

20 December 2021

Attn: The Board of Directors and Group
Executive Management of Sydbank A/S

File No. 21-014970

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 a resolution entity at 1 January 2022 on a consolidated basis at a resolution group level, cf section 267(1) of the Danish Financial Business Act, at 24.4% of Sydbank A/S's total risk exposure (risk exposure amount) and 6.0% of Sydbank A/S's total exposure measure (leverage ratio). The MREL is set for Sydbank A/S as a resolution entity. The MREL is based on figures for year-end 2020. However the MREL takes into account a decrease in the Pillar II add-on to the solvency need in the second quarter of 2021 of 0.4 percentage points. The MREL based on the total risk exposure would have been the binding requirement at year-end 2020. At year-end 2020 the MREL is equal to DKK 13.2bn.

The Danish FSA **sets** the subordination requirement for Sydbank A/S at 1 January 2022 on a consolidated basis at a resolution group level at twice the solvency need and once the capital buffer requirement for Sydbank A/S, cf section 267c(4)(2), equivalent to 24.4% of the total risk exposure. The requirement is based on figures for year-end 2020. However the requirement takes into account a decrease in the Pillar II add-on to the solvency need in the second quarter of 2021 of 0.4 percentage points. At year-end 2020 the requirement is equal to DKK 13.2bn.

At 30 September 2022 the subordination requirement for Sydbank A/S will be set at 25.3% of the total risk exposure due to the reactivation of the countercyclical capital buffer.

2. Legal basis

2.1. Minimum requirement for own funds and eligible liabilities

Banks must at all times comply with an MREL set by the Danish FSA after consulting with Finansiell Stabilitet, cf section 266(1), first sentence of the Danish Financial Business Act.

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DANISH MINISTRY OF
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Setting minimum requirement for own funds and eligible liabilities

The Danish FSA must set the MREL as a percentage of the undertaking's total risk exposure and total exposure measure, cf section 266(5) of the Danish Financial Business Act.

The MREL is determined on the basis of the following criteria, cf section 266a(1) of the Danish Financial Business Act:

- 1) The resolution group can be resolved by applying the resolution tools in respect of the resolution entity in a way that meets the resolution objectives.
- 2) The resolution entity and its subsidiaries that are not resolution entities have sufficient own funds and eligible liabilities to ensure that the losses can be absorbed and the capital ratio and the leverage ratio of the entities in question can be restored to a level that allows the resolution entity and its subsidiaries that are not resolution entities to continue to meet the requirements for authorisation and to carry on the activities for which they are authorised while sustaining sufficient market confidence.
- 3) The resolution entity has sufficient own funds and eligible liabilities to absorb losses and restore the resolution entity's capital ratio and leverage ratio to a level that allows the resolution entity to continue to meet the requirements for authorisation and to carry on the activities for which it is authorised while sustaining sufficient market confidence when the resolution plan envisages the possibility that certain categories of own funds and eligible liabilities will be excluded from a bail-in or be transferred in full to a recipient under a partial transfer.
- 4) The undertaking's size, business model, financing model and risk profile.
- 5) The extent to which the failure of the undertaking will have an adverse impact on financial stability, including any spillover effect on other undertakings.

The Danish FSA sets the MREL at an amount that is sufficient to ensure that the losses which the undertaking is expected to incur are fully absorbed (loss absorption) and that the resolution entity and its subsidiaries that are not resolution entities are recapitalised to the level necessary to allow them to continue to meet the requirements for authorisation and to carry on the activities for which they are authorised for an appropriate period of no longer than one year (recapitalisation), cf section 3 of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities.

For a resolution entity the MREL, cf section 266 of the Danish Financial Business Act, cf section 5 of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities, is set as the following:

- 1) A percentage of the resolution entity's total risk exposure (risk exposure

amount), cf section 266(5)(1) of the Danish Financial Business Act, calculated in accordance with Schedule 1, no. 2. The MREL is set as a percentage calculated in accordance with Schedule 1, no. 2.

