

Setting of minimum requirement for own funds and eligible liabilities

1. Decision

The Danish Financial Supervisory Authority (FSA) sets the minimum requirement for own funds and eligible liabilities (MREL) for Sydbank A/S as the parent at a consolidated level at 12.2% of Sydbank's total liabilities and own funds. This represents 29.3% of the risk exposure amount (REA), equal to DKK 17bn based on data from September 2019.

The MREL takes effect from 1 January 2020. On 30 June 2020 the MREL will rise to 12.4% of Sydbank's total liabilities and own funds at a consolidated level and on 30 December 2020 it will rise to 12.6% (29.8% and 30.3% respectively of REA made up in September 2019) based on the increase in the countercyclical capital buffer.

The MREL is set annually by the Danish FSA on the basis of the group's resolution plan. The MREL 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 other 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.

2. Legal basis

Pursuant to section 266(1) of the Danish Financial Business Act the Danish FSA after consulting with Finansielt Stabilitet sets the size of the MREL of a financial institution.

Similarly a financial institution which is a parent and which is subject to consolidated supervision must meet the MREL at a consolidated level, cf section 266(3) of the Danish Financial Business Act.

Pursuant to section 268(1) of the Danish Financial Business Act the Danish FSA after consulting with Finansielt Stabilitet sets the MREL for a financial institution at a consolidated level on the basis of a specific assessment of the following criteria:

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**DANISH MINISTRY OF INDUSTRY,
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- 1) The group can be wound up using the resolution tools.
- 2) If bail-in is applied, the group 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 group 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 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 group's size, business model, financing 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 a group is distressed has a negative impact on financial stability, including any spillover effect on other financial undertakings/groups.

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 set out in section 268(1) of the Danish Financial Business Act.

The MREL must be expressed as a percentage of total liabilities and own funds of the undertaking, cf Article 7(2) of the Regulation.

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

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

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) of the Regulation. 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) of the Regulation.

¹ 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

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) of the Regulation. Moreover the Danish FSA may make adjustments according to Articles 3-6 of the Regulation.

The Danish FSA may determine an appropriate transitional period to reach the MREL, cf Article 8(1) of the Regulation. 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) of the Regulation. By the end of the transitional period the undertaking must meet the MREL.

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

3. Assessments by the Danish FSA

Assessment of public interest

Sydbank has been designated as systemically important and provides critical functions.

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 Restructuring and Resolution Act.

Resolution strategy

As a general rule Sydbank would remain in the market and be reestablished as a viable undertaking. This would take place via recapitalisation of Sydbank by writing down and converting the claims of the bank's creditors.

Assessment of size of MREL

The loss absorption amount of the MREL for Sydbank A/S is determined as the group's solvency need plus the combined buffer requirement. The recapitalisation amount is determined as the solvency need plus the combined buffer requirement with the exception of the countercyclical capital buffer.

Since Sydbank, as a general rule, would be reestablished as a viable undertaking by Finansielt Stabilitet, the MREL will be twice the solvency need plus twice the combined buffer requirement. The countercyclical capital buffer is however only included once in the calculation of the MREL.

On the basis of the above the Danish FSA assesses that the MREL should be set at 12.2% of Sydbank's total liabilities and own funds at a consolidated level. This represents 29.3% of REA, equal to DKK 17bn based on data for September 2019.

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4. Complaints

Decisions made by the Danish FSA may be brought before the Danish Company Appeals Board no later than four weeks after the receipt of such decision, cf section 372(1) of the Danish Financial Business Act. The complaint must be sent by email to ean@naevneneshus.dk or by post to the secretariat of the Danish Company Appeals Board, Toldboden 2, 8800 Viborg, Denmark.

Complaints filed with the Danish Company Appeals Board are subject to a fee of DKK 4,000, cf section 7(2) of the Danish executive order on the Company Appeals Board of the Danish Ministry of Industry, Business and Financial Affairs. The Danish Company Appeals Board or its chairman may decide to refund the fee paid in full or in part if the claim is upheld in full or in part, cf section 15(4) of the Danish executive order on the Company Appeals Board. The fee is refunded if the complaint is rejected by the Danish Company Appeals Board.