12/09/2016

D E C I S I O N

Resurs Bank Aktiebolag
through the Chair of the Board
Box 22209
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FI Ref. 15-13887
Notification no. 1

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Remark and sanction fee

Finansinspektionen's decision (to be announced 13 September 2016 at 8:00 a.m.)

1. Finansinspektionen is issuing Resurs Bank Aktiebolag (publ) (516401-0208) a remark.

(Chapter 15, section 1 of the Banking and Finance Business Act [2004:297])

2. Resurs Bank Aktiebolag (publ) shall pay an administrative fine of SEK 35 million (35,000,000).

(Chapter 15, section 7 of the Banking and Financing Business Act)

To appeal the decision, see *Appendix 1*.

Summary

Resurs Bank Aktiebolag (Resurs) is a joint stock bank authorised to conduct banking business in accordance with the Banking and Financing Business Act (2004:297).

Finansinspektionen has investigated Resurs's compliance with the rules for a consolidated situation (previously a financial group) and how Resurs has applied the capital requirements in the consolidated situation (group-level). The investigation covers the years 2012–2015. It focused in particular on which firms during this period of time should have been included in the consolidated situation and what could then be considered to constitute the Common Equity Tier 1 capital and the Tier 1 capital. Finansinspektionen's investigation shows that Resurs has been in violation of the rules on three points:

1. during the period 1 August 2013–16 September 2015, Resurs was non-compliant in its reporting of its consolidated situation.

2. During the period 1 January 2014–16 September 2015, Resurs did not meet the requirements on the lowest Common Equity Tier 1 capital ratio and Tier 1 capital ratio for its consolidated situation.
3. during the period 2 August 2014–16 September 2015, Resurs did not meet the combined buffer requirement for its consolidated situation.

Because of these identified breaches, Resurs is being issued a remark along with an administrative fine of SEK 35 million.

1 Background

1.1 Introduction regarding applicable regulations

The circumstances on which Finansinspektionen is stating its position in this decision were present during the period 1 August 2013–16 September 2015. Prior to 1 January 2014, the relevant provisions regarding capital adequacy were set out in Chapters 3 and 9 of the Capital Adequacy and Large Exposures Act (2006:1371) (Capital Adequacy Act) and Chapter 6 and Chapter 7, sections 1 and 1a of Finansinspektionen's regulations and general guidelines (FFFS 2007:1) regarding capital adequacy and large exposures (the capital adequacy regulations). Since 1 January 2014, the provisions in Articles 11(2), 18, 26(1), 28(1), 52(1), 92 and 99 of the Capital Requirements Regulation apply instead[1]. The provisions regarding intervention have been set out in Chapter 15 of the Banking and Financing Business Act (2004:297) for the entire duration of the period in question. However, these provisions were amended by legislation that entered into force on 2 August 2014.

As a result of the amendments mentioned above, some of the terms in the regulations have changed. For example, the term "financial group" that was used previously has now been changed to "consolidated situation". In order to avoid confusion, the new terms are used whenever possible even if the circumstances took place before the change.

1.2 The firm and its operations

Resurs Bank Aktiebolag (publ) (hereafter referred to as Resurs or the bank) is authorised to conduct banking business in accordance with the Banking and Financing Business Act. Resurs is the parent company in a group, which consists of, in addition to the bank, Resurs Norden AB, RCL1 Ltd and yA Bank AS. The companies in the group are active in the Nordic region and offer payment services and consumer loans. Resurs in turn is a subsidiary of Resurs Holding AB (Resurs Holding), which is a mixed financial holding company. In 2012, the Luxembourg-based holding company, Cidron FI Sarl (Cidron), acquired 55 per cent of Resurs Holding. Cidron was a parent financial holding company that was

[1] 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.

controlled by Nordic Capital. Cidron has now been liquidated. Following its initial public offering in April 2016, Resurs Holding is owned by Cidron Semper Ltd (34.93 per cent) and Waldakt AB (28.58 per cent). None of the remaining owners hold 20 per cent or more on their own.

The bank's annual report for 2015 states that the group (the bank and its subsidiaries) as at 31 December 2015 had a balance sheet total of SEK 24.5 billion. The bank's turnover in 2015 was approximately SEK 2.2 billion and earnings after tax amounted to approximately SEK 456 million.

1.3 The case

Finansinspektionen investigated Resurs's compliance with applicable provisions regarding both its consolidated situation and its application of capital requirements at the group level. In addition to the regulations mentioned in section 1.1, the investigation reviewed Resurs's compliance with the provisions set out in the Capital Buffers Act (2014:966). Finansinspektionen's investigation targeted in particular which firms should be included in the consolidated situation, the capital that may be included in Common Equity Tier 1 capital and Tier 1 capital and how well the combined buffer requirement was met in the consolidated situation. The investigation covered the years 2012–2015.

The investigation was started after a notification from the bank itself that its consolidated situation may have been improperly defined, and it was conducted on material that Resurs submitted to Finansinspektionen upon request. Resurs was given the opportunity to respond to Finansinspektionen's preliminary assessments that the bank disregarded its obligations. The bank thereafter submitted a response to Finansinspektionen.

1.4 Capital adequacy regulations

The main purpose of the extensive capital requirement regulations are to ensure that credit institutions (i.e. banks and credit market companies) maintain a certain level of solvency. This promotes not only financial stability but also good customer and consumer protection since the regulations decrease the risk that institutions will find themselves in a situation where they can no longer meet their obligations.

