

# **KREDITILSYNET**

Norway

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*This translation is for information purposes only. Legal authenticity remains with the official Norwegian version as published in Norsk Lovtidend.*

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No. 1 of 7 December 1956 (with amendments as per 1 July 2003)

## **Act on the Supervision of Credit Institutions, Insurance Companies and Securities Trading etc. (Financial Supervision Act)**

**Section 1** This Act provides for the supervision of:

1. Commercial banks.
2. Savings banks.
3. Non-life insurance companies, including the general agents (principal agents) in Norway of foreign non-life insurance companies.
4. Life insurance companies, including general agents (principal agents) in Norway of foreign life insurance companies.
5. Branches of credit institutions as mentioned in the Financial Institutions Act (No. 40 of 10 June 1988) section 1-4 first paragraph subparagraph 4 insofar as their activity in Norway is concerned.
6. Finance companies and mortgage companies; cf. the Financial Institutions Act (No. 40 of 10 June 1988) section 3-1.
7. Any person who is required under the Financial Institutions Act (No. 40 of 10 June 1988) section 4-1 to notify Kredittilsynet (the Banking, Insurance and Securities Commission) of organised or commercial intermediation of loans.
8. Any undertaking falling within the Financial Institutions Act (No. 40 of 10 June 1988) section 1-3 first paragraph subparagraph 1 to 6, or which the King pursuant to section 1-3 second paragraph exempts from any of the provisions of the Act, when it is decided that Kredittilsynet shall supervise the business.
9. Auditors and firms of auditors approved under the Auditors Act.
10. Stock exchanges and authorised marketplaces.
11. Securities registers.
12. Maritime insurance associations; cf. Act no. 2 of 3 July 1953.
13. Representative offices in Norway of foreign financial institutions.
14. Investment firms and other undertakings carrying on business connected with securities trading, and of compliance with provisions on securities trading issued in or pursuant to law.
15. Private, municipal and county municipal pension funds and Norges Bank's pension fund.
16. Other undertakings to the extent provided in or pursuant to special legislation.

When an institution as mentioned in the first paragraph forms part of a group, other companies in the group shall also be subject to supervision pursuant to this Act. When required on supervisory grounds this also applies to those parts of the business of the companies in the group that do not otherwise come within the provisions of this Act.

This Act also provides for the supervision of foreign undertakings corresponding to undertakings as mentioned in the first paragraph, or which carry on activity corresponding to activity as mentioned in the first paragraph, and foreign undertakings corresponding to undertakings as mentioned in the Financial Institutions Act (No. 40 of 10 June 1988) section 2a-6 first paragraph litera b and e to the extent that they carry on activity in Norway.

Rules of this Act concerning institutions apply correspondingly to natural persons as mentioned in the first paragraph.

**Section 2** Supervision is carried out by Kredittilsynet. The King may issue further regulations on the activity of Kredittilsynet.

Kredittilsynet is managed by a board of five members. The members and their alternates are appointed by the King. The King nominates the chairman and vice chairman of the board. The director general of Kredittilsynet is appointed by the King for a period of six years. The members of the board and their alternates are appointed for a period of four years. The King may lay down instructions for the board.

Two members are elected by and from among the employees to supplement the board when it deals with administrative business. The election arrangement is agreed upon by negotiation with the employees, and in the absence of such agreement is stipulated by the ministry.

Norges Bank shall have an observer on the board. The observer is entitled to speak and to submit proposals, but not to vote. The observer and his/her alternate are appointed by the Ministry for a period of four years following a proposal from Norges Bank.

Kredittilsynet may engage state authorised and registered accountants and persons with other expert knowledge to perform assignments within Kredittilsynet's area of responsibility.

Kredittilsynet may appoint committees to undertake independent investigations within Kredittilsynet's area of responsibility. Institutions and officers and employees of financial institutions under Kredittilsynet's supervision are subject to the same disclosure duty towards such a committee as towards Kredittilsynet; cf. section 3, second and third paragraph. As part of its investigation, the committee may require evidence to be taken in court pursuant to the Courts of Justice Act section 44. The members of the committee are subject to a duty of confidentiality as stated in section 7 fifth paragraph and must, except as otherwise stipulated or premised upon appointment, follow such rules as apply to members of the board of Kredittilsynet.

The ministry may decide that the expenditure on assignments as mentioned in the two preceding paragraphs shall be refunded entirely or in part by the institutions at which the assignments have been carried out.

**Section 3** Kredittilsynet shall ensure that the institutions it supervises operate in an appropriate and proper manner in accordance with law and provisions issued pursuant to law and with the intentions underlying the establishment of the institution, its purpose and articles of association.

Kredittilsynet shall examine accounts and other records of the institutions and shall otherwise carry out such investigations of their position and activity as Kredittilsynet deems necessary. The institution is obliged at all times to furnish all information that Kredittilsynet may require and to give Kredittilsynet access to, and in the event hand over to Kredittilsynet for inspection, the institution's records, registered accounting information, accounting

documentation, ledgers, documents, computers or other technical aids and material that is available via such aids and holdings of whatever kind.

