

SFS Number - 2003:1223 - [View register](#)

Covered Bond Issuance Act (SFS 2003:1223)

Ministry: Ministry of Finance B

Issued: 18 December 2003

Implemented changes: through SFS 2022:803

In force: 1 July 2004

Chapter 1 Introductory provisions

Scope of the Act

Section 1 This Act contains provisions governing the right of credit institutions to issue covered bonds. Act (2022:803).

Definitions

Section 2 For the purposes of this Act, the following words and expressions shall have the following meanings:

residential property: a residential property in accordance with Article 4(1)(75) of the Capital Requirements Regulation,

derivative agreements: agreements entered into, for the purpose of achieving balance between the financial terms and conditions governing assets in the cover pool and the corresponding terms and conditions for the covered bonds, between an issuing institution and a credit institution, a foreign credit institution within the EEA or a counterparty to claims as referred to in Article 129(1)(a) and (b) of the Capital Requirements Regulation,

issuing institution: a credit institution that has been granted a licence to issue covered bonds, in accordance with Chapter 2, Section 1,

EEA: the European Economic Area,

credit institution: a credit institution in accordance with Chapter 1, Section 5, of the Act on Banking and Financing Activities (SFS 2004:297),

Liquidity Coverage Regulation: Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to the liquidity coverage requirement for credit institutions,

cover pool: assets specified in Chapter 3, Sections 1 and 2, and registered funds in accordance with Chapter 3, Section 10, second paragraph, second sentence, and Chapter 4, Section 4, in which the bondholders and the issuing institution's counterparties in derivative agreements have a priority right

in accordance with this Act and the Rights of Priority Act (SFS 1970:979),

covered bonds: bonds or other comparable debt instruments that have a priority right in the issuing institution's cover pool,

Capital Requirements Regulation: Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, and

foreign credit institution in the EEA: a foreign credit institution in accordance with Chapter 1, Section 5, of the Act on Banking and Financing Activities that is domiciled within the EEA. Act (2022:803).

Chapter 2 Conditions for licences, etc.

Licence requirement

Section 1 A credit institution may issue covered bonds pursuant to a licence granted by Finansinspektionen (the Swedish Financial Supervisory Authority). A licence shall be granted provided that:

1. the articles of association, statutes or regulations accord with this Act,
2. there is reason to assume that the planned operations will be conducted in accordance with the provisions of this Act and other statutes governing the operations,
3. previously issued bonds and other comparable debt instruments, which have been issued in order to finance loans of the type that may be included in the cover pool, are converted into covered bonds or administered in an equivalent manner with respect to the creditors, in accordance with a plan approved by Finansinspektionen, and
4. the credit institution provides a financial plan showing that its financial situation is sufficiently stable such that the interests of other creditors are not jeopardised.

The financial plan referenced to in item 4 of the first paragraph (above) must include an auditor's statement substantiating the report. Act (2022:803).

Protected labelling

Section 2 The labelling "covered bonds" may only be used to describe those debt instruments that are covered by this Act.

Section 3 The labelling "Swedish covered bond" may only be used to describe such a debt instrument that meets the requirements of this Act.

A debt instrument as referred to in the first paragraph (above) may also be labelled as a European covered bond, a European covered bond (premium) and corresponding foreign official designations within the EEA. Act (2022:803).

Chapter 3 Operations of the issuing institution

Assets permitted in the cover pool

Mortgage loans and public claims

Section 1 The cover pool may comprise the following:

1. loans that have been granted against collateral in residential and commercial properties pursuant to Article 129(1)(d) and (f) of the Capital Requirements Regulation (mortgage loans), provided that the loans fulfil all requirements stated in Sections 3-7, and
2. public claims pursuant to Article 129(1)(a) and (b) of the Capital Requirements Regulation.

Mortgage loans that have been granted against collateral in commercial properties may not exceed 10 percent of the cover pool. However, this does not apply to mortgage loans that have been granted against collateral in commercial properties that are mainly used for agricultural or forestry purposes.

