

23 March 2018

The Group Executive Management of Sydbank

File No. 3022-0003

Setting of minimum requirement for own funds and eligible liabilities, cf section 266 of the Danish Financial Business Act

1. Decision

The Danish Financial Supervisory Authority (FSA) sets the minimum requirement for own funds and eligible liabilities (MREL) for Sydbank at 12.4% of Sydbank's total liabilities and own funds. This represents 27.3% of risk-weighted exposures, equal to DKK 17.4bn at the end of 2016.

The requirement must be fully met by 1 July 2019. The MREL is set annually by the Danish FSA and may be met by means of capital instruments and debt exposures which can be written down and converted before unsecured claims in case of resolution and bankruptcy and which otherwise meet the conditions for MREL funds. Debt instruments issued before 1 January 2018 which are not written down and converted before unsecured claims in case of resolution or bankruptcy but which otherwise meet the conditions for MREL funds may be included in the calculation towards meeting the MREL until 1 January 2022.

The Danish FSA sets the MREL annually on the basis of the annual updating of the group's resolution plan.

2. Legal basis

Pursuant to section 266(1) of the Danish Financial Business Act the Danish FSA after consulting with Finansiell Stabilitet sets a requirement for the size of the own funds and eligible liabilities of an undertaking.

According to section 268(1) of the Danish Financial Business Act the requirement is set on the basis of a specific assessment of the following criteria:

- 1) The undertaking can be wound up using the resolution tools.
- 2) If bail-in is applied, the undertaking has sufficient own funds and eligible liabilities to ensure that the losses can be absorbed and the group's Common Equity Tier 1 capital can be restored to a level at which the group can continue to meet the requirements for authorisation, and to sustain sufficient market confidence.
- 3) The undertaking has sufficient own funds and eligible liabilities to ensure that, if certain categories of own funds and eligible liabilities are excluded from bail-in, the losses can be absorbed and a group's

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Common Equity Tier 1 capital can be restored to a level at which the group can continue to meet the requirements for authorisation.

- 4) The undertaking's size, business model and risk profile.
- 5) The extent to which the guarantee fund for depositors and investors can help to finance the resolution in accordance with section 2a of the Danish Guarantee Fund for Depositors and Investors Act.
- 6) The extent to which the fact that an undertaking is distressed has a negative impact on financial stability, including any spill-over effect on other financial undertakings.

The Commission Delegated Regulation (EU) 2016/1450¹ (the Regulation), specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities, further details the criteria listed in section 268(1) of the Danish Financial Business Act.

It appears from the Regulation that the MREL must be expressed as a percentage of the undertaking's total liabilities and own funds, cf Article 7(2) (cf section 266(1), second sentence of the Danish Financial Business Act).

According to the Regulation the MREL consists of a loss absorption amount, cf Article 1, and a recapitalisation amount, cf Article 2, as well as the necessary adjustments specified in Articles 3-6, cf Article 7(1).

As a rule the loss absorption amount is determined as the undertaking's solvency need plus the combined buffer requirement, cf Article 1(4).

The recapitalisation amount is determined on the basis of the anticipated resolution strategy as identified in the institution's resolution plan. The recapitalisation amount is generally set at zero if the resolution strategy is bankruptcy, cf Article 2(2). If the resolution strategy is not bankruptcy the recapitalisation amount is generally determined as the solvency need plus capital buffers, cf Article 2(5), (7) and (8).

The Danish FSA may decide to make an upward or a downward adjustment of the loss absorption amount and the recapitalisation amount, cf Article 1(5) and Article 2(3) and (9). Moreover the Danish FSA may make adjustments according to Articles 3-6 of the Regulation.

¹ The Commission Delegated Regulation (EU) 2016/1450 of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities

Pursuant to Article 8(1) of the Regulation the Danish FSA may determine an appropriate transitional period to reach the MREL. The transitional period must be as short as possible. The Danish FSA must determine a planned MREL for each 12-month period during the transitional period, cf Article 8(2). By the end of the transitional period the undertaking must meet the MREL.

It is a condition for restructuring or resolution pursuant to the Danish act on restructuring and resolution of certain financial undertakings (the Danish Restructuring and Resolution Act) that public interest necessitates the implementation of resolution measures, cf section 4(1)3 of the Danish Restructuring and Resolution Act. Pursuant to section 5 of the Danish Restructuring and Resolution Act public interest comprises the following:

1. Ensuring the continuity of critical functions which if discontinued would likely lead to disruption of services essential to the real economy or lead to disruption of financial stability.
2. Avoiding considerable negative consequences for financial stability particularly by preventing contagion, including to market infrastructures, and by maintaining market discipline.
3. Protecting public funds by minimising dependence on extraordinary public financial support.
4. Protecting depositors and investors covered by the Danish Guarantee Fund for Depositors and Investors Act.
5. Protecting customers' funds and assets.

Furthermore it is a condition that the resolution objectives cannot be fulfilled to the same extent in case of liquidation or bankruptcy proceedings.

3. Assessments by the Danish FSA

Sydbank has been designated as a SIFI in Denmark having systemic importance and critical functions that would have to be continued in case of resolution.

Consequently the resolution plan assesses that public interest generally calls for the implementation of one or more resolution measures if Sydbank should fail, cf section 4(1)3 of the Danish Restructuring and Resolution Act.

As a general rule Sydbank would remain in the market and be reestablished as a viable undertaking in the event of resolution. This would take place via recapitalisation of Sydbank by means of write-down and conversion.

The MREL consists of a loss absorption amount and a recapitalisation amount.

The loss absorption amount for Sydbank is determined as the solvency need plus the combined buffer requirement. The recapitalisation amount is determined on the basis of the anticipated resolution strategy as the solvency need plus the combined buffer requirement.

Since Sydbank, as a general rule, would be reestablished as a viable undertaking by Finansiell Stabilitet the MREL will be twice the solvency need plus twice the combined buffer requirement.

On the basis of the above the Danish FSA assesses that the MREL based on the data reported at the end of 2016 should be set at 27.3% of the risk-weighted exposures.

The Danish FSA sets the minimum requirement for own funds and eligible liabilities (MREL) for Sydbank at 12.4% of Sydbank's total liabilities and own funds. This represents 27.3% of risk-weighted exposures, equal to DKK 17.4 bn at the end of 2016.

The requirement must be fully met by 1 July 2019. The MREL is set annually by the Danish FSA and may be met by means of capital instruments and debt exposures which can be written down and converted before unsecured claims in case of resolution and bankruptcy and which otherwise meet the conditions for MREL funds. Debt instruments issued before 1 January 2018 which are not written down and converted before unsecured claims in case of resolution or bankruptcy but which otherwise meet the conditions for MREL funds may be included in the calculation towards meeting the MREL until 1 January 2022.

4. Complaints

According to section 372(1) of the Danish Financial Business Act decisions made by the Danish FSA may be brought before the Danish Company Appeals Board by email to ean@naevneneshus.dk or by post to Nævnenes Hus, Toldboden 2, 8800 Viborg, Denmark, no later than four weeks after the receipt of such decisions.

Pursuant to section 7(2) of the Danish executive order on the Company Appeals Board of the Danish Ministry of Industry, Business and Financial Affairs the fee for filing a complaint with the Company Appeals Board is DKK 4,000. According to section 15(4) of the mentioned executive order the board or the chairman on its behalf may decide to refund the fee paid in full or in part if the claim is upheld in full or in part. The fee is refunded if the complaint is rejected.