

Finansinspektionen's Regulatory Code

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This translation is furnished solely for information purposes. Only the printed version of the regulation in Swedish applies for the application of the law.

Regulations amending Finansinspektionen's regulations and general guidelines (FFFS 2014:12) regarding prudential requirements and capital buffers;

FFFS 2020:32

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decided on 15 December 2020.

Finansinspektionen prescribes¹ the following pursuant to Chapter 5, section 2, point 17 of the Banking and Financing Business Ordinance (2004:329), Chapter 6, section 1, point 56 of the Securities Market Ordinance (2007:572), section 6, point 4 of the Supervision of Svenska Skeppshypotekskassan Ordinance (1970:68), section 16, points 1, 4, 6 and 14, section 18, points 2 and 10–12, and section 19, point 1 of the Special Supervision and Capital Buffers Ordinance (2014:993) in respect of Finansinspektionen's regulations and general guidelines (FFFS 2014:12) regarding prudential requirements and capital buffers

in part that Chapter 4, section 1 and Chapter 8, sections 6–11 shall be repealed,
in part that the heading immediately prior to Chapter 8, section 4 shall be removed,
in part that current Chapter 4, section 2 shall be designated Chapter 4, section 1,
in part that Chapter 1, sections 1, 3, 5 and 6, Chapter 3, section 5, Chapter 6, section 1, Chapter 8, sections 2, 4 and 5, and Chapter 9, sections 4–6 shall have the following wording,
in part that a new chapter, Chapter 11, four new sections, Chapter 2, section 5, Chapter 9, sections 9–11, and new headings immediately preceding Chapter 8, section 5 and Chapter 9, section 9 shall be inserted with the following wording.

Finansinspektionen also provides the following general guidelines.

Chapter 1

Section 1 These regulations contain provisions concerning prudential requirements that supplement 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.

The regulations also contain provisions concerning which data a financial holding company or a mixed financial holding company shall submit to Finansinspektionen in conjunction with its application for approval or exemption from the requirement for approval pursuant to the Special Supervision of Credit Institutions and Investment Firms Act (2014:968).

¹ Cf. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC as amended by Directive 2019/878/EU of the European Parliament and of the Council.

Section 3 An undertaking that is included in the consolidation as set out in Article 18 of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and securities companies, does not need to apply Chapter 8, section 4 at the individual level.

Section 5 The following provisions do not apply to Svenska Skeppshypotekskassan

- large exposures in Chapter 5,
- disclosure of information in Chapter 8, sections 1 and 4, and
- documentation of the undertakings' internal capital and liquidity assessment process in Chapter 10.

Section 6 The regulations are divided into the following twelve chapters:

- Scope and definitions (Chapter 1),
- Consolidated situation (Chapter 2),
- Own funds and own funds requirements (Chapter 3),
- Credit risk (Chapter 4),
- Large exposures (Chapter 5),
- Liquidity (Chapter 6),
- Reporting (Chapter 7),
- Disclosure of information (Chapter 8),
- Capital buffers (Chapter 9),
- Documentation of the undertakings' internal capital and liquidity assessment process (Chapter 10),
- Content of applications for financial holding companies and mixed financial holding companies (Chapter 11).

Chapter 2

Section 5 Provisions to the effect that Finansinspektionen may decide on full consolidation or proportional consolidation (the proportional method) in cases other than those set out in sections 1–4 can be found in Article 18(8) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and securities companies.

Chapter 3

Section 5 An undertaking that issues capital instruments that are to be included in its own funds shall notify Finansinspektionen of this. Notification shall take place no later than the day on which the issue takes place.

The notification must include the following information:

- name of issuer,
- the purpose of the issue,
- the issuer’s position in the consolidated situation,
- what level of the consolidated situation the instrument shall be included in,
- whether the instrument is being issued externally or internally within the consolidated situation,
- type of instrument,
- date of issue,
- amount that is being issued and in which currency, and
- under which country’s legislation the instrument is being issued.

The requirement in the first paragraph does not apply to instruments that are subject to the permission requirement or notification obligation pursuant to Article 26(3) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and securities companies.

General guidelines

If an issuance as referred to in the first paragraph contains complex terms and conditions or new terms and conditions relative to previous issuances, the undertaking should also notify Finansinspektionen of this in advance. The undertaking should make such an advance notification well in advance of the planned issuance, and it should contain information about the complex or new terms and conditions in question.