Collateral in residential and commercial properties must satisfy the requirements in Articles 208(2), 208(4) and 208(5) of the Capital Requirements Regulation. The collateral shall consist of a pledge over real property or a site leasehold, a pledge over tenant-owner rights or against corresponding foreign collateral. Act (2022:803).

Claims against credit institutions

Section 2 The cover pool may also include claims against credit institutions and foreign credit institutions within the EEA (claims against credit institutions).

The first paragraph applies to:

1. claims that are based on derivative agreements and that meet the requirements for credit quality step 1 or 2 pursuant to Article 129(1)(c) of the Capital Requirements Regulation,
2. claims that are based on derivative agreements and that only meet the requirements for credit quality step 3 pursuant to Article 129(1)(c) of the Capital Requirements Regulation, if approved by Finansinspektionen pursuant to Article 129(1a)(c), second sentence, of that Regulation,
3. other claims that meet the requirements for credit quality step 1 or 2 pursuant to Article 129(1)(c) of the Capital Requirements Regulation and that are level 1 or 2A assets in

accordance with Article 3 of the Liquidity Coverage Regulation, and

4. other claims that may be used to meet the requirement for a liquidity buffer according to Section 9 a.

Claims against credit institutions may not exceed the proportions specified in Article 129(1a) of the Capital Requirements Regulation. Act (2022:803).

Loan-to-value ratio

Section 3 When granting a mortgage loan, the loan may be included in the cover pool to the extent that the loan, relative to the collateral, lies within the loan-to-value ratios set out in Article 129(1)(d) and (f) of the Capital Requirements Regulation. Act (2022:803).

Valuation principles

Section 4 Whenever an issuing institution grants mortgage loans, the market value of the collateral shall be based upon an individual valuation. However, valuation of the following types of items may be based upon general price levels:

1. real property that consists of residential property in a single or two-family home,
2. site leasehold rights that have been granted for residential purposes regarding a single or two-family home, or
3. tenant-owner rights granted for residential purposes.

Market value refers to the price that would be achieved if a sale were carried out under market conditions with reasonable time allowed for negotiations. The market value shall be assessed without regard to speculative and temporary circumstances. Act (2022:803).

Requirements for performing valuations

Section 5 In accordance with Section 4, an independent valuation must be performed by a competent appraiser. The valuation must be documented. This documentation must state the identity of the person that performed the valuation as well as when, and on what basis, the valuation was made.

Valuations based upon general price levels must be performed in a satisfactory manner.

Geographic limitation

Section 6 Collateral for mortgage loans may only consist of property located within the EEA. Act (2022:803).

Value of collateral

Section 7 An issuing institution must monitor the market value of property used as collateral for mortgage loans in accordance with Article 129(3) of the Capital Requirements Regulation.

In the event of a significant decline in the market value of property used as collateral for mortgage loans, only the portion of the mortgage loan that, after the decline in value, lies within the loan-to-value ratio applicable pursuant to Section 3 may be included in the cover pool. Act (2022:803).

Matching rules

Section 8 The nominal value of the cover pool must at all times exceed, by at least two per cent, the aggregate nominal value of any claims that may be brought against the issuing institution in respect of covered bonds.

The value of the cover pool must also cover the costs for managing and winding up of covered bonds under bankruptcy. These costs may be determined at a flat rate. Act (2022:803).

Section 9 The issuing institution's assets in the cover pool shall be subject to certain terms and conditions regarding currency, interest rates and the fixed interest period. These shall be set such that a suitable balance is maintained in relation to the corresponding terms and conditions that apply to the covered bonds. Derivative agreements may be used for this purpose.

The issuing institution shall be considered to have achieved such balance as referred to in the first paragraph if, at all times, the present value of assets in the cover pool, less deductions for costs as referred to in Section 8, second paragraph, exceeds the present value of liabilities regarding covered bonds by at least two per cent. The present value of derivative agreements must be taken into consideration when making the calculation.

