FINANSTILSYNET

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Attn.: The Supervisory Board and the Executive Board of Jyske Bank A/S

Minimum requirement for own funds and eligible liabilities

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Ministry of Industry, Business and Financial Affairs

1. Decision

For Jyske Bank A/S, at the consolidated resolution group level, the FSA **determines** the minimum requirement for own funds and eligible liabilities as of 1 January 2022, cf. S.267(1) of the Danish Financial Business Act at 27.3% of Jyske Bank A/S' risk-weighted exposures and 6.0% of Jyske Bank A/S' total exposure target (leverage ratio). The requirement is based on figures at the end of 2020. The requirement based on the total risk exposure would have been the binding requirement at the end of 2020. At the end of 2020, the requirement corresponded to DKK 28.7 bn.

As of 1 January 2022, the FSA **determines** the subordination requirement for the minimum requirement for own funds and eligible liabilities for Jyske Bank A/S at the consolidated resolution group level to be twice the solvency requirement and one time the capital buffer requirement for Jyske Bank A/S, cf. S. 267 c(4)(ii), corresponding to 27.3% of the total risk exposure. The requirement is based on figures at the end of 2020. At the end of 2020, the requirement corresponded to DKK 28.7 bn.

As of 30 September 2022, the subordination requirement for Jyske Bank A/S is determined at 28.3% of the total risk exposure in consequence of the reactivation of the countercyclical capital buffer.

2. Legal basis

2.1. Minimum requirement for own funds and eligible liabilities

At any time, financial institutions must meet a minimum requirement for own funds and eligible liabilities, which the FSA determines, after consulting with Finansiel Stabilitet (the Danish resolution authority) according to S.266(1), sentence 1 of the Danish Financial Business Act.

Determination of minimum requirement for own funds and eligible liabilities

The FSA must determine the minimum requirement for own funds and eligible liabilities as a percentage of the total risk exposure of the company and the total risk exposure target of the company, cf. S.266(5) of the Danish Financial Business Act..

The minimum requirement for own funds and eligible liabilities is determined on the basis of the following circumstances, cf. s.266 a(1) of the Danish Financial Business Act.

1) It must be possible to resolve the resolution group by using the resolution tools on the resolution unit in a way that meets the resolution objectives.
2) The resolution unit and its subsidiaries that are not resolution units must have sufficient own funds and eligible liabilities to ensure that losses can be absorbed, and the capital ratio and leverage ratio of the relevant companies can be re-established at a level where the resolution unit and its subsidiaries that are not resolution units can still meet the license requirements and carry out the activities for which a licence has been granted and where sufficient confidence in the market is maintained.
3) The resolution unit must have sufficient own funds and eligible liabilities to absorb losses and to re-establish the capital ratio and leverage ratio of the resolution unit to a level where the resolution unit can still meet the license requirements and carry out the activities for which a license has been granted and where sufficient confidence in the market is maintained when the resolution plan envisages the possibility that certain categories of own funds and eligible liabilities are exempt from bail-in or are transferred in full to a recipient through a partial transfer.
4) The company’s size, business model, funding model and risk profile.
5) To which extent the company being in distress will have a negative effect on financial stability, including the effects on other companies.

The FSA determines the minimum requirement for own funds and eligible liabilities at an amount sufficient to ensure that the the expected losses of the company will be absorbed in full (loss absorption) and that the resolution unit and its subsidiaries that are not resolution units will be recapitalised to the level that is necessary in order for them still to meet the license requirements and to carry out the activities for which a license has been granted for a suitable period of no more than 12 months (recapitalisation), cf. S3 of the executive order on the minimum requirement for own funds and eligible liabilities.

According to S.266 of the Danish Financial Business Act, cf. S.5 of the executive order on the minimum requirement for own funds and eligible liabilities, the minimum requirement for own funds and eligible liabilities of a resolution unit will be determined as:

1) A percentage of the total risk exposure of the resolution unit (risk-weighted exposures), cf. S.266(5)(i) of the Danish Financial Business Act, calculated in accordance with Appendix 1, No. 1. The requirement is determined as a percentage calculated in accordance with Appendix 1, No. 2.

2) A percentage of the total exposure target of the resolution unit (leverage ratio), cf. S.266(5)(ii) of the Danish Financial Business Act, calculated in accordance with Appendix 1, No. 3. The requirement is determined as a percentage calculated in accordance with Appendix 1, No. 4.

