directive (EU) 2019/878, respectively.
8 Directive (EU) 2019/879 and Regulation (EU) 2019/877, respectively.

II THE REGULATORY REGIME APPLICABLE TO BANKS

The primary law governing credit institutions in Finland is the Act on Credit Institutions (ACI).[9] The ACI entered into force in August 2014, replacing the previous act of the same name. One of the main objectives of the reform was to implement, via the ACI, the Capital Requirements Directive IV (CRD IV)[10] and the Capital Requirements Regulation (CRR)[11] into Finnish legislation.

The ACI is generally applicable to all credit institutions. In addition, there are other laws on specific matters that are applicable to banks of particular forms. Deposit banks are categorised as commercial banks (banks in the form of a limited company), cooperative banks or savings banks, each of which are subject to their own specific regulation. As such, the regulatory framework in Finland consists of various laws governing specific forms of banking activities. The most important laws and regulations are the following:

a the ACI, which governs, inter alia, the establishment and management of credit institutions. The definition of a credit institution includes deposit banks and credit societies. As a general law applicable to all credit institutions, the ACI lays down the authorisation requirements, defines the permitted business activities and sets out the conduct of business rules. The ACI also contains provisions on capital adequacy and liquidity requirements;

b the Act on Commercial Banks and Other Credit Institutions in the Form of a Limited Company,[12] which regulates the operations of commercial banks. This Act lays down provisions regarding, inter alia, the division, merger, liquidation and bankruptcy of commercial banks. The Companies Act,[13] as a generally applicable law, governs the corporate aspects of commercial banks except as otherwise provided for in the Act on Commercial Banks and Other Credit Institutions in the Form of a Limited Company or in the ACI;

c the Act on Cooperative Banks and Other Credit Institutions in the Form of a Cooperative,[14] which regulates the operations of cooperative banks. The Act lays down provisions regarding, inter alia, the division, merger, liquidation and bankruptcy of cooperative banks. The Cooperatives Act,[15] as a generally applicable law, governs the corporate aspects of cooperative banks except as otherwise provided for in the Act on Cooperative Banks and Other Credit Institutions in the Form of a Cooperative or in the ACI. There are two cooperative bank groups operating in Finland: OP Financial Group and POP Bank Group. At the end of 2021, OP Financial Group was made up of 121 independent cooperative banks, while POP Bank Group consisted of 21 independent cooperative banks;

9 Act on Credit Institutions 8.8.2014/610.
10 Directive 2013/36/EU.
11 Regulation (EU) No. 575/2013.
12 28.12.2001/1501.
13 624/2006.
14 423/2013.
15 421/2013.

d the Act on Covered Bonds[16] and the Act on Mortgage Societies,[17] which regulate the operations of mortgage banks and mortgage societies, respectively. Mortgage banks and mortgage societies are credit institutions that specialise in the financing of residential and commercial real estate. However, their role is not significant in the Finnish financing sector owing to the strong position of deposit banks as providers of financing;

e the Savings Bank Act,[18] which governs the operations of savings banks that have the special purpose of promoting saving. At the end of 2021, there were 18 regional savings banks operating in Finland;

f the Deposit Banks Amalgamation Act (the Amalgamations Act).[19] An amalgamation of deposit banks comprises a cooperative central institution, the companies belonging to the central institution's consolidation group, the member credit institutions and the companies belonging to the member credit institutions' consolidation groups, and the credit institutions, financial institutions and service companies in which the aforementioned institutions jointly hold more than half of the voting rights. Under the Amalgamations Act, a central institution is liable for the debts of its member credit institutions. Furthermore, the member credit institutions are jointly liable for each other's debts. Pursuant to the Amalgamations Act, the aggregate amount and liquidity of the amalgamation's own funds are monitored at the amalgamation level on a consolidated basis; and

g regulations and guidelines issued by the FIN-FSA.