The issuing institution must ensure that the flow of payments regarding the assets in the cover pool, derivative agreements and covered bonds are such that the institution is, at all times, able to fulfil its payment obligations towards the holders of covered bonds and counterparties in derivative agreements. Act (2022:803).

Liquidity buffer

Section 9 a The issuing institution must ensure that the cover pool contains a liquidity buffer that covers the institution's highest daily accumulated net liquidity outflow in respect of a covered bond for the next 180 days.

The liquidity buffer must consist of:

1. level 1 or 2A assets in accordance with Article 3 of the Liquidity Coverage Regulation, or

2. claims against credit institutions comprising short-term deposits with an initial term not exceeding 100 days and that meet the requirements for credit quality step 1 or 2 pursuant to Article 129(1)(c) of the Capital Requirements Regulation.

In special circumstances, Finansinspektionen may approve that the liquidity buffer temporarily consists of

1. claims according to item 2 of the second paragraph that only meet the requirements for credit quality step 3 pursuant to Article 129(1)(c) of the Capital Requirements Regulation, or

2. level 2B assets in accordance with Article 3 of the Liquidity Coverage Regulation. Act (2022:803).

Section 9 b For a covered bond that satisfies the requirements in Section 15, second paragraph, item 2, the liquidity buffer must only cover the capital amount in relation to the later maturity date in the contract terms. Act (2022:803).

Obligation to maintain a register

Section 10 An issuing institution is required to maintain a register of covered bonds, the cover pool and, if applicable, derivative agreements.

At all times, the register must indicate the nominal value of the covered bonds as well as the cover pool that is tied to such bonds. The register must also show the funds deriving from the cover pool and derivative agreements. Act (2022:803).

Contents of the register

Section 11 The register must contain the following:

1. for each covered bond, information regarding the bond's nominal value, interest rate and date of maturity,

2. for each individual loan, information regarding the loan number, borrower, nominal value, amortisation terms and interest rate,

3. for each public claim in the form of a loan according to item 2, information regarding the guarantor,

4. for each mortgage loan, information regarding:

a) the value of collateral, as well as when and on what basis the valuation was made, and

b) claims arising from insurance agreements relating to the collateral,

5. for any claim against credit institutions, other than claims under derivative agreements, and for any public claim, other than credit under paragraph 2, information regarding its nominal value, date of maturity and interest rate, and

6. for each derivative agreement, information regarding the type and number of the agreement, counterparty of the derivative agreement, nominal amount, currency, interest rate, received collateral, value of the net claim or net liability and the effective/termination dates of the contract. Act (2022:803).

Independent inspector

Section 12 Finansinspektionen will appoint an independent inspector for each issuing institution. Finansinspektionen is entitled to revoke any such appointment and appoint a new inspector.

The inspector is entitled to receive a reasonable fee from the issuing institution for services provided. The fee amount shall be determined by Finansinspektionen.

Section 13 The inspector is required to monitor that the register as per Section 10 is maintained in a correct manner and in accordance with the provisions of this Act.

Such inspector is required to regularly report any findings, pursuant to the first paragraph, to Finansinspektionen.

Section 14 An issuing institution is required to provide the inspector with any information requested regarding the institution's activities related to covered bonds.

The inspector is entitled to conduct investigations at the issuing institution's premises.

Term extension

Section 15 The term of a covered bond may only be extended following the approval of Finansinspektionen. Prior to a decision on approval, Riksbanken (Swedish Central Bank) and Riksgäldskontoret (Swedish National Debt Office) shall be given have the opportunity to submit comments.

Approval may be granted if:

1. it is likely that an extension may prevent the issuing institution from becoming insolvent, and

2. the following are set out in the terms and conditions of the covered bond:

a) that the term may only be extended following the approval of Finansinspektionen,

b) the conditions for approval under item 1, and

(c) the later maturity date that applies following an extension.

A matter or case regarding approval must be dealt with rapidly. Act (2022:803).