- 2) A percentage of the resolution entity's total exposure measure (leverage ratio), cf section 266(5)(2) of the Danish Financial Business Act, calculated in accordance with Schedule 1, no. 3. The MREL is set as a percentage calculated in accordance with Schedule 1, no. 4.

Loss absorption amount

The loss absorption amount is determined as the losses to be absorbed in the event of resolution and which correspond to the requirements for the resolution entity, cf Article 92(1)(c) of Regulation (EU) no. 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and section 124 of the Danish Financial Business Act, on a consolidated basis at a resolution group level, cf Schedule 1, nos. 1 and 3 of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities.

Recapitalisation amount

The recapitalisation amount is determined as the amount that allows the resolution group to restore compliance with its total capital ratio requirement referred to in Article 92(1)(c) of Regulation (EU) no. 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and section 124 of the Danish Financial Business Act on a consolidated basis at a resolution group level after the implementation of the preferred resolution strategy, cf Schedule 1, nos. 1 and 3 of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities.

The Danish FSA may make an upward or a downward adjustment of the recapitalisation amount, cf Schedule 1, nos. 1 and 3 of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities. The Danish FSA may increase the recapitalisation amount by an appropriate amount necessary to ensure that the resolution entity, following resolution, is able to sustain sufficient market confidence for an appropriate period of no longer than one year, cf Schedule 1 no. 1 of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities.

Compliance with minimum requirement for own funds and eligible liabilities

A resolution entity is required to meet the MREL on a consolidated basis at a resolution group level, cf section 267(1) of the Danish Financial Business Act. The consolidation applies exclusively to undertakings subject to a minimum requirement for own funds and eligible liabilities, cf section 267(2), first sentence of the Danish Financial Business Act.

2.2. Subordination requirement regarding minimum requirement for own funds and eligible liabilities

After consulting with Finansielt Stabilitet, the Danish FSA must determine that a share of the minimum requirement for own funds and eligible liabilities must be met with own funds, subordinated eligible instruments or liabilities comprised by section 267a(1)(5) (subordination requirement) as regards resolution entities that are not global systemically important financial institutions (G-SIFIs) and that form part of a resolution group whose total assets are less than EUR 100bn but which in the assessment of the Danish FSA are likely to pose a systemic risk in the event of failure, cf section 267c(1)(3) of the Danish Financial Business Act.

However, after consultation with Finansielt Stabilitet, the Danish FSA may determine that the subordination requirement may not exceed the greater of 8% of the resolution group's total liabilities and own funds or the amount calculated on the basis of the formula in Schedule 9, no. 3, if one of the following conditions is met, cf section 267c(4) of the Danish Financial Business Act:

- 1) The Danish FSA and Finansielt Stabilitet have ascertained that there are significant obstacles to resolution, cf sections 262 and 263, and that no remedial action has been taken in accordance with the order issued by the Danish FSA pursuant to section 264(5) within the stipulated limit, or the significant obstacles ascertained cannot be remedied using the order as stipulated in section 264(5), and the determination of the share stipulated in subsection 1 in accordance with this provision compensates for the adverse impact of the significant obstacle on resolvability.
- 2) It follows from the resolution plan of the resolution entity that the preferred resolution strategy of the resolution entity is feasible and credible to a limited extent, taking into account the resolution entity's size, the nature, extent and complexity of its activities, the risks associated with its activities, any interconnectedness as well as the resolution entity's legal status and shareholding structure.
- 3) The individual solvency requirement pursuant to section 124(3) or individual solvency need pursuant to section 124(2) reflects the fact that the resolution entity is in terms of riskiness among the top 20% of entities for which the Danish FSA sets the minimum requirement for own funds and eligible liabilities.

