

21 December 2020

Attn: The Board of Directors and Group  
Executive Management of Sydbank A/S  
Submitted electronically to CVR No 12626509

File No. 3022-0003

## 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 on a consolidated basis at a resolution group level at 28 December 2020 at 10.3% of Sydbank A/S's total liabilities and own funds. This represents 25.1% of Sydbank A/S's risk exposure amount. The MREL is based on figures for year-end 2019. At year-end 2019 the MREL is equal to DKK 13.8bn.

At 28 December 2020 only the MREL as a percentage of the risk exposure amount will have a binding effect on Sydbank A/S.

The Danish FSA **determines** that of the MREL (of 25.1% of REA) plus the combined buffer requirement (which stood at 3.5% of REA at 30 June 2020) an amount representing 25.1% of Sydbank A/S's risk exposure amount must be met with capital instruments and debt exposures which can be written down and converted before unsecured claims in case of resolution and bankruptcy. To meet this requirement Sydbank A/S may apply the capital instruments and debt exposures included to meet the MREL as well as the CET1 instruments included to meet the combined buffer requirement.

### 2. Legal basis

#### 2.1. Minimum requirement for own funds and eligible liabilities

##### *Existing regulation*

After consulting with Finansielt Stabilitet the Danish FSA sets a requirement for the size of the own funds and eligible liabilities of a financial institution, cf section 266(1), first sentence of the Danish Financial Business Act.

The MREL is set as a percentage of the undertaking's total liabilities and own funds, cf section 266(1), third sentence of the Danish Financial Business Act.

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The MREL is determined on the basis of the following criteria, cf section 268(1) of the Danish Financial Business Act:

- 1) The group can be resolved 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 CET1 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 CET1 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 and/or groups.

Commission Delegated Regulation (EU) 2016/1450<sup>1</sup> (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 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.

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<sup>1</sup> 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. The undertaking must meet the MREL by the end of the transitional period.

#### *Forthcoming regulation*

On 28 December 2020 the bill 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 Act on Financial Stability (bill) and the Danish executive order on the minimum requirement for own funds and eligible liabilities come into force. The bill and the executive order implement parts of Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC (BRRD II).

With the entering into force of the Danish executive order on the minimum requirement for own funds and eligible liabilities the loss absorption amount must be determined at an amount sufficient to guarantee that the losses which the undertaking is expected to incur are fully absorbed, cf section 3(1)(1) of the draft executive order.

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

##### *Existing regulation*

The Danish FSA may demand that own funds and eligible liabilities must consist in full or in part of liabilities that can be converted, cf section 268(2), second sentence of the Danish Financial Business Act.

##### *Forthcoming regulation*

With the entering into force of the bill the Danish FSA, after consulting with Finansiel Stabilitet, 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 which are not global systemically important financial institutions (G-SIFIs) and

which 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 proposed section 267c(1), cf section 1(80) of the bill.

However, after consultation with Finansiell Stabilitet, the Danish FSA may determine that the subordination requirement may not exceed the greater of 8% of the total liabilities and own funds of the resolution group or the amount calculated on the basis of the formula in Schedule 9, no. 3, if one of the following conditions is met, cf proposed section 267c(4), cf section 1(80) of the bill.

- 1) The Danish FSA and Finansiell Stabilitet have ascertained that there are significant obstacles to resolution, cf sections 262 and 263, and that no corrective measures have 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 corrected using the order as stipulated in section 264(5), and the determination of the size stipulated in subsection 1 in accordance with this provision compensates for the adverse impact of the significant obstacle on the resolution possibilities.
- 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 size of the resolution entity, the nature, extent and complexity of the resolution entity's activities, the risks associated with the activities of the resolution entity, any interconnectedness as well as the legal status and shareholding structure of the resolution entity.
- 3) The individual solvency requirement pursuant to section 124(3) or individual solvency need pursuant to section 124(2) reflects 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. Resolution plan and public interest

The Danish FSA must prepare, adopt and maintain a resolution plan, cf sections 259 and 260. 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.

Pursuant to 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 commentary 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 of the Danish Financial Business Act, on the basis of the criteria of section 268(1) of the Danish Financial Business Act and the resolution plan for Sydbank A/S.

#### **3.1. Resolution plan**

##### *Public interest*

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*

The resolution strategy is based on a single point of entry strategy which involves keeping the group as one entity 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 group on a consolidated basis at a group level by writing down and converting the claims of creditors.

#### **3.2. Minimum requirement for own funds and eligible liabilities**

The requirement for own funds and eligible liabilities is determined as a loss absorption amount, cf Article 1 of the Regulation, and a recapitalisation amount, cf Article 2 of the Regulation.

##### *Loss absorption amount*

With the coming into force of the bill the minimum requirement for own funds and eligible liabilities and the combined buffer requirement will have to be met as two separate requirements as CET1 capital which is applied to meet the combined buffer requirement cannot at the same time be applied to meet the minimum requirement for own funds and eligible liabilities.

To ensure that Sydbank A/S as from 28 December 2020 is not bound by any higher minimum requirement for own funds and eligible liabilities than the maximum requirement which can apply according to the regulation in force as from 28 December 2020, it is the assessment of the Danish FSA that the loss absorption amount for Sydbank A/S must be set at the solvency need of Sydbank A/S.

#### *Recapitalisation amount*

As a general rule Sydbank A/S 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 minimum requirement for own funds and eligible liabilities 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 Danish FSA's assessment the minimum requirement for own funds and eligible liabilities as regards Sydbank A/S on a consolidated basis at a resolution group level at 28 December 2020 must be set at 10.3% of Sydbank A/S's total liabilities and own funds. This represents 25.1% of Sydbank A/S's risk exposure amount. The MREL is based on figures for year-end 2019. At year-end 2019 the MREL is equal to DKK 13.8bn.

At 28 December 2020 only the MREL as a percentage of the risk exposure amount will have a binding effect on Sydbank A/S.

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

The bill implies that the Danish FSA after consultation with Finansiell Stabilitet must set a subordination requirement for Sydbank A/S, cf proposed section 267c(1)(2), cf section 1(80) of the bill. The subordination requirement set by the Danish FSA may not exceed the greater of 8% of the group's total liabilities and own funds or twice the solvency need plus once the combined buffer requirement, cf proposed section 267c(4), cf section 1(80) of the bill. The subordination requirement includes the minimum requirement for own funds and eligible liabilities as well as the combined buffer requirement, which according to the bill and the Danish executive order on the minimum requirement for own funds and eligible liabilities must be met separately.

The Danish FSA **determines** that of the MREL (of 25.1% of REA) plus the combined buffer requirement (which stood at 3.5% of REA at 30 June 2020) an amount representing 25.1% of Sydbank A/S's risk exposure amount must be with capital instruments and debt exposures which can be written down and converted before unsecured claims in case of resolution and bankruptcy. To meet this requirement Sydbank A/S may apply the capital instruments and debt exposures included to meet the MREL as well as the CET1 instruments included to meet the combined buffer requirement.

This ensures that Sydbank A/S as from 28 December 2020 with this decision is not bound by any higher minimum requirement for subordination than the maximum requirement which can apply according to the regulation in force as from 28 December 2020.

#### **4. Consultation**

On 23 November 2020 the decision was submitted to Sydbank A/S for consultation with a deadline on 9 December 2020.

#### **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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