Chapter 6

Section 1 An undertaking and all or some of its subsidiary undertakings may refrain from applying Articles 412 and 413 of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms in the case referred to in Article 8(2) of the Regulation.

This requires the undertaking to submit notification to Finansinspektionen in writing of which undertakings are included in the single liquidity sub-group. In its notification, the undertaking shall also certify

1. that the conditions in Articles 8(1)(a)–8(1)(d) of the Regulation are fulfilled, and
2. that there are legal opinions stating that the conditions in Articles 8(1)(c) and 8(1)(d) of the Regulation are fulfilled.

Chapter 8

Section 1 Provisions concerning the scope of the information that an undertaking shall disclose are set out in Article 431(i).

General guidelines

The undertaking should, when applying Article 431(3) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, report its total own funds requirement and its own funds in a unified way. The report should refer to both the risk-based own funds requirement and the leverage ratio requirement and be arranged in the manner stated below.

Risk-based own funds requirement

The undertaking should provide the information in both SEK and as a percentage of total risk-weighted exposure amounts. *Total risk-weighted exposure amounts* refers to the risk-weighted exposure amounts that apply by virtue of Article 92(3) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

In the report, the undertaking should disclose separately at least the following items:

1. Own funds requirement in accordance with Article 92(1)(a)–(c) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.
2. Specific own funds requirement in accordance with Chapter 2, section 1, point 2 of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968) (Pillar 2 requirements).
3. Combined buffer requirement in accordance with Chapter 2, section 2 of the Capital Buffers Act (2014:966).
4. A notification in accordance with Chapter 2, section 1c of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968) (Pillar 2 guidance).

The undertaking should also report

- the sum total of items 1–4 (total adequate level of own funds), and
- the undertaking's own funds in accordance with Part Two of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

Own funds requirements that refer to leverage ratio

This information should be provided in both SEK and as a percentage of total exposure measure for leverage ratio. *Total exposure measure for leverage ratio* refers to the exposure amounts that apply by virtue of Article 429(4) in Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

In the report, the undertaking should disclose separately at least the following items:

1. Own funds requirement in accordance with Article 92(1)(d) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.
2. Specific own funds requirement in accordance with Chapter 2, section 1, point 1 of the Special Supervision of Credit Institutions and Investment Firms Act (Pillar 2 requirements).
3. A notification in accordance with Chapter 2, section 1c of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968) (Pillar 2 guidance).

The undertaking should also report

- the sum total of the items set out in 1–3 (total adequate level of own funds), and
- the undertaking’s Tier 1 capital in accordance with Part Two of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

Section 2 The information that an undertaking shall disclose pursuant to section 3, first paragraph and section 4, first paragraph shall be available on the undertaking’s website.

If the undertaking does not have a website, it shall have the ability to provide the information to the public in a different manner.

Section 4 An undertaking shall disclose information about the internally assessed capital need as determined through its internal process for assessing capital need in accordance with Chapter 6, section 2 of the Banking and Financing Business Act (2004:297) or Chapter 8, section 4 of the Securities Market Act (2007:528).

The undertaking shall disclose the information specified in the first paragraph together with the other information set out in Articles 435–455 of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

Exemption from the obligation to disclose information

Section 5 Finansinspektionen can exempt an undertaking from disclosing the information about exposure to counterparty credit risk referred to in Article 439(d) and (e) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms if disclosure of this information could reveal that the undertaking has received emergency liquidity support in the form of collateral swap transactions from a central bank.

If an undertaking wants an exemption from that which is specified in the first paragraph, the undertaking shall submit an application concerning this to Finansinspektionen.