If the disclosure duty imposed on the institution pursuant to the second paragraph is not complied with, the disclosure duty may be imposed on the individual officers and employees of the institution. The institution shall as a rule be notified in such cases. The auditor may be ordered to disclose information which appears in the annual accounts, account form, summary of staff pay-and-deduction statements, auditor's records and auditor's report.

**Section 3a** The appointed auditor at institutions as mentioned in section 1 first paragraph is obliged to report to Kredittilsynet immediately any circumstance concerning the activities of the institution which comes to his knowledge during the performance of his auditing duties which may

1. involve contravention of provisions regulating the institution's activities, if such contravention may entail withdrawal of the institution's authorisation to carry on business,
2. harm the continued operation of the institution, or
3. entail that the accounts will not be approved or that reservations will be made.

The reporting obligation pursuant to the first paragraph applies correspondingly to circumstances which come to the auditor's knowledge during the performance of his auditing duties for undertakings with which the institution has close connections. "Close connections" means a situation where two or more natural or legal persons are connected with each other by virtue of

- a) capital interest, i.e. by holding or controlling at least 20 per cent of an undertaking's voting rights or capital, or
- b) control, i.e. through a connection between a main undertaking and a subordinate undertaking or through a corresponding connection between any natural or legal person and an undertaking. As a general rule control is deemed to be present where persons or undertakings own or control at least 20 per cent of the shares or votes in the institution, and where the institution owns or controls at least 20 per cent of the shares or votes in an undertaking, or where undertakings form part of the same group as the institution. Any subordinate undertaking of a subordinate undertaking is also regarded as a subsidiary of the main undertaking at the head of the undertakings. A situation where two or more natural or legal persons are permanently connected with a person through control is also regarded as a close connection between such persons. The ministry may lay down further rules on what are to be regarded as close connections.

Circumstances which the auditor reports in heedful good faith to Kredittilsynet shall not be regarded as breaches of the duty of confidentiality pursuant to law, regulation or agreement, and shall not entail liability.

**Section 4** Kredittilsynet may order the institutions it supervises:

1. to arrange audits in conformity with the rules laid down by Kredittilsynet and to arrange annual accounts and registration of accounting information in the prescribed manner,
2. to arrange their internal control in accordance with the provisions laid down by Kredittilsynet,

3. to submit statements and information in the manner prescribed by Kredittilsynet and which Kredittilsynet considers it needs in order to discharge its functions, including for statistical purposes,
4. to maintain a higher capital ratio than the statutory minimum requirement,
5. to restrict overall credit to a customer to a lower amount than the statutory maximum,
6. to alter the composition of the control committee,
7. to rectify the matter if an institution's bodies have failed to discharge their duties as required by provisions laid down in or pursuant to law, or have acted in breach of the terms of the institution's licence. The same applies if the institution's bodies have failed to comply with the institution's articles of association or with internal guidelines adopted in conformity with provisions laid down in or pursuant to law,
8. to rectify any inappropriate investment of the institution's funds, and to organise their activity to conform to resolutions adopted pursuant to law by the Storting, the King, a ministry or Norges Bank.

The rules of the Private Limited Companies Act and the Public Limited Companies Act regarding audits may be overridden by rules as mentioned in the first paragraph subparagraph 1.

**Section 4a** Should Kredittilsynet assume that someone without the necessary authorisation is engaged in activities encompassed by section 1 first or third paragraph, it may issue an order to halt such activities. Kredittilsynet may, if it deems it necessary in order to decide whether an order pursuant to the first sentence should be issued, instruct the person it assumes to be in charge of such activity to provide information about the activity. Section 3 third paragraph applies correspondingly. An order to provide information may also encompass an undertaking's parent company or the parent company in the group of which the undertaking forms part, except where the undertaking forms part of a group under supervision, cf. section 1 second paragraph.

**Section 5** Kredittilsynet may convene meetings of the board, control committee and committee of representatives or similar controlling bodies of institutions which are under its supervision. At such meetings and in general meetings Kredittilsynet may be represented and may submit proposals, but may not vote. If an extraordinary general meeting is not convened when so demanded by Kredittilsynet, Kredittilsynet may convene such a meeting.

As part of its supervisory activity Kredittilsynet may require evidence to be taken in court pursuant to the Courts of Justice Act section 44. The rules concerning the taking of evidence in civil litigation apply equally to the taking of evidence under this Act.

**Section 6** Contravention of provisions applying to institutions that are supervised by Kredittilsynet may be reported to the prosecuting authority or to the public authority within whose jurisdiction the matter specifically falls.

When Kredittilsynet in the course of its work learns of circumstances involving the proceeds of a criminal act, information to this effect shall be forwarded to the National Authority for Investigation and Prosecution of Economic and Environmental Crime, ØKOKRIM.