As regards banking services provided by non-Finnish banks, the ACI sets out conditions under which non-Finnish credit institutions may provide their services in Finland. Credit institutions from countries belonging to the European Economic Area (EEA) may provide banking services in Finland either by establishing a branch or by providing cross-border services, provided that a notification is submitted to the FIN-FSA in accordance with the passporting regime available to EEA credit institutions. Credit institutions from non-EEA countries are not able to take advantage of the passporting regime available to EEA credit institutions; consequently, if a credit institution from a non-EEA country intends to provide its services in Finland, this must happen through a branch with prior authorisation from the FIN-FSA. The authorisation procedure for non-EEA credit institutions is comparable to the authorisation procedure applicable to Finnish credit institutions. At present, there are three authorisations for non-EEA credit institutions in force in Finland. In addition, a non-EEA credit institution may establish a representative office in Finland by notifying the FIN-FSA thereof. The representative office may not engage in banking services, however.

16 151/2022. The President of the Republic of Finland has on 11 March ratified the Finnish Covered Bond Act (CBA; 151/2022) to implement the Covered Bond Directive (EU) 2019/2162 (the Covered Bond Directive). When entering into force on 8 July 2022, the CBA will repeal the Finnish Act on Mortgage Credit Bank Activity (688/2010).

17 8.12.1978/936.

18 1502/2001.

19 599/2010.

III PRUDENTIAL REGULATION

i Relationship with the prudential regulator

The FIN-FSA is responsible for the supervision of Finland's financial sector. The objectives of the FIN-FSA's activities are to enable balanced operations of credit institutions and other supervised entities as well as to foster public confidence in financial market operations. The FIN-FSA is further responsible for, inter alia, promoting compliance with good practice in the financial markets and disseminating general knowledge about the markets. These objectives and the duties of the FIN-FSA have been included in the Act on the Financial Supervisory Authority,[20] which sets forth a comprehensive list of the FIN-FSA's duties and delineates its supervisory powers. While the FIN-FSA operates in connection with the Bank of Finland, it makes independent decisions in its supervisory work. In addition to that work, the FIN-FSA is the authority that grants authorisations needed by many financial market participants, such as credit institutions, investment firms, fund management companies and insurance companies.

When carrying out its supervisory duties, the FIN-FSA has considerable authority to obtain information from the entities under its supervision, regardless of any rules on confidentiality. Furthermore, the entities supervised by the FIN-FSA are required to regularly file various reports to the FIN-FSA, which uses the reported data to monitor the supervised entities' economic standing and risks, and to analyse their profitability, capital adequacy, risks and business volumes.

The FIN-FSA may exercise various supervisory powers, such as imposing a temporary prohibition on a person holding a managerial position in a supervised entity or, in extreme circumstances, cancelling an authorisation granted to a supervised entity. Moreover, the FIN-FSA may impose administrative sanctions, including administrative fines, public warnings and penalty payments. By the entry into force of the ACI in 2014, the sanctioning powers of the FIN-FSA were extended notably. In particular, the maximum amounts of penalty payments were increased significantly, bringing the maximum amounts of the penalty payments the FIN-FSA may impose for failures to comply with certain requirements of the ACI in line with the maximum penalties provided for in CRD IV.

A significant change took place in the supervisory regime when the new single supervisory mechanism (SSM) commenced its operations in Europe in November 2014. The SSM is a system of financial supervision comprising the European Central Bank (ECB) and the competent national authorities of the participating EU Member States. The legal basis for the SSM is Council Regulation (EU) No. 1024/2013. Within the SSM, the ECB will directly supervise significant credit institutions, and will have an indirect role in the supervision of less significant credit institutions, which continue to be supervised by their national supervisors in close cooperation with the ECB. At the time of writing, three Finnish credit institutions and groups (Nordea Group, OP Financial Group and Municipal Finance Plc) as well as the Finnish branch of Danske Bank A/S have been classified as significant institutions, and they have been transferred to the direct supervision of the ECB.

Under the SSM, the FIN-FSA will not use its powers directly where the ECB has jurisdiction. Therefore, in respect of institutions subject to the ECB's direct supervision, the powers of the FIN-FSA described herein should be read also to refer to the ECB under the SSM.

20 878/2008.