Loss absorption amount
The loss absorption amount is determined as the losses that must be absorbed in connection with resolution and that correspond to the requirements applicable to the resolution unit, cf. Article 92(1)(i)(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 S.124 of the Danish Financial Business Act, at the consolidated resolution group level, cf. Appendix 1, Nos. 1 and 3 of the executive order on the minimum requirement for own funds and eligible liabilities.

Recapitalisation amount
The recapitalisation amount is determined as an amount that offers the resolution group the possibility of renewed compliance with its total capital ratio 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 S.124 of the Danish Financial Business Act at the consolidated resolution group level after the completion of the preferred resolution strategy, cf. Appendix 1, Nos. 1 and 3 of the executive order on the minimum requirement for own funds and eligible liabilities.

The FSA may raise or lower the recapitalisation amount, cf. Appendix 1, Nos. 1 and 3 of the executive order on the minimum requirement for own funds and eligible liabilities. The FSA may increase the recapitalisation amount by a sufficient amount necessary to ensure that the resolution unit after resolution is able to maintain sufficient confidence in the market for a sufficient period of no longer than 12 months, cf. Appendix 1, No. 1 of the executive order on the minimum requirement for own funds and eligible liabilities.

Compliance with the minimum requirement for own funds and eligible liabilities
A resolution unit must meet the minimum requirement for own funds and eligible liabilities at the consolidated resolution group level, cf. S.267(1) of the Danish Financial Business Act. The consolidation relate only to companies subject to a minimum requirement for own funds and eligible liabilities, cf. S.267(2), first sentence of the Danish Financial Business Act.

Mortgage credit institutions are exempt from the requirement, cf. S.266(1) of the Danish Financial Business Act. Mortgage credit institution must instead meet a debt buffer requirement, cf. S.268 of the Danish Financial Business Act. Hence mortgage credit institutions are not subject to the consolidation at the determination of the minimum requirement for own funds and eligible liabilities at a consolidated level.

Own funds and eligible liabilities applied to meet a requirement determined for own funds and eligible liabilities that must be met at a consolidated level must not at the same time be applied to meet or fund liabilities that are included in order to meet the requirements of S.268(1-4) or the requirements that follow from S.268 d, cf. S.267(2), second sentence of the Danish Financial Business Act.

2.2. Requirement for subordination of the minimum requirement for own funds and eligible liabilities.

The FSA must after consulting with Finansiel Stabilitet (the Danish resolution authority) determine that a proportion of the minimum requirement for own funds and eligible liabilities shall be fulfilled through own funds, subordinated eligible instruments or liabilities subject to S. 267 a(1), No. 5, (requirement for subordination) for resolution units that are not global systemically important financial institutions (G-SIFIs) and that are included in a resolution group of which total assets are below EUR 100 bn, but which the FSA has assessed will, with a reasonable degree of probability, pose a systematic risk, should they be in distress, cf. S.267 c(1), No. 3 of the Danish Financial Business Act.

However, after consulting with Finansiel Stabilitet, the FSA may determine that the requirement for subordination shall be an amount that as a maximum corresponds to the higher amount of either 8% of the resolution group’s total liabilities and own funds or the amount calculated on the basis of the formula stated in appendix 9, No. 3, if one of the following conditions have been met, cf. S.267 c(4) of the Danish Financial Business Act.

1) The FSA and Finansiel Stabilitet have established material obstacles for resolution, cf. S.262 and S.263, and no remedial measures have been taken in accordance with orders given by the FSA according to S.264(5) by the deadline stipulated, or the established material obstacles cannot be remedied through the orders mentioned in S.264(5) and the determination of the proportion mentioned in (1) according to this stipulation offsets the negative impact of the material obstacle on the possibilities of resolution.
2) It is implied in the resolution plan for the resolution unit that the preferred resolution strategy for the resolution unit to a limited extent is feasible and credible, taking into account the size of the resolution unit, the nature, the extent and the complexity of the activities of the resolution unit, the risks entailed with the activities of the resolution unit, the interrelationship, as well as the legal status and shareholding structure of the resolution unit.

3) The individual solvency requirement laid down pursuant to S.124(3) or individual solvency requirements laid down pursuant to S.124(2) reflect that the resolution unit is among the 20% most risky companies for which the FSA determines a minimum requirement for own funds and eligible liabilities.

2.3. Transition period

After consulting with Finansiel Stabilitet, the FSA sets a deadline by which the companies must meet the minimum requirement for own funds and eligible liabilities and the subordination requirement, cf. S.5(11) first sentence in the Act to Amend the Financial Business Act, etc.[1]. The companies must meet the requirements as of 1 January 2024, cf. S.5(11), second sentence in the Act to Amend the Financial Business Act. etc. With a view to meeting the requirements, the FSA defines intermediate targets that the companies must meet as of 1 January 2022, cf. S.5(11), fourth sentence in the Act to Amend the Financial Business Act. etc. The FSA defines intermediate targets for each 12-month period during the transitional period for the company, cf. S.5(11), fifth sentence in the Act to Amend the Financial Business Act. Etc.

