

# KREDITILSYNET

Norway

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Translated by Government Authorised Translator Peter Thomas

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Regulations no. 435 of 1 June 1990 (as amended)

## **Regulations on Measurement of the Own Funds of Financial Institutions, Clearing Houses and Investment Firms**

### **Section 1 Scope**

These regulations apply to commercial banks, savings banks, finance companies, mortgage institutions, investment firms, clearing houses and insurance companies, and to any other company or institution encompassed by Act no. 39 of 10 June 1988 on Insurance Activity, and prescribes how the own funds of these institutions are to be defined and measured in relation to the statutory minimum standard and requirements as to a satisfactory level of capital adequacy.

### **Section 2 Own funds**

Own funds consist of core capital (section 3), supplementary capital (section 4), and general provisions (section 5). The deductions and restrictions stipulated in sections 6 to 8 inclusive shall apply for purposes of measurement.

### **Section 3 Core capital**

The following items are eligible for inclusion in core capital:

- 1 Paid-up share capital/common stock
- 2 Share premium account
- 3 Dividend equalisation fund
- 4 The savings bank's fund, including initial capital, cf. section 2 of the Savings Banks Act
- 5 Paid-up primary-capital-certificate capital
- 6 Guarantee fund in mutual insurance companies, less that part of the fund that consists of subordinated loan capital
- 7 Fully paid-up members' contributions in mutual insurance companies where obligatory for customers of the company pursuant to the company's articles of association. The company's articles of association shall make clear that members' contributions shall be available to absorb losses or deficits on current operations and not yield returns independent of the annual operating profit/loss. Upon repayment the customer is entitled to have written back that portion of the total equity capital upon exit which corresponds to his/her share of the total premium reserve. Members' contributions may not be repaid without prior consent from Kredittilsynet (Norwegian Banking, Insurance and Securities Commission). Section 6-3 of the Companies Act on notification of creditors applies to repayment of members' contributions insofar as appropriate
- 8 Donations Fund
- 9 Other share capital/equity approved by Kredittilsynet
- 10 Cumulated profits pursuant to published and auditor-certified interim accounts, subject to the sum being reduced by 50 per cent and loss potential being reviewed in

- conformity with regulations governing entry in the accounts and evaluation of non-performing assets. Where the equity method is employed in the annual accounts, the amount for the period transferred to valuation reserve shall be deducted when calculating cumulated profits in accordance with the first sentence.
- 11 50 per cent of repayable members' contributions in loan associations, provided that repayment cannot take place until the loan is redeemed and that the members' contributions do not bear interest, also provided that repayment cannot take place if the stipulated capital requirement pursuant to law or regulations is not met, or if repayment entails that it will not be met. Members' contributions shall furthermore be freely available to absorb losses or deficits on current operations. Repayment must furthermore not take place before the accounts for the year in question have been closed and approved in accordance with generally accepted accounting principles and with regulations laid down by Kredittilsynet as regards provisions for and recording of losses.
- 12 Other capital elements which, subject to approval from the Ministry of Finance, may be equated with core capital. Such capital shall:
- be fully paid up
  - be available to absorb losses or deficits on current operations
  - not yield returns independent of the annual operating profit/loss
  - not be repayable except in the event of liquidation
- 13 Guarantees furnished through statutory guarantee schemes on terms approved by Kredittilsynet.
- 14 In the case of interim financial statements, that share of supplementary provisions in life insurance companies and pension funds corresponding to the amount that could have been taken to income under Regulations No. 979 of 25 September 2000 on Supplementary Provisions in Life Insurance Companies under the rules applying to annual financial statements.

#### **Section 4                      Supplementary capital**

The following items are eligible for inclusion in supplementary capital:

- 1 50 per cent of repayable members' contributions in credit associations, provided that repayment cannot take place until the loan is redeemed and that the members' contributions do not bear interest, also provided that repayment cannot take place if the stipulated capital requirement pursuant to law or regulations is not met, or if repayment entails that it will not be met. Members' contributions shall furthermore be freely available to absorb losses or deficits on current operations. Repayment must furthermore not take place before the accounts for the year in question have been closed and approved in accordance with generally accepted accounting principles and with regulations laid down by Kredittilsynet as regards provisions for and recording of losses.
- 2 Other instruments of debt/equity  
Comprises instruments that have the character of both debt and equity capital and which satisfy the following conditions:
- Special consent must have been obtained from the authorities for raising such capital
  - The funds must be unsecured and must yield priority to the institution's ordinary debt, and must be fully paid up
  - The funds shall not be repayable at the creditor's option or without prior