**Section 7** Board members and employees of Kredittilsynet must treat as confidential any information about a customer's affairs which may come to their knowledge in the course of

their work. They must not make use of such information for commercial purposes. The duty of confidentiality pursuant to this provision and the provisions of the Public Administration Act does not apply to disclosure of information to Norges Bank or to supervisory authorities in other EEA states which conduct supervision as mentioned in section 1 first paragraph subparagraphs 1 to 6 or 14, or supervision of management companies for securities funds. Neither does the duty of confidentiality prevent Kredittilsynet from passing to stock exchanges authorised under the Stock Exchange Act section 2-1, to a securities register authorised according to Act no 64 of 5 July 2002 on Registration of Financial Instruments (the Securities Register Act) section 3-1 or clearing house authorised according to Act no. 79 of 19 June 1997 on Securities Trading (Securities Trading Act) section 6-1, such information on circumstances as is necessary for the discharge of these institutions' statutory functions. The ministry may lay down rules to the effect that the duty of confidentiality shall not apply in relation to supervisory authorities in non-EEA states which conduct supervision as mentioned in the third sentence. The ministry may lay down further rules on Kredittilsynet's exchange of information with those authorities and bodies in respect of which the duty of confidentiality does not apply.

Board members and employees of Kredittilsynet must not be employed by or take paid work with or be a member of the board, committee of representatives or corresponding body of any institution under Kredittilsynet's supervision.

Such institutions shall not grant loans against endorsement or other guarantee furnished by a board member or employee of Kredittilsynet or by a partnership of which such board member or employee of Kredittilsynet is a partner. Nor shall they grant loans to officers or employees of Kredittilsynet without in each case obtaining the consent of the appropriate ministry as regards loans to Kredittilsynet's board members or directors and the consent of the director general of Kredittilsynet as regards loans to other employees. Board members, alternates and directors of Kredittilsynet shall, pursuant to further rules laid down by the King, furnish information about own-account trading of financial instruments and about the customer relationships they enter into with institutions that are supervised by Kredittilsynet.

Board members and employees of Kredittilsynet may not own shares in or participations issued by institutions subject to supervision. The ministry may grant dispensation from this prohibition.

The provisions of this section apply equally to alternates, observers and observers' proxies to the board of directors.

**Section 8** Kredittilsynet shall prepare all cases falling within its area of responsibility in which the final decision rests with the King or a ministry.

Kredittilsynet submits each year a report on its activity to the appropriate ministry.

**Section 9** The costs of supervision shall be levied on those institutions which pursuant to section 1 or other special authority in law are under supervision at the beginning of the budget year. The costs are distributed among the various groups of institutions according to the extent of the supervision. The costs of supervising compliance with the general provisions governing securities trading, and costs of supervising compliance with the Act on Payment Systems etc. (no. 95 of 17 November 1999), are levied on the basis of the distribution pursuant to the preceding sentence. Such costs shall nevertheless not be levied on estate agencies or debt collection agencies; auditors or auditing firms; accountants, accounting

firms or accounting pools.

In those groups mentioned in section 1 first paragraph subparagraph 1, 2, 6, 8 and 15, the distribution shall be based on the size of the institution's total assets at the beginning of the year, nonetheless such that the ministry stipulates for each year a minimum and maximum amount which can be levied on the individual institution in each group. For a commercial bank formed pursuant to section 4 third paragraph of the Commercial Banks Act, an amount may be specially stipulated on the basis of the extent of the supervision. Distribution within groups mentioned under section 1 first paragraph subparagraph 3, 4 and 12 is based on the size of the total premium income for direct insurance contracted in Norway. The ministry may nonetheless for each year stipulate a minimum and maximum amount which may be levied on the individual institution in each group. The distribution within groups falling within section 1 first paragraph subparagraph 5, 7, 9, 10, 11, 13 and 14 is on the basis of rules stipulated by the ministry. When supervision is pursuant to section 1 second paragraph or other special statutory authority, cf. section 1 first paragraph subparagraph 16, the distribution within each group shall be in accordance with rules stipulated by the Ministry. Levying shall be carried out by Kredittilsynet, but shall be approved by the Ministry.

That part of the costs which is levied on housing savings associations shall be paid by the Treasury.

The levied amounts are a basis for enforcement of distraint.

The announcements which Kredittilsynet sends to the Norwegian Gazette pursuant to the Insurance Companies Act of 29 July 1911 shall be paid for by the insurance company concerned.

**Section 10** Any officer or employee of an institution under the supervision of Kredittilsynet who wilfully or through negligence contravenes this Act or provision or order issued pursuant thereto or is an accomplice to such contravention shall be punishable by fines or by imprisonment of up to one year, or both, unless the offence comes under a more severe penal provision. If particularly aggravating circumstances obtain, imprisonment of up to three years may be imposed. Any person, officer or employee of an undertaking who wilfully or through negligence contravenes an order issued pursuant to section 4a shall be subject to the same penalties.

If an order issued by Kredittilsynet under provisions laid down in or pursuant to law is not complied with, the ministry in question may decide that the persons or the institution, the parent company of the institutions or the parent company in the group of which the institution forms part, that shall comply with the order, shall pay a daily fine until the circumstance in question is rectified. The imposition of a fine is a basis for enforcement of distraint.

## **Section 11**

I. This Act comes into force immediately.

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