2.4. Resolution plan and interest of the general public

The FSA must prepare, adopt and maintain a resolution plan, according to Sections 259 and 260 of the Danish Financial Business Act.

The resolution plan must state the resolution units and resolution groups in the business group in question, cf. S.260(2), sentence 2 in the Danish Financial Business Act.

The resolution plan assesses whether the interest of the general public necessitates implementation of resolution measures, as this is a precondition for restructuring or resolution, cf. S.4(1), No.3, of the Danish Act on Restructuring and Resolution of Certain Financial Enterprises.

According to S.5 of the Act on Restructuring and Resolution of Certain Financial Enterprises, the interest of the public includes the following:

1) to ensure the continuity of critical functions, the discontinuance of which is likely to lead to the disruption of services that are essential to the real economy or likely to disrupt financial stability;
2) to avoid a significant adverse effect on the financial stability, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;
3) to protect public funds by minimising reliance on extraordinary public financial support;
4) to protect depositors and investors covered by the Act on a Depositor and Investor Guarantee Scheme;
5) to protect client funds and client assets.

[1] Act No. 2110 of 22 December 2020 for the amendment of the Danish Financial Business Act, the Danish Act on Restructuring and Resolution of Certain Financial Enterprises and the Danish Capital Market Act and bills for the repeal of the Danish Act on Financial Stability.

Moreover, it is a condition that the resolution objectives in question cannot be met to the same extent in the event of bankruptcy proceedings, cf. the comments to S.4(1), No. 3, of the Danish Act on Restructuring and Resolution of Certain Financial Enterprises.

3. The assessment of the FSA

The FSA determines the minimum requirement for own funds and eligible liabilities, cf. S.266(1), sentence 1 of the Danish Financial Business Act, on the basis of the criteria laid down in S.266 a of the Danish Financial Business Act and the resolution plan for Jyske Bank A/S.

3.1. *The resolution plan*

Interest of the public
Jyske Bank A/S has as a consolidated company been appointed a systemically important financial institution, and also the group has critical functions that must be continued during a situation of resolution.

Therefore the resolution plan assesses that, if it is necessary in the interest of the public, one or more resolution measures must be initiated if the group is in distress, cf. S.4(1), No. 3 of the Danish Act on Restructuring and Resolution of Certain Financial Enterprises.

Resolution strategy
Jyske Bank A/S is has been designated a resolution unit.

The resolution strategy is based on the assumption that the control of Jyske Bank A/S is transferred to Finansiel Stabilitet if the conditions for resolution are met.

The resolution strategy is based on a single-point-of-entry, where the Group is identified as the resolution group and is seen as a whole in the event of resolution. The point of departure is that Jyske Bank A/S will remain in the market and be re-established as a viable enterprise. This will be ensured through recapitalisation of the resolution group at the consolidated resolution group level through write-downs and conversion of creditor claims.

3.2. Minimum requirement for own funds and eligible liabilities

Loss absorption amount
The FSA assesses that the loss absorption amount for Jyske Bank A/S is to be determined as Jyske Bank A/S' solvency requirement, cf. S3 in the executive order on the minimum requirement for own funds and eligible liabilities.

Recapitalisation amount

The point of departure is that the resolution group will be re-established as a viable enterprise by Finansiel Stabilitet, cf. section 3.1. Therefore, the FSA assesses that, for Jyske Bank A/S, the recapitalisation amount is to be determined as the solvency requirement plus the combined capital buffer requirement except for the countercyclical buffer.

Determination of minimum requirement for own funds and eligible liabilities
Hence the FSA assesses that the minimum requirement for own funds and eligible liabilities must be twice the solvency requirement plus one time the combined capital buffer requirement except for the countercyclical buffer (loss absorption and recapitalisation).

The FSA determines the minimum requirement for own funds and eligible liabilities as of 1 January 2024 and the intermediate target as of 1 January 2022 at the consolidated resolution group level at 27.3% of Jyske Bank A/S' total risk exposure (risk-weighted exposures) and 6.0% of Jyske Bank A/S' total exposure target (leverage ratio). The requirement is based on figures at the end of 2020. The requirement based on the total risk exposure would have been the binding requirement at the end of 2020. At the end of 2020, the requirement corresponded to DKK 28.7 bn.