The Act on the Financial Supervisory Authority contains specific provisions for the supervision of foreign supervised entities and their branches in Finland, and on cooperation with foreign supervisory authorities.

ii Management of banks

The board of directors of a bank shall create a framework for the bank's internal governance. To fulfil this and other tasks, the board may opt to create committees or other working groups that are charged with assisting the board in fulfilling its duties. The day-to-day operations of the bank are the responsibility of its senior management, consisting of, for example, the managing director and members of the management group. It should be noted that while there is no legal requirement to have a management group, it is recommended to create such a body to provide assistance to the bank's managing director in the fulfilment of his or her duties.

In addition to the organisational requirements discussed above, a bank's managers must fulfil certain obligations (as set forth in the ACI and in the FIN-FSA's regulations and guidelines) to manage the bank professionally and in a way that complies with sound business principles. All banks must maintain an effective risk-management system that seeks to manage and reduce risks to the bank's liquidity and capital adequacy. The FIN-FSA's supervision of banks' corporate governance procedures takes particular note of certain items including, inter alia:

a the planning and management of a bank's activities;
b the establishment of an internal audit function;
c the organisation of a bank's activities in general (identification of conflicts of interest, storage of information, effective customer complaint procedures, etc.); and
d whether the bank maintains sufficient personnel for its operations, has created and follows a strategic business plan, and ensures that its operations are governed according to sound professional and ethical standards.

Each credit institution is required to follow certain rules, pursuant to the ACI, which include a requirement to have a remuneration policy that is in line with the business strategy, objectives, values and long-term interests of the institution. Additionally, remuneration policies must be consistent with, and promote, sound and effective risk management, and must not encourage risk-taking that exceeds the level of tolerated risk of the institution. The rules of the ACI governing remuneration policies are in line with those of CRD IV.

iii Regulatory capital and liquidity

Authorisation for a credit institution will be granted if the preconditions set out in the ACI are met. These include, inter alia, that the share capital, cooperative capital or basic capital must be at least €5 million and fully paid at the time of granting a licence, and that the credit institution must meet the capital requirements set out in the ACI.

The implementation of the CRD IV package introduced significant changes to the prudential regulatory regime applicable to Finnish credit institutions, including increased capital requirements, and changes in the elements of own funds and in the calculation of own fund requirements. The directly applicable CRR entered into force in Finland on 1 January 2014, whereas the requirements of CRD IV were implemented in Finland through the ACI.

In light of the implementation of the CRD IV package, Finnish regulatory capital and liquidity requirements are determined in accordance with both the CRR and the ACI. Pursuant to the ACI, a Finnish credit institution must continuously hold the required minimum amount of own funds and consolidated own funds, calculated in accordance with both the CRR[21] and Chapter 10 of the ACI. Under the ACI, the definition of own funds corresponds to the definition of own funds as set forth in the CRR.[22]

Pursuant to the CRR, credit institutions must have a Common Equity Tier 1 capital ratio of at least 4.5 per cent, a Tier 1 capital ratio of 6 per cent and a total capital ratio of 8 per cent (each ratio expressed as a percentage of the total risk exposure amount). Furthermore, pursuant to the ACI, an additional capital conservation buffer of 2.5 per cent has been applicable to all credit institutions since 1 January 2015. The FIN-FSA is also authorised to set a countercyclical buffer of zero to 2.5 per cent based on macroprudential analysis. Both the additional capital conservation buffer and the countercyclical buffer must be satisfied with Common Equity Tier 1 capital. At the time of writing, the FIN-FSA has not imposed the countercyclical buffer. Since 1 January 2018, the FIN-FSA has been authorised to set a systemic risk buffer of between 1 and 5 per cent on credit institutions, applicable from 1 January 2019 at the earliest. The most recent decision of the FIN-FSA regarding the level of systemic risk buffer requirements for Finnish credit institutions was issued on 6 April 2020. Finally, there is an additional capital buffer requirement for other systemically important institutions (O-SIIs) whose failure or other malfunction would be expected to jeopardise the stability of the national financial system. The O-SII buffer for credit institutions operating in Finland may be set at zero to 2 per cent of the total risk exposure amount and must be satisfied with Common Equity Tier 1 capital. At the time of writing, the FIN-FSA has imposed additional capital requirements (O-SII buffers) on three Finnish credit institutions.[23]

The ACI also contains specific provisions on the consolidated supervision of banking groups, including provisions on the calculation of own funds on a consolidated basis, consistent with the CRR and CRD IV.