Chapter 9

Section 4 When an undertaking calculates its institution-specific countercyclical capital buffer rate, it shall state the geographical area of the relevant credit exposure in accordance with the technical standards for supervision that have been adopted under Article 140(7) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

Section 5 An undertaking shall calculate its systemic risk buffer in accordance with Chapter 4, section 2 of the Capital Buffers Act (2014:966) as follows:

$$B_{SR} = r_T \cdot E_T + \sum_i r_i \cdot E_i$$

where:

B_{SR} = systemic risk buffer,

r_T = the buffer value that is applicable to an institution's total risk-weighted exposure amounts,

E_T = an institution's total risk-weighted exposure amounts calculated in accordance with Article 92(3) in Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms,

i = the index that specifies the subgroup of exposures in accordance with Article 133(5) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms,

r_i = the buffer value that is applicable to the risk-weighted exposure amount for the subgroup of exposures 'i', and

E_i = an institution's risk-weighted exposure amount for the subgroup of exposures 'i', calculated in accordance with Article 92(3) in Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

The undertaking shall state the geographical location of the credit exposures as set out in the technical standards for supervision that has been adopted under Article 140(7) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

Section 6 The maximum distributable amount for the combined buffer requirement under Chapter 8, section 1 of the Capital Buffers Act (2014:966) shall be calculated by multiplying a distributable amount by a factor.

The distributable amount referred to in the first paragraph shall consist of

a) interim profits and year-end profits that are not included in Common Equity Tier 1 capital in accordance with Article 26(2) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, net of dividends or payments that are the result of the actions referred to in Chapter 8, section 3, points 1–3 of the Capital Buffers Act, less

b) the amount that would have been paid in taxes had the profits referred to in point a been retained within the undertaking.

The factor referred to in the first paragraph shall be determined as follows:

When the undertaking's Common Equity Tier 1 capital, which is not being used to meet the own funds requirement in accordance with Article 92(1)(a), (b) and (c) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and the specific own funds requirement that applied by virtue of a decision pursuant to Chapter 2, section 1 of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968), expressed as a percentage of the total risk-weighted exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, is within the combined buffer requirement's

- a) first quartile, the factor shall be 0,
- b) second quartile, the factor shall be 0.2,

- c) third quartile, the factor shall be 0.4, or
 d) fourth quartile, the factor shall be 0.6.

The lower and upper limit in each quartile shall be calculated as follows:

$$\text{Undregräns kvartilen} = \frac{\text{Kombinerad buffertkrav}}{4} \times [Q_n - 1]$$

$$\text{Övregräns kvartilen} = \frac{\text{Kombinerad buffertkrav}}{4} \times Q_n$$

where Q_n states the ordinal number of the relevant quartile, $Q_n = 1$ is equivalent to the first quartile, $Q_n = 2$ is equivalent to the second quartile, $Q_n = 3$ is equivalent to the third quartile $Q_n = 4$ is equivalent to the fourth quartile.

Interventions and restrictions if the leverage ratio buffer requirement is not met

Section 9 An undertaking shall calculate the maximum distributable amount for the leverage ratio buffer requirement in accordance with Chapter 8, section 1 of the Capital Buffers Act (2014:966) by multiplying a distributable amount by a factor.

The distributable amount referred to in the first paragraph shall consist of

- a) interim profits and year-end profits that are not included in Common Equity Tier 1 capital in accordance with Article 26(2) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, net of dividends or payments referred to in Chapter 8, section 3, points 1–3 of the Capital Buffers Act, less
- b) the amount that would have been paid in taxes had the profits referred to in point a) been retained within the undertaking.

The factor referred to in the first paragraph shall be determined as follows:

When the undertaking's Tier 1 capital, which is not being used to meet the own funds requirement in accordance with Article 92(1)(d) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and the specific own funds requirement that applies by virtue of a decision pursuant to Chapter 2, section 1 of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968), expressed as a percentage of the total exposure measure calculated in accordance with Article 429(4) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, is within the leverage ratio buffer requirement's

- a) first quartile, the factor shall be 0,
 b) second quartile, the factor shall be 0.2,
 c) third quartile, the factor shall be 0.4, or
 d) fourth quartile, the factor shall be 0.6.

The lower and upper limit in each quartile shall be calculated as follows:

$$\text{Lower limit in the quartile} = \frac{\text{Leverage ratio buffer requirement}}{4} \times (Q_n - 1)$$

$$\text{Upper limit in the quartile} = \frac{\text{Leverage ratio buffer requirement}}{4} \times Q_n$$

where Q_n states the ordinal number of the relevant quartile, $Q_n = 1$ is equivalent to the first quartile, $Q_n = 2$ is equivalent to the second quartile, $Q_n = 3$ is equivalent to the third quartile $Q_n = 4$ is equivalent to the fourth quartile.