Information on covered bonds

Section 16 An issuing institution must provide such information about a covered bond that is required in order for a buyer to be able to assess the bond and the risk associated with investing in it.

If the covered bond contains contract terms as referred to in Section 15, second paragraph, item 2, the information shall in particular include details about

1. the circumstances that may trigger an extension,
2. whether an extension is affected by the bankruptcy or resolution of the issuing institution, and
3. the requirement for approval by Finansinspektionen. Act (2022:803).

Chapter 4 Insolvency of the issuing institution

Rights of priority

Section 1 Such priority right as stipulated in Section 3 a of the Rights of Priority Act (SFS 1970:979), shall apply to all assets that are registered as cover pool in accordance with Chapter 3, Section 10.

In addition, such priority right applies to the funds subsequently recorded in the register in accordance with Section 4. Act (2022:803).

Administration of assets

Section 2 If, at the date of adjudication of bankruptcy, the assets in the cover pool meet the requirements set forth in this Act, they shall be maintained together and separate from the other assets and liabilities of the bankruptcy estate. Such measures shall prevail as long as the requirements remain fulfilled. This shall also apply to assets covered by the right of priority stated in Section 1, second paragraph, as well as bonds and derivative agreements listed in the register pursuant to Chapter 3, Section 10.

Should any temporary, minor deviation from these terms and conditions arise, the first paragraph shall nevertheless still apply.

Contractual payments

Section 3 Holders of covered bonds as well as counterparties in derivative agreements are entitled to payments in

accordance with the contract terms from the assets covered by the priority right, provided that such assets meet the requirements set forth in this Act or there is only a temporary, minor deviation from such requirements. Act (2010:320).

Funds received

Section 4 Funds that are received subsequent to the date of adjudication of bankruptcy in accordance with the terms and conditions in effect for assets in the cover pool and for derivative agreements must be listed in the register described in Chapter 3, Section 10.

Agreements on behalf of the bankruptcy estate

Section 5 The administrator may, on behalf of the bankruptcy estate, take out loans, enter into derivative agreements, repurchase agreements and other agreements for the purpose of achieving a balance between, on the one hand, cash flows, currencies, interest rates and interest periods pursuant to the financial terms and conditions in respect of the assets in the cover pool and derivative agreements entered into, and, on the other hand, the obligations of the issuing institution pursuant to covered bonds and derivative agreements. Act (2010:320).

Section 6 In order to fulfil the obligations of the bankruptcy estate pursuant to a loan taken out or an agreement entered into pursuant to Section 5, the administrator may, on behalf of the bankruptcy estate, use assets in the cover pool and funds set forth in Section 1, second paragraph. Funds which are received pursuant to such loans and agreements shall be administered in accordance with Section 4. Act (2010:320).

Section 7 Obligations and costs arising for the bankruptcy estate as a result of a loan taken out or an agreement entered into pursuant to Section 5 shall, in a distribution of different types of property in the estate, be treated pursuant to Chapter 14, Section 18 of the Bankruptcy Act (SFS 1987:672) as expenses for the care and custody of property included in the cover pool. Act (2010:320).

Section 8 In determining, pursuant to sections 2 and 3, whether the assets in the cover pool fulfil the terms and conditions imposed in this Act, the financial terms and conditions of loans taken out or agreements entered into pursuant to Section 5 shall also be taken into account. Act (2010:320).

Chapter 5 Specific rules regarding supervision and intervention

Specific supervision

Section 1 Finansinspektionen has a supervisory role over issuing institutions to ensure that they adhere to the provisions of this Act as well as other statutes governing their activities.

Intervention against issuing institutions

Section 2 In the event that an issuing institution seriously neglects its obligations pursuant to this Act or other statutes governing its operations, Finansinspektionen shall revoke the issuing institution's licence to issue covered bonds or, where sufficient, issue a warning.

Section 3 Finansinspektionen will revoke an issuing institution's licence if:

1. it fails to begin issuing covered bonds within one year of the date when its licence was granted,
2. it makes a declaration to waive its licence, or
3. it has obtained the licence by providing false information or in some other improper manner.