The FSA assesses that the intermediate targets will ensure a linear structure of owns funds and eligible liabilities over the period leading up to the compliance with the minimum requirement for own funds and eligible liabilities on 1 January 2024. Therefore, as already today, Jyske Bank A/S meets the minimum requirement for own funds and eligible liabilities as of 1 January 2024, the intermediate target as of January 2022 is the same as the minimum requirement for own funds and eligible liabilities as of 1 January 2024.

As mortgage credit institutions are exempt from the minimum requirement for own funds and- liabilities Board, cf. S.266(1) of the Danish Financial Business Act, Jyske Realkredit A/S is not included in the consolidation on which the consolidated requirement for Jyske Bank A/S is based, according to S.267(2), first sentence, of the Danish Financial Business Act.

3.3. Requirement for subordination of the minimum requirement for own funds and eligible liabilities.

For Jyske Bank A/S, at the consolidated resolution group level, the FSA determines the subordination requirement as of 1 January 2024 and the intermediate target as of 1 January 2022 at twice the solvency requirement and one time the capital buffer requirement for Jyske Bank A/S. The requirement is determined according to S.267(4)(ii), sentence 2 of the Danish Financial Business Act. The FSA determines the subordination requirement as of 1 January 2022 at 27.3% of the total risk exposure. The requirement is based on figures at the end of 2020. At the end of 2020, the requirement corresponded to DKK 28.7 bn.

Jyske Bank A/S is a SIFI with a high degree of internal as well as external dependencies. The FSA assesses that, to a limited extent, the preferred resolution strategy for Jyske Bank A/S is feasible and credible, if it is not supported by sufficient subordinated means, as the risk increases of having to execute a bail-in relating to unsecured claims (non-subordinated funding), the lower the degree of subordinated funding that is available in the event of resolution. Bail-in of general unsecured creditors may result in significant, negative effects for the financial system, market confidence and the real economy and may have derived negative effects on other financial Institutions in Denmark. Moreover, the company's activities are of a such an extensive nature that bail-in of general unsecured creditors will increase the complexity of settlement.

A higher degree of subordinated funding will also have the result that the general unsecured creditors are to account for a smaller amount, if it turns out to be necessary to execute bail-in for unsecured claims. Moreover, a high degree of subordination will also increase the transparency for investors as to which creditors are likely to have to make contributions in the event of resolution, as subordinated funding per construction is designed to bear losses.

The FSA assesses that the intermediate targets will ensure a linear structure of subordinated liabilities over the period leading up to the compliance with the subordination requirement on 1 January 2024. Therefore, as already today, Jyske Bank A/S meets the subordination requirement as of 1 January 2024, however, with an increase as of 30 September 2022 after the reactivation of the countercyclical capital buffer, the intermediate target will as of January 2022 be equal to the subordination requirement as of 1 January 2024.

4. Consultation

On 26 October 2021, Jyske Bank A/S was consulted regarding the decision and was given a deadline until 12 November 2021.

5. Complaints

The decision of the FSA can, no later than four weeks after receipt, be brought before the Danish Commerce and Companies Appeal Board, cf. S.372(1) of the Danish Financial Business Act. The complaint must be sent by e-mail to ean@naevneneshus.dk or by post to Erhvervsankenævnets sekretariat, Toldboden 2, 8800 Viborg.

A fee of DKK 4,000 is payable for filing a complaint with the Commerce and Companies Appeal Board, cf.S.7(2) of the Danish Executive Order on the Commerce and Companies Appeal Board. The fee amounts to DKK 2,000 in connection with complaints that do not pertain to current or future business activities. The Commerce and Companies Appeal Board or the Chairman can make a decision about full or partial repayment of the fee paid if the complaint is sustained in part or in full, cf. S.15(4) of the Danish Executive Order on the Commerce and Companies Appeal Board. The fee will be refunded if the Danish Commerce and Companies Appeal Board rejects the complaint.

6. Publication

This decision was made by the FSA's Governing Board. It is a condition that the decision is to be published, cf. S.354 a of the Danish Financial Business Act. However, publication can be omitted if such publication would result in disproportionate damage to the company, cf. S.354 a(4) of the Danish Financial Business Act. Has publication been omitted, publication must take place when the consideration that necessitated the omission no longer applies, cf. S.354(5) of the Danish Financial Business Act.

The FSA does not find any grounds for delaying publication of the decision, as the FSA assesses that such publication will not result in any disproportionate damage to Jyske Bank A/S. Hence the decision must be published, cf. S.354 a of the Danish Financial Business Act;

Yours sincerely,

Steffen Ulrik Lind
Deputy Administrative Head of Department