The FIN-FSA has issued further national regulations and guidelines on the calculation of capital requirements and large exposures. These instructions are related to the national application of the CRR and contain, inter alia, the FIN-FSA's guidelines on the categorisation of various Finnish capital instruments into Common Equity Tier 1, Additional Tier 1 or Tier 2 instruments for the purposes of satisfying the own funds requirements imposed by the CRR and the ACI.

As regards liquidity requirements, Finnish credit institutions must comply with the liquidity requirements set forth in the CRR and as further specified by the Commission Delegated Regulation.[24]

iv Recovery and resolution

Directive 2014/59/EU, providing for the establishment of a European-wide framework for the recovery and resolution of credit institutions and investment firms (BRRD), entered into force on 2 July 2014. EU Member States were required to adopt and publish the implementing regulations to comply with the BRRD by 31 December 2014. In addition,

21 Article 92(3) of the CRR.

22 Article 4(1)(118) of the CRR.

23 These credit institutions are Nordea Group, OP Financial Group and Municipal Finance Plc.

24 Commission Delegated Regulation (EU) 2015/61.

the European Union has adopted a directly applicable regulation governing the resolution of the most significant financial institutions in the eurozone (i.e., a regulation establishing a Single Resolution Mechanism Regulation (the SRM Regulation)).[25]

In Finland, the BRRD was implemented mainly through two new acts: the Act on Resolution of Credit Institutions and Investment Firms (the Resolution Act)[26] and the Act on the Financial Stability Authority.[27] The latter regulates the Finnish Financial Stability Authority (the Stability Authority), which is the national resolution authority and is responsible for the resolution of credit institutions and investment firms in Finland. Among its key tasks, the Stability Authority draws up resolution plans for institutions, decides whether a failing institution is to be placed under resolution and applies the necessary resolution tools to an institution under resolution. The implementation of the BRRD also involved amendments to dozens of existing acts, most notably to the ACI, and the repeal of the Act on the Temporary Bank Levy and of the Act on the Government Guarantee Fund.

Under the recovery and resolution regime, credit institutions are generally required to draw up recovery plans to secure the continuation of their business in the event of financial distress. These plans must include options for measures to restore the financial viability of the institution and must be updated annually. The plans must be submitted to the scrutiny of the FIN-FSA.

In the context of the new legislation, the FIN-FSA has been empowered to apply early intervention tools to banks and investment firms. These tools may be used if the FIN-FSA has solid reasons to believe that an institution will fail in regard to its licensing conditions, liabilities or obligations under the capital adequacy regulations within the next 12 months. The early intervention tools include, inter alia, the right of the FIN-FSA to:

a require the bank's management to implement measures included in the recovery plan;
b convene a general meeting of shareholders for the purpose of taking necessary decisions for recovery;
c require the removal of members of the bank's management; and
d require changes to the legal and financial structure of the institution.

Pursuant to the Resolution Act, the Stability Authority shall set up and maintain a resolution plan for each institution. The resolution plan must be ready for execution in the event that the institution needs to be placed in a resolution process.

The Resolution Act vests the Stability Authority with resolution powers and tools as provided in the BRRD. If the Stability Authority considers that an institution is failing or likely to fail, and that there is no reasonable prospect that any private or early intervention measures or write-down of capital instruments would prevent the failure, and further that resolution is necessary in the public interest, the Stability Authority is empowered to declare and initiate a resolution process in respect of the institution.

During such a process, the institution could be subject to the exercise of a number of resolution tools: mandatory write-down of debts or conversion of debts into equity (bail-in), sale of business, bridge institution and asset separation. To continue the operations of the institution, the Stability Authority has the power to decide upon covering the losses of the institution by reducing the value of the institution's share capital or cancelling its shares.