When sufficient, a warning may instead be issued for such cases as described in items 1 or 3 of the first paragraph. Act (2022:803).

Section 4 In the event that a licence is revoked, Finansinspektionen may then determine the manner in which operations are to be wound up. Any revocation decision may be associated by an injunction preventing the institution from continuing its operations.

Intervention against unlicensed entities

Section 5 Finansinspektionen shall issue an injunction on the continued operations of any unlicensed entity found to be conducting operations governed by this Act. Finansinspektionen is entitled to determine the manner in which operations are to be wound up.

Fines

Section 6 Should Finansinspektionen issue a prohibition on the continued operations as per Section 4 or an injunction as per Section 5, Finansinspektionen may stipulate a penalty if such order is not complied with.

Fees

Section 7 Issuing institutions are required to pay annual fees that are used to finance the supervision by Finansinspektionen.

Finansinspektionen may charge fees for the examination of applications, notifications and information under this Act. Act (2022:803).

Chapter 6 Appeals and authorisations

Appeals

Section 1 Any appeal of a decision taken by Finansinspektionen in accordance with this Act shall be submitted to the General Administrative Court.

Leave to appeal is required for appeals to the Administrative Court of Appeal.

Finansinspektionen is entitled to make any prohibition on operations, injunction or revocation effective immediately. Act (2018:814).

Section 2 Should Finansinspektionen fail to notify a decision regarding licensing pursuant to Chapter 2, Section 1, within six months from the date when the application is submitted, Finansinspektionen would then be required to notify the applicant of the reasons for such delay. The applicant may thereafter request a declaration by the Administrative Court of Appeal that the matter has been unreasonably delayed.

A request for a declaration as referred to in the first paragraph shall be made to the General Administrative Court. Leave to appeal is required for appeals to the Administrative Court of Appeal.

If Finansinspektionen has not issued a decision within six months from the date of issuance of such declaration, the application shall be deemed rejected. Act (2013:104).

Authorisations

Section 3 The Government or a public authority designated by the Government may issue regulations regarding the following:

1. the content of required plans, as per Chapter 2, Section 1, first paragraph, items 3 and 4,
2. real property, site leasehold rights and tenant-owner rights as referred to in Chapter 3, Section 1, third paragraph,
3. the method for conducting the valuation of collateral in accordance with Chapter 3, Section 5,
4. the method for determining market value in accordance with Chapter 3, Section 7,
5. how the flat rate for costs for managing and winding up of covered bonds in accordance with Chapter 3, Section 8, second paragraph, is to be determined,

6. the terms and conditions for derivative agreements as well as the calculation method and terms for risk exposure and interest payments, in accordance with Chapter 3, Section 9,
7. the manner in which the register shall be maintained, in accordance with Chapter 3, Section 10,
8. the required competence of independent inspectors as well as required tasks and reporting requirements, in accordance with Chapter 3, Sections 12 and 13,
9. what information an issuing institution is required to provide in accordance with Chapter 3, Section 16, first paragraph, and
10. the fees referred to in Chapter 5, Section 7. Act (2022:803).

Transitional provisions

2022:803

1. This law shall enter into force on 8 July 2022.
2. The earlier wording of the provision in Chapter 5, Section 3, still applies to transgressions that have occurred before the law enters into force.
3. Older provisions continue to apply to a covered bond that has been issued before the law enters into force. For such bonds, however, the new Chapter 3, Section 16, first paragraph, applies, and for transgressions that occur after the law has entered into force, the new wording of Chapter 5, Section 3, applies.
4. Older provisions also apply to such covered bonds as referred to in Article 30(2) of Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU, in its original form, provided that the issue volume is not extended after 8 July 2024 and the covered bond meets the requirements in points (a) to (d) of the same Article. For such bonds, however, the new Chapter 3, Section 16, first paragraph, applies, and for transgressions that occur after the law has entered into force, the new wording of Chapter 5, Section 3, applies.