2.3 Transitional period

After consultation with Finansielt Stabilitet, the Danish FSA sets a deadline within which undertakings must meet the MREL and the subordination requirement, cf section 5(11), first sentence of the Act to amend the Danish Financial Business Act etc.¹ The undertakings must meet the requirements

¹ Act no. 2110 of 22 December 2020 to amend the Danish Financial Business Act, the Danish Act on Restructuring and Resolution of Certain Financial Undertakings and the Danish Capital Markets Act and to repeal the Danish Financial Stability Act.

by 1 January 2024, cf section 5(11), second sentence of the Act to amend the Danish Financial Business Act etc. With a view to meeting the requirements, the Danish FSA sets intermediate targets that the undertakings must meet by 1 January 2022, cf section 5(11), fourth sentence of the Act to amend the Danish Financial Business Act etc. The Danish FSA sets intermediate targets for each 12-month period during the transitional period for the undertaking, cf section 5(11), fifth sentence of the Act to amend the Danish Financial Business Act etc.

2.4 Resolution plan and public interest

The Danish FSA must prepare, adopt and maintain a resolution plan, cf sections 259 and 260 of the Danish Financial Business Act. The resolution plan must specify the resolution entities and the resolution groups of the group in question, cf section 260(2), second sentence of the Danish Financial Business Act. The resolution plan assesses whether public interest calls for the implementation of resolution measures as this is a condition for restructuring or resolution, cf section 4(1)(3) of the Danish Act on Restructuring and Resolution of Certain Financial Undertakings.

According to the resolution objectives specified in section 5 of the Danish Act on Restructuring and Resolution of Certain Financial Undertakings, 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 bankruptcy proceedings, cf the explanatory notes of section 4(1)(3) of the Danish Act on Restructuring and Resolution of Certain Financial Undertakings.

3. Assessment by the Danish FSA

The Danish FSA sets the minimum requirement for own funds and eligible liabilities, cf section 266(1), first sentence of the Danish Financial Business Act, on the basis of the criteria of section 266a of the Danish Financial Business Act and the resolution plan for Sydbank A/S.

3.1. Resolution plan

Public interest

As a resolution entity on a consolidated basis, Sydbank A/S has been designated as a systemically important financial institution and the group has critical functions that would have to be maintained in a resolution situation.

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

Resolution strategy

Sydbank A/S has been designated as a resolution entity.

The resolution strategy is based on the transfer of control over Sydbank A/S to Finansiell Stabilitet if the conditions for resolution are met.

The resolution strategy is based on a single point of entry strategy where Sydbank A/S is identified as an entity to which resolution measures would be applied in the event of a resolution situation. As a general rule Sydbank A/S would remain in the market and be reestablished as a viable undertaking. This would take place via recapitalisation of the resolution group on a consolidated basis at a resolution group level by writing down and converting the claims of creditors.

3.2. Minimum requirement for own funds and eligible liabilities

Loss absorption amount

In the assessment of the Danish FSA the loss absorption amount for Sydbank A/S must be determined as the solvency need of Sydbank A/S, cf section 3 of the Danish Executive Order on the Minimum Requirement for Own Funds and Eligible Liabilities.

Recapitalisation amount

As a general rule the resolution group will be reestablished as a viable undertaking by Finansiell Stabilitet, see 3.1. above. Consequently it is the assessment of the Danish FSA that the recapitalisation amount of Sydbank A/S must be set at the solvency need plus the combined buffer requirement with the exception of the countercyclical capital buffer.

Setting of minimum requirement for own funds and eligible liabilities

Consequently it is the assessment of the Danish FSA that the MREL must be twice the solvency need plus once the combined buffer requirement with the exception of the countercyclical capital buffer (loss absorption and recapitalisation).