25 Regulation (EU) No. 806/2014.
26 1194/2014.
27 1195/2014.

The BRRD (and consequently, the Resolution Act) provides a requirement for credit institutions to meet the minimum requirement for own funds and eligible liabilities (MREL) designed to ensure sufficient loss-absorbing capacity to enable the continuity of critical functions without recourse to public funds. All institutions must meet an individual MREL requirement calculated as a percentage of total liabilities and own funds and set by the relevant resolution authorities. The Stability Authority has started gathering information from credit institutions in its direct jurisdiction. Based on the gathered information, the Stability Authority has been preparing individual resolution plans and decisions on eligible liabilities under MREL for Finnish credit institutions. The process and schedule of the planning and decision process varies between institutions.

The SRM Regulation has established a pan-European resolution authority, the Single Resolution Board (SRB). The SRB has been fully operational, with a complete set of resolution powers, since January 2016. These powers have replaced the resolution powers of the Stability Authority in respect of the Finnish institutions that are subject to the SRM Regulation.[28]

As part of the single resolution mechanism, a new Single Resolution Fund (SRF) managed by the SRB commenced operations in January 2016. Finnish credit institutions must pay annual contributions to the SRF. The amount of the contributions shall be determined in accordance with the SRM Regulation.

The Finnish parliament adopted extensive changes to the ACI and the Resolution Act by implementing the changes relating to the EU's second banking package. The main amendments further specify the grounds for setting various capital requirements; lay down provisions concerning the setting of an equity ratio basis of certain capital requirements or asset distribution restrictions; impose a licensing requirement on financial sector holding companies and extend certain aspects of the regulation and monitoring of credit institution activities to cover these holding companies; lay down provisions on a new calculation model for assessing the interest risks of financial accounts; lighten the regulation of credit institutions' remuneration; and partially expand the circle of people covered by the regulation of related party lending. As for resolution, the main amendments supplement the regulation concerning the minimum requirement for own funds and eligible liabilities and lay down provisions on new powers for the resolution authority to restrict the distribution of assets by institutions and suspend the implementation of agreements. Furthermore, in relation to amalgamations of deposit banks, the Stability Authority was given powers to use the resolution tools towards the whole amalgamation including its central institution and member banks if the amalgamation as a whole fulfils the criteria for resolution.

IV CONDUCT OF BUSINESS

The ACI sets out the conduct of business rules for banks and lays down provisions on civil and criminal liability for breaching those rules.

As regards the activities banks may engage in, all credit institutions may provide various financing services (such as lending, leasing and factoring) as well as other services covered by their licence, but only deposit banks are entitled to accept deposits from the public. The regulation concerning payment accounts with basic features was amended through the adoption of the Payment Accounts Directive[29] (PAD) via the ACI on 1 January 2017.

28 Namely Nordea Bank Plc, OP Cooperative and Municipal Finance Plc.

29 Directive 2014/92/EU.

Pursuant to the ACI, customers are always entitled to certain basic banking services, as a result of which deposit banks may only refuse to open a payment account with basic features and to offer payment services relating to that payment account for weighty reasons, such as non-compliance by the customer with anti-money laundering obligations. Following the implementation of the PAD, online banking credentials are also considered a part of basic banking services, and banks may no longer refuse to offer online banking credentials to, for example, customers with a bad credit history.

With the entry into force of the ACI in 2014, certain new conduct rules of business obligations were introduced in the legislation; these include the obligation for banks to comply with good banking practice, the content of which is likely to evolve in the future. Furthermore, a binding maximum loan-to-value (LTV) ratio for housing loans was introduced in the legislation. The binding maximum LTV ratio, and the FIN-FSA's power to tighten this ratio, entered into force on 1 July 2016. In November 2015, the FIN-FSA issued specific guidelines on the calculation of the LTV ratio to harmonise the LTV concept in the market of housing loans for personal customers. Foreign (non-Finnish) credit institutions providing services in Finland must also comply with these guidelines.