- consent from Kredittilsynet
  - The funds must be available to absorb losses or deficits without the institution being wound up
  - The loan contract must entitle the counterparty to defer interest payments
- 3 Subordinated loan capital with a fixed term that satisfies the following conditions:
- Special consent must have been obtained from the authorities for raising such loan capital
  - The loan capital shall be unsecured and shall yield priority to the institution's ordinary debt, and must be paid up
  - The loan must have a term of at least five years. In the last five years to maturity of the loan or parts thereof, that part of the loan capital which is eligible for inclusion as supplementary capital shall each year be reduced by 20 per cent of the amount falling due. In the final year to maturity the loan is no longer eligible for inclusion in own funds
  - The loan contract must not contain clauses stipulating a creditor call option before the agreed redemption date. Repayment of the loan before the agreed redemption date is not permitted without prior consent from Kredittilsynet
- 4 Mutual members' liability/joint and several liability in credit associations approved by the Ministry of Finance pursuant to special legislation.

### **Section 5                    General provisions**

General provisions are provisions to cover future losses on loans, guarantees etc., which could arise as a result of circumstances arising after the balance sheet date (i.e. provisions to cover losses over and above specified and unspecified loan-loss provisions).

### **Section 6            (Revoked by regulation no. 1202 of 23 December 1992)**

### **Section 7                    Deductions**

The following items shall be deducted from the core capital:

- a) Cumulated losses
- b) Holdings of own shares/primary capital certificates
- c) Book goodwill and other intangible assets

The following items shall be deducted from the supplementary capital:

- a) Holdings of own instruments as specified in section 4 subsections 2 and 3.

The following items shall be deducted from overall own funds:

- a) Book values of any kind of own funds in other financial institutions and investment firms for that part which exceeds 2 per cent of the own funds of the recipient financial institution or investment firm. The provision of the first paragraph does not apply to unit-linked life insurance contracts which do not offer a guaranteed return.
- b) Book values of any kind of own funds that are not deducted pursuant to the third paragraph litra a, for that part of the sum of such own funds that exceeds 10 per cent of the financial institution's or investment firm's own funds. For life insurance companies the provision of the first sentence applies to book values of own funds that exceed 50 per cent of the insurance company's own funds. The provisions of the first and second sentences do not apply to unit-linked life insurance contracts which do not offer a guaranteed return.

## **Section 8                      Limits and restrictions**

- a        The sum total of the items included in the supplementary capital may not exceed 100 per cent of the sum of the core capital and the general provisions.
- b        Subordinated loan capital with a fixed term may not amount to a sum which is in excess of 50 per cent of the core capital and the general provisions.
- c        In the case of loan associations, the sum of subordinated loan capital with a fixed term and members' supplementary liability shall not exceed 50 per cent of the core capital and the general provisions.
- d        In the case of mutual insurance companies having a restricted licence and operating in a limited geographical area, the limits imposed under the terms of the licence for the proportion of subordinated loan capital in the guarantee fund shall apply.

## **Section 9                      Commencement**

These regulations come into force at the same time as the Regulation on Minimum Standards of Capital Adequacy for Financial Institutions, cf. section 2-9 third paragraph and section 3-17 of the Financial Institutions Act no. 40 of 10 June 1988.

## **Section 10                    Transitional provisions**

- a        Savings banks are until 30 June 1994 allowed to raise subordinated loan capital with a fixed term in excess of the limitation stipulated in section 8b of these regulations, cf. Royal Decree of 10 June 1988, no. 457, subsection 7. After 30 June 1994 the limitation stipulated in section 8b shall apply.
- b        Insurance companies that were in operation in Norway when the Act relating to Insurance Activity came into force are until 31 December 1992 allowed to cover up to 50 per cent of the capital requirement by raising subordinated loan capital.
- c        Loan associations may up to 31 December 1992 include the whole of the members' contributions in their core capital.
- d        The percentage stipulated in section 7 third paragraph litra a of these regulations shall be 10 per cent up to 31 December 1995, and 5 per cent up to 30 December 1997. The percentage stipulated in section 7 third paragraph litra a shall apply after 31 December 1997.
- e        In the period up to and including 31 December 1993, unspecified loan-loss provisions may in their entirety be regarded as general provisions. In the period 1 January 1994 - 31 December 1994, two thirds of unspecified loan-loss provisions may be regarded as general provisions. In the period 1 January 1995 - 31 December 1995, one third of unspecified loan-loss provisions may be regarded as general provisions.

The provisions of the first paragraph do not apply in relation to section 8.

The term unspecified loan-loss provisions means provisions to cover losses which, owing to circumstances on the balance sheet date, must be expected to be incurred on loans which have not been identified and assessed pursuant to the rules on specific loan-loss provisions.

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