

UNOFFICIAL TRANSLATION

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Questions and answers regarding the minimum requirement for eligible liabilities

On 23 February 2017 the Swedish National Debt Office (SNDO) published a decision memorandum regarding the minimum requirement for eligible liabilities (MREL).¹ This Question and Answer document addresses a number of questions which have been received by the Swedish National Debt Office in relation to the statements in the decision memorandum. This document may be supplemented with further questions and answers as required.

Published 06-10-2017

1. How will decisions regarding the MREL be formulated?

According to chapter 4, section 3 of the Resolution Act (2015:1016) decisions regarding the MREL shall be taken in conjunction with resolution planning. In section 7 of the Resolution Ordinance (2015:1034) it states that the SNDO shall, as a general rule, update the resolution plans of firms annually. Thus decisions regarding MREL shall, as a general rule, also be updated annually. In respect of timing, it is the SNDO's intention that decisions regarding the updating of resolution plans and MREL shall be taken in December and that the requirements shall thereafter begin to apply on 1 January the following year. With regard to firms which are part of cross-border groups, the annual decisions regarding resolution plans and MREL involves authorities other than just the SNDO. For this reason, the timing of decisions relating to such firms may differ from those relating to other firms.

According to chapter 4 section 1 of the Resolution Act and article 7.2 in the Commission's 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 MREL for own funds and eligible liabilities, the requirement shall be *expressed* as a percentage of the firms total liabilities and own funds. At the same time, in accordance with the same delegated regulation, MREL shall be *calculated* on the basis of the firms risk-weighted capital requirements (see SNDO's decision memorandum for a more detailed description). The requirement which will be provided in the decision will

¹ [*Application of the minimum requirement for own funds and eligible liabilities*](#) (Ref RG 2016/425), SNDO 23 February 2017.

thus be expressed in relation to total liabilities and own funds.

The decision regarding MREL will only relate to *the size* of MREL. From the decision memorandum, it follows that the SNDO also intends to apply a number of principles regarding how MREL shall be *met*, including that the requirement be met with a certain proportion of liabilities as well as that the requirement by 1 January 2022 be met entirely with subordinated instruments. These principles express the SNDO's view on how firms should meet MREL in order to be regarded resolvable. The principles will be applied in the assessment required under chapter 3 section 10 or 11 in the Resolution Act, i.e. the assessment of to what extent it is possible to resolve or liquidate a firm or group of firms, through bankruptcy, liquidation or resolution in a manner which does not lead to a serious disruption of the financial system in the EEA. Within the framework of this assessment, the SNDO will evaluate the firm's compliance with the principles. If they are not complied with, an extended assessment will be initiated which, if there is deemed to exist a significant obstacle to resolution, can result in the process outlined in chapter 3 sections 12-24 of the Resolution Act, being initiated.²

Published 06-10-2017

2. How will the SNDO monitor the build-up of subordinated liabilities?

MREL for eligible liabilities shall be met with subordinated instruments no later than 1 January 2022. During the phasing-in period, the SNDO will continuously monitor to ensure that the build-up of subordinated liabilities occurs at a reasonable pace. The assessment of what constitutes a reasonable pace will be made on the basis of a firm's individual circumstances and prevailing market conditions as well as with consideration of *inter alia* the following:

- (i) That the proposed build-up of subordinated liabilities takes account of the firm's capacity to issue such liabilities (even under less favourable market conditions) and that the issue plans are drawn up in a manner which does not assume an increase in the firm's overall leverage. The build-up should take place at an even rate, e.g. the firm shall avoid assigning a large proportion of the total issuance volume towards the end of the phasing-in period.
- (ii) If firms intend to meet the requirement with statutorily subordinated liabilities, that – with regard to the uncertainty surrounding the timing of the introduction of statutory subordination – the issue plan includes a strategy for how the subordinated requirement shall be met if such an introduction takes place at a later point in time than that on which the firm based its plan.
- (iii) If firms intend, and consider that it is possible, to meet the subordination requirement by issuing a debt instruments which involve delayed subordination

² See section 5.1 in the decision memorandum.

(i.e. become subordinated at a different point in time to that of the issue), that such an instrument is only use to manage contract restrictions in outstanding Tier 2 capital instruments.

Published 06-10-2017

3. When will MREL for subsidiary firms in groups where the resolution strategy is a Single Point of Entry (SPE) strategy be decided on?

The SNDO does not intend to make decisions during 2017 concerning MREL at an individual level for subsidiary firms which form part of Swedish groups for which the resolution strategy is an SPE strategy.

For cross-border groups, MREL for subsidiary firms are subject to joint decisions in the resolution colleges. Decisions are taken on the basis of proposals from the resolution authorities in each country where subsidiary firms have their respective head offices. For Swedish subsidiaries which are the subject to joint decisions, the SNDO has proposed that MREL should not be decided at an individual level within the framework of the 2017 resolution planning.

The SNDO intends to revert with notification on how MREL for the above mentioned subsidiaries will be dealt with during 2018 and beyond.

Published 06-10-2017

4. Can MREL be met by liabilities which previously qualified own funds?

According to chapter 4 section 1 of the Resolution Act, MREL is a requirement which determines how large a firm's MREL eligible liabilities and own funds must be, as a minimum, in relation to the firm's total liabilities and own funds. An MREL eligible liability is a liability which meet the conditions in chapter 2, section 2 of the Resolution Act (eligible liabilities) and chapter 2, section 2 of the SNDO's Resolution Regulations (RGKFS 2015:2) (MREL eligible liabilities).

Liabilities in the form of instruments which previously wholly or partially qualified for inclusion in an institution's own funds may be used to meet MREL provided that these conditions are met. Tier 2 instruments do not constitute eligible liabilities according to chapter 2, section 2 of the Resolution Act. Thus any portion of such instruments subject to amortisation according to article 64 CRR may not be used to meet MREL³.

³ Regulation (EU) No 575/2013 of The European Parliament and of The Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

Published 28-02-2018

5. How will the liabilities proportion principle be monitored?

The SNDO has established a number of principles for how firms should meet MREL in order to be deemed resolvable, amongst others that MREL should be met to a certain degree with liabilities (the liabilities proportion principle).⁴ The liabilities proportion shall be equivalent to the recapitalisation amount expressed as a percentage of risk weighted exposures.⁵ For those firms covered by the liabilities proportion principle, the applicable percentage during 2018 is the recapitalisation amount calculated in connection with the SNDO's MREL decisions.⁶

In monitoring firms' compliance with MREL, the SNDO will examine that firms have, at all times, sufficient outstanding MREL eligible liabilities to comply with the liabilities proportion principle.

⁴ See section 5.2.1 in [Application of the minimum requirement for own funds and eligible liabilities](#) (Ref RG 2016/425), SNDO 23 February 2017.

⁵ For firms which are deemed capable of being managed through normal bankruptcy or liquidation (firms with simplified obligations) the recapitalization amount is zero. The liabilities proportion principle is thus not applicable for such firms.

⁶ Information on the SNDO's decisions is available [here](#). Details on the liabilities proportion principle per firms are given in the final column of [this table](#).