The ACI also provides banks' clients with extensive protection as regards banking secrecy. In practice, banking secrecy rules are generally strictly applied in Finland, although there are certain notable statutory exemptions to the banking secrecy obligations, including the ability to provide information within the same group of companies for certain purposes, and the right of certain authorities to obtain information.

Since the enactment of the ACI, the legislation now contains express provisions requiring non-Finnish credit institutions to comply with the conduct of business obligations set forth in the ACI when offering banking services in Finland, irrespective of whether these services are offered through a Finnish branch or on a cross-border basis.

The ACI contains provisions on both civil and criminal liability, although breaches of certain provisions of the ACI are governed by the Finnish Penal Code. Under the ACI, civil liability for damage caused due to wilful misconduct or negligence when performing their duties extends to the founder of a credit institution, the members of its supervisory board and board of directors, as well as the credit institution's managing director.

V FUNDING

The main source of funding for banks operating in Finland is deposits. The banks fill the funding gap between lending to customers and accepting deposits by issuing bonds mainly to international wholesale capital markets. The market demand for the bond issuances of Finnish banks has remained satisfactory. The market has seen the introduction of CRR-compliant Additional Tier 1 and Tier 2 instruments. As part of the CRR regime, banks need to consider the capital adequacy treatment of each of the instruments. Being cautious about any possible strings attached, Finnish banks have not resorted to ECB special funding facilities to any significant extent.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

Prior notification to the FIN-FSA is required when acquiring shares or interests, either directly or indirectly, in a credit institution and thereby establishing a qualifying holding (i.e., at least 10 per cent of the shares or comparable other capital of the credit institution, or at least 10 per cent of the voting rights or other holding entitling the holder to exercise similarly significant influence in the credit institution).

The FIN-FSA must also be similarly notified if the holding in a credit institution is increased so that the proportion of the share or comparable other capital or voting rights held reaches or falls below any of the thresholds of 20, 30 or 50 per cent of the same, or results in the credit institution becoming or ceasing to be a subsidiary of the acquirer. The same notification requirements apply where an acquirer is party to an agreement or other arrangement that, if or when effected, will result in the acquirer's holding reaching, exceeding or falling below one of the aforementioned thresholds.

The names of the owners of holdings referred to above, as well as the sizes of those holdings, must be notified by the credit institution or its financial holding company to the FIN-FSA at least once a year, and any changes in the ownership of any holdings that have come to its notice must immediately be notified by the credit institution or its financial holding company.

The FIN-FSA may, within 60 business days of receipt of the notification, object to the acquisition of the holding if the holding would endanger the business operations of the credit institutions being carried out in accordance with prudent and sound business principles, and the endangerment is grounded on a breach of additional approval criteria.

The FIN-FSA may prohibit the exercise of voting rights in the credit institution by the acquirer for periods of one year at a time where an acquisition violated the acceptance criteria of the FIN-FSA's opposition or is not duly notified to the FIN-FSA, resulting in, inter alia, the suspension of all the rights related to shares or participations in a credit institution other than the right to profit.

ii Transfers of banking business

The Act on Commercial Banks and Other Credit Institutions in the Form of a Limited Company contains provisions on mergers, demergers and transfers of business of a credit institution operating in the form of a limited liability company. Corresponding transfers of business provisions are also included in the Savings Bank Act and in the Act on Cooperative Banks and Other Credit Institutions in the Form of a Cooperative, which means that savings banks and cooperative banks are also able to transfer business to another credit institution in accordance with the special regime. The provisions require, inter alia, a merger, demerger or transfer plan to be prepared, and public summons to be given to the creditors of the bank, except for its depositors.

Creditors, excluding depositors, are entitled to object to the arrangement, usually within a period of three to four months of the date of the public summons. If the prompt completion of the arrangement is considered necessary by the FIN-FSA to safeguard the stable operation of a credit institution, the arrangement can be executed, despite any objections by creditors whose position will not be jeopardised by the arrangement, in the FIN-FSA's opinion.