In the assessment of the Danish FSA the minimum requirement for own funds and eligible liabilities for Sydbank A/S at 1 January 2024 and the intermediate target at 1 January 2022 on a consolidated basis at a resolution

group level in respect of the resolution entity is 24.4% of Sydbank A/S's total risk exposure (risk exposure amount) and 6.0% of Sydbank A/S's total exposure measure (leverage ratio). The MREL is set for Sydbank A/S as a resolution entity. The MREL is based on figures for year-end 2020. However the MREL takes into account a decrease in the Pillar II add-on to the solvency need in the second quarter of 2021 of 0.4 percentage points. The MREL based on the total risk exposure would have been the binding requirement at year-end 2020. At year-end 2020 the MREL is equal to DKK 13.2bn.

In the assessment of the Danish FSA the intermediate targets must ensure a linear build-up of own funds and eligible liabilities towards the MREL at 1 January 2024. Since Sydbank A/S already meets the MREL applicable at 1 January 2024 the intermediate target applicable at January 2022 is the same as the MREL applicable at 1 January 2024.

3.3. Subordination requirement regarding minimum requirement for own funds and eligible liabilities

The Danish FSA sets the subordination requirement for Sydbank A/S at 1 January 2024 and the intermediate target at 1 January 2022 on a consolidated basis at a resolution group level at twice the solvency need and once the capital buffer requirement for Sydbank A/S. The requirement is set pursuant to section 267(4)(2) of the Danish Financial Business Act. The requirement is set for Sydbank A/S as a resolution entity. The Danish FSA sets the subordination requirement at 1 January 2022 at 24.4% of the total risk exposure. The requirement is based on figures for year-end 2020. However the requirement takes into account a decrease in the Pillar II add-on to the solvency need in the second quarter of 2021 of 0.4 percentage points. At year-end 2020 the requirement is equal to DKK 13.2bn.

Sydbank A/S is a SIFI with a high degree of internal and external dependencies. In the assessment of the Danish FSA the preferred resolution strategy for Sydbank A/S is feasible and credible to a limited extent if it is not supported by sufficient subordinated funds since the risk of a bail-in in respect of unsecured claims (non-subordinated funds) increases, the fewer the subordinated funds are available in a resolution situation. A bail-in in respect of unsecured creditors may have significant negative effects on the financial system, market confidence and the real economy and may result in derived negative effects on other financial institutions in Denmark. In addition the undertaking's activities are so extensive that a bail-in in respect of unsecured creditors would increase the complexity of resolution.

Additional subordinated funds also mean that a smaller amount will be involved with regard to unsecured creditors if a bail-in in respect of unsecured claims proves necessary. A high degree of subordination also increases transparency for investors in terms of which creditors are likely to be required to contribute in a resolution situation since subordinated funds

are inherently designed to absorb losses.

In the assessment of the Danish FSA the intermediate targets must ensure a linear build-up of subordinated liabilities towards the subordination requirement at 1 January 2024. Since Sydbank A/S already meets the subordination requirement applicable at 1 January 2024, however with an increase at 30 September 2022 after the reactivation of the countercyclical capital buffer, the intermediate target applicable at January 2022 is the same as the subordination requirement applicable at 1 January 2024.

4. Consultation

On 26 October 2021 the decision was submitted to Sydbank A/S for consultation with a deadline on 12 November 2021.

5. 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. Complaints not related to current or future business are subject to a fee of DKK 2,000. 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.

6. Publication

This decision has been made by the board of directors of the Danish FSA. In general this decision must be made public, cf section 354a of the Danish Financial Business Act. However publication can be omitted if it will result in any disproportionate damage to the undertaking, cf section 354a(4) of the Danish Financial Business Act. If publication has been omitted, publication must be made when the considerations necessitating omission no longer apply, cf section 354(5) of the Danish Financial Business Act.

The Danish FSA does not find grounds to delay publication of the decision as the Danish FSA assesses that publication will not result in any

disproportionate damage to Sydbank A/S. Therefore the decision must be made public, cf section 354a of the Danish Financial Business Act.

Yours sincerely

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