Section 10 A capital conservation plan for the leverage ratio buffer requirement in accordance with Chapter 8, section 1 of the Capital Buffers Act (2014:966) shall contain information concerning the following:

- a) Estimates of revenue and expenditure and a forecast for assets, liabilities and equity on the balance sheet.
- b) The measures that will be implemented to increase the undertaking's capital ratio.
- c) A plan and timescale for increasing own funds, with the goal of fully meeting the leverage ratio buffer requirement in accordance with Article 92(1)(a) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.
- d) All other information that the undertaking deems is necessary to allow Finansinspektionen to assess the capital conservation plan.

Section 11 The notification that an undertaking shall submit to Finansinspektionen pursuant to Chapter 8, section 5 of the Capital Buffers Act (2014:966) shall contain information concerning the following:

1. The undertaking's own funds, broken down into:
 - a) Common Equity Tier 1 capital, and
 - b) other Tier 1 capital.
2. The undertaking's interim and year-end profit.
3. The maximum distributable amount, calculated in accordance with section 9.
4. The portion of the highest distributable amount that the undertaking intends to use in order to
 - a) perform a transfer of value linked to the undertaking's Common Equity Tier 1 in accordance with Chapter 1, section 2, point 17 of the Capital Buffers Act,
 - b) redeem own funds instruments,
 - c) make payments connected to Additional Tier 1 capital, or
 - d) undertake to pay variable remuneration, discretionary pension benefits or variable remuneration for which the payment obligation arose at a time when the undertaking did not meet the leverage ratio buffer requirement.

Chapter 11 Content of applications for financial holding companies and mixed financial holding companies

Application for approval

Section 1 An application for approval of a holding company in accordance with Chapter 1, section 7 of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968) shall contain the following:

1. A schematic overview of the undertakings in the group the holding company is included in. Subsidiaries and any parent companies shall be specified clearly. The overview shall indicate the ownership structure by specifically stating each owner's share of the capital and voting rights.
2. A description of the activities each undertaking in the group conducts and where each head office is located.
3. A description of how the duties are divided within the group, in order to, at the group level or subgroup level, comply with the requirements stipulated in Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and the Capital Buffers Act (2014:966).
4. The directors and any alternates who are on the board of directors. The application shall also include the name of the chair of the board of directors, the managing director and, where applicable, the managing director's deputies.
5. The information set out in Appendix 2 to Finansinspektionen's regulations (FFFS 2009:3) regarding ownership and management assessment in financial firms, in respect of the holding companies' directors, alternate directors and managing director, as well as deputy managing directors, where such have been appointed.

General guidelines

The holding company should also submit the assessment of the senior executives' suitability that the company has conducted pursuant to the European Banking Authority and the European Securities and Markets Authority's joint guidelines on the assessment of the suitability of members of the management body and key function holders.

Section 3 A holding company that has a credit institution as a subsidiary shall also submit information concerning

1. the persons, shareholders or members who have a qualifying holding in the credit institution and the scope of such holdings, or
2. if there is no qualifying holding, the persons who are the 20 largest shareholders or members of the credit institution.

When the undertaking submits information in accordance with the first paragraph, point 1, it shall always state Finansinspektionen's reference number for cases that involve authorisation to acquire shares.

Application for exemption from the requirement for approval

Section 4 An application for exemption from the requirement for approval for a holding company pursuant to Chapter 1, section 7 of the Special Supervision of Credit Institutions and Investment Firms Act (2014:968), shall contain the following information:

1. A description of the principal activity of the holding company.
2. Name(s) of the undertaking(s) that has/have been appointed as resolution entity in the group's resolution groups.
3. Name of the subsidiary credit institution responsible for ensuring that the group complies with the supervision requirements at group level.
4. A commitment stating that the holding company is not contributing to influencing the operation of the group or the subsidiaries in the group that are financial institutions or institutions.

1. These regulations and general guidelines shall enter into force on 28 June 2021 in respect of Chapter 1, sections 3 and 5, Chapter 6, section 1 and Chapter 8, sections 2 and 4–11, and otherwise on 29 December 2020.

2. The provisions set out in Chapter 9, sections 9–11 are initially applied on 1 January 2023.

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