Creditors who have objected to the arrangement under any other circumstance must give their consent and receive payment or be granted a security for their claims before the completion of the arrangement. Even though they are not considered creditors, banks' depositors must be informed of the arrangement. Depositors whose deposit would be excluded from the deposit guarantee in full or in part are entitled to terminate their deposits.

The FIN-FSA must be informed of the arrangement before the public summons is applied for, and informed in due course of creditors' potential objections. The FIN-FSA has an individual right to object to the arrangement in the event that the receiving party will not need to apply for a new authorisation and the FIN-FSA considers that the arrangement endangers the fulfilment of the conditions for the bank's authorisation.

VII THE YEAR IN REVIEW

With regard to the regulation of the Finnish banking sector, since 1 January 2018, the FIN-FSA has been authorised to set a systemic risk buffer of 1 to 5 per cent on credit institutions, which has been applicable from 1 January 2019. The FIN-FSA made a decision on the level of systemic risk buffer requirements for Finnish credit institutions on 28 June 2019, but these were removed on 6 April 2020 due to the covid-19 pandemic. On 29 June 2021, the FIN-FSA decided to maintain the O-SII buffer at 2 per cent in the case of Nordea Group, at 1 per cent in the case of OP Financial Group, and at 0.5 per cent in the case of Municipality Finance Plc.[30] In June 2021, the FIN-FSA also tightened the loan-to-value ratio with 5 per cent from 90 per cent to 85 per cent for new housing loans granted for the buying of non-first homes, the validity of which has been continued in December 2021.[31] The loan-to-value ratio is now at its pre-pandemic level.

Comprehensive amendments were made to the ACI in 2021 in connection with the implementation of the EU's second banking package. Moreover, several amendments were introduced into the Finnish Consumer Protection Act (CPA),[32] which had a concrete effect on the day-to-day operations of Finnish banks and other consumer credit providers. Temporary amendments that mainly concerned setting an interest rate cap of 10 per cent for consumer credit other than goods-or-service-related consumer credit and prohibiting direct marketing of consumer credit were first introduced in early 2020 and later their applicability prolonged until 30 September 2021. The main purpose of the temporary amendments was to ensure that consumers who will be required to rely on credit financing in order to navigate themselves clear of the exceptional situation caused by covid-19 will be able to receive a moderate interest rate for the credit. Although these amendments to the CPA were temporary, the Finnish Parliament commissioned the Ministry of Justice to examine whether some or all of the temporary amendments should be made permanent. As a result, on 11 March 2022, an expert group of the Finnish Ministry of Finance published a report, in which it proposed a permanent lowering of the interest rate cap of consumer credits from 20 to 15 per cent. The new interest rate cap would apply to almost all consumer credits. The goal of these changes is to reduce consumer indebtedness and make the pricing of especially large credits with a long maturity period more reasonable. In addition, marketing of credits is proposed to be amended with additional restrictions, and obtaining credit as well as paying

30 Source: FIN-FSA macroprudential decision of 29 June 2021.

31 Source: FIN-FSA macroprudential decision of 16 December 2021.

32 38/1978.

with an invoice when making online purchases are proposed to be accompanied by strong identification. Furthermore, the proposal includes new provisions on warnings to be given in credit advertising.

Furthermore, authorities supervising the provision of consumer credit were given new powers and, inter alia, the competence to impose a penalty payment amounting to 4 per cent of the revenue of the consumer credit provider for infringing the Finnish laws pertaining to consumer credit. The Ministry of Finance also recently issued a government proposal that would amend the Finnish laws pertaining to mortgages in accordance with the recommendation of the European Systemic Risk Board to take further policy action to address the medium-term vulnerabilities related to household debt, which can be a source of systemic risk.[33] In December 2021, however, the FIN-FSA considered it necessary to update its recommendation and specified during the second quarter of 2022 in the light of updated information on extension of credit.[34]

The regulatory guidance of the FIN-FSA centred around the pandemic and the mitigation of the effects therewith, after which the regulatory measures started to slowly revert close to their pre-pandemic level. On 27 July 2021, the FIN-FSA decided that it would no longer continue its recommendation to credit institutions under its supervision to refrain from dividend distributions and repurchases and redemptions of shares when the purpose of the purchases and redemptions is to distribute profits after 30 September 2021. The recommendation ended with respect of both distribution of profits and variable remuneration. The FIN-FSA's decision was based on the ECB's decision issued on 23 July 2021 to not continue its recommendation on limiting distribution of profits of credit institutions after 30 September 2021 due to the improved economic situation and decreased uncertainty. In the midst of the pandemic, the FIN-FSA also sought to underline the importance of a functioning credit process, which is more or less the foundation for responsible conduct of business for a credit institution. The FIN-FSA reminded credit institutions of their statutory obligation to comply with good credit practices, including the requirement to conduct themselves responsibly in the event of payment restructuring concerning a consumer, as well as the need to consider any and all restrictions imposed by non-discrimination legislation for the credit institutions' credit granting processes, including the assessment of the customer's creditworthiness.

Further, the Finnish Act on the Supervision System of Bank and Payment Accounts (ASBA) has required that Finnish banks and Finnish branches of EEA banks maintain an information retrieval system for passing on certain information about clients holding an account or safety deposit box in the credit institution to the competent authorities, unless exempted from this obligation by the FIN-FSA. The ASBA is currently proposed to be amended as a means to implement Directive (EU) 2019/1153, laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, as well as supplementing the Finnish implementation of Directive (EU) 2018/843 (the Fifth Anti-Money Laundering Directive). The amendments are to enter into force in September 2022.

33 Source: European Systemic Risk Board, 30 October 2019.

34 Source: FIN-FSA macroprudential decision of 16 December 2021.

VIII OUTLOOK AND CONCLUSIONS

The continuing covid-19 pandemic and the resulting economic downturn and uncertainty are posing challenges both to customers' repayment capacity and credit institutions' credit processes and operations in the near future. The 'new normal' with regard to the role of digital technologies in customers' personal and professional lives has forced the traditional Finnish financial sector actors to adopt more digital solutions and revise their business models. Nevertheless, the stress tests performed on Finnish banks by the European Banking Authority showed in 2021 that the solvency of the Finnish banking sector would tolerate a strong weakening of the operational environment. This rapid transition into a more digitised world accelerated by the pandemic will open up possibilities for exploitation, as criminals have already targeted several Finnish banks and their customers by, for example, flooding search engine results with fake links and phishing for customers' online bank user identifiers. In order to ensure their uninterrupted operations in the future, it is vital for the Finnish financial sector actors to always focus on management of operational risks and to ensure the integrity of IT systems and information in general.

As has been evident for a while now, sustainability will have a significant effect on the future risks and regulation of actors in the financial sector with, for example, the proposal for a Regulation of the European Parliament and of the Council on European green bonds being further discussed in Finland and in the EU. Moreover, on 23 February 2022 the European Commission adopted a proposal for a Directive on corporate sustainability due diligence. In addition, further regulatory measures to combat the rise of Finnish household debt are also expected to become more concrete in 2022. The Ministry of Finance has issued a government proposal to the Finnish parliament, which would amend the laws pertaining to mortgages, and is expected to introduce, inter alia, a maximum term for housing loans and limitations to housing company loans for new housing construction. The proposal was open to consultations until 11 March 2022, and is expected to be presented before the Finnish Parliament during spring 2022. The proposed acts are expected to enter into force on 1 July 2023. Furthermore, the Finnish government has issued a government proposal for establishment of a positive credit register in Finland to combat over-indebtedness. The Act is supposed to enter into force in August 2022 with a gradual introduction to use.

Despite the continued low interest environment, a fair amount of new regulation and the market turbulence caused by the pandemic, the profitability of the Finnish banking sector has remained good, and the Finnish banking sector has survived the covid-19 pandemic well. The low level of interest rates continues to place a strain on Finnish banks; consequently, they have continued to reinvent their business models and strived to strengthen their ability to compete by undertaking structural reorganisations and rearranging their cost structures. These changes are likely to continue as the general level of interest rates is expected to remain low indefinitely.

Appendix 1

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