For financial firms, it has been considered justified to establish special rules for capital. These rules place requirements on how much capital the firms must have in relation to the risks in their business. These rules are set out in the capital requirement regulations. One of the reasons for placing capital requirements on firms is that there is a clear risk that financial problems may spread from one firm to another. The capital requirement regulations aim to increase the financial resilience of financial corporations in order to protect financial stability (Bill 2006/07:5 p. 101).

It has not been considered sufficient to merely monitor each credit institution's financial position. If a firm in the consolidated situation would have financial problems, this could also have an impact on other firms in the group. The capital requirement regulations shall therefore also apply to the cumulative financial position of a consolidated situation (a. Bill p.91).

2 Applicable provisions

For a description of the applicable provisions, *see Appendix 2*.

3 Finansinspektionen's assessment

In this section, Finansinspektionen describes its observations and assessments regarding how Resurs has complied with the regulations governing a consolidated situation and the capital requirement regulations. Finansinspektionen also specifies which firm in the consolidated situation should be considered to be responsible for compliance with the regulation.

3.1 Consolidated situation

A consolidated situation (previously called "financial group") consists of the firms that according to applicable regulations shall be consolidated. Some rules shall be applied to the aggregate financial position of the consolidated situation. Rules regarding Common Equity Tier 1 capital and Tier 1 capital are examples of rules that also must be met at the group level. This also means that the responsible institution shall report the Common Equity Tier 1 capital ratios and the Tier 1 capital ratios to the competent authority.

Prior to 1 August 2013, mixed financial holding companies were not included in the financial group. On 1 August 2013, the provisions set out in Chapter 9 of the Capital Adequacy Act were amended such that mixed financial holding companies were included in the financial group and thus required to comply with the rules that applied to the group. The same applies since 1 January 2014 pursuant to Articles 11(2) and 18 of the Capital Requirements Regulation.

The Resurs group has reported as a consolidated situation with the mixed financial holding company, Resurs Holding, as the top company. When the amended rule entered into force on 1 August 2013, however, Cidron owned 55 per cent of Resurs Holding. Cidron was a parent financial holding company and was included in the consolidated situation and should thus have been reported accordingly.

Since Cidron was not included in the consolidated situation reported by Resurs, Finansinspektionen makes the determination that the bank's reporting of its consolidated situation has been incorrect. The error occurred on 1 August 2013 when the rule changed and persisted until 16 September 2015 when Cidron was liquidated. Since Resurs shall submit reports to the competent authorities every

quarter regarding the size of its own funds, the bank has been in violation of the rules governing reporting at least every quarter.

In its response on 4 May 2016, Resurs raised no objections to Finansinspektionen's assessment of its consolidated situation.

3.2 Common Equity Tier 1 capital and Tier 1 capital

As presented above, Finansinspektionen makes the assessment that Resurs Holding's parent company, Cidron, was part of the consolidated situation during the period 1 August 2013–16 September 2015. This means that the capital requirement regulations should also have applied to the aggregate financial position for the entire consolidated situation, including Cidron.

Article 26(1) of the Capital Requirements Regulation states that Common Equity Tier 1 items in an institution consist of, for example, certain capital instruments and share premium accounts related to such instruments.

Article 28(1)(h) of the Capital Requirements Regulation states that a prerequisite for classifying an instrument as Common Equity Tier 1 capital is that it meets certain conditions regarding distributions. One of the conditions states that, "there is no preferential distribution treatment regarding the order of distribution payments, including in relation to other Common Equity Tier 1 instruments, and the terms governing the instruments do not provide preferential rights to payment of distributions."

Article 25 of the Capital Requirements Regulation states that an institution's Tier 1 capital consists of the sum of the Common Equity Tier 1 capital and Additional Tier 1 capital of the institution.

Article 51 of the Capital Requirement Regulation states that Additional Tier 1 capital consists of capital instruments that meet the conditions of Article 52(1) and share premium accounts related to such instruments.

Article 52(1) of the Capital Requirements Regulation states that a prerequisite for classifying an instrument as Additional Tier 1 capital is that it meets certain conditions. One of the conditions (Article 52(1)(n)) states that, "the provisions governing the instruments require that, upon the occurrence of a trigger event, the principal amount of the instruments be written down on a permanent or temporary basis or the instruments be converted to Common Equity Tier 1 instruments."

The capital in Cidron consisted primarily of a share premium reserve of SEK 1.4 billion and share capital, of which 76 per cent consisted of preferential shares. The preferential shares and the part of the share premium reserve related to the preferential shares contain clauses regarding the order of distribution payments. This means that, pursuant to the capital requirement regulations, neither the preferential shares nor the corresponding part of the share premium reserve are

allowed to be included as Common Equity Tier 1 capital. Since the preferential shares cannot be transformed into Common Equity Tier 1 capital, according to Article 51(1)(n) of the Capital Requirements Regulation they may not be included in Additional Tier 1 capital, either. In the consolidated situation, this means that only the original shares and the 24 per cent of the share premium reserve that is linked to the original shares could be used as Common Equity Tier 1 capital or Tier 1 capital.

Resurs stated in its response on 4 May 2016 that there was only one shareholder in Cidron and therefore there was no real preference. According to Resurs, the shares therefore in practice were not subject to any preferential distribution.

The capital requirement regulations state that preferential shares, or corresponding parts of the share premium reserve, are not eligible as Common Equity Tier 1 capital or Tier 1 capital. The number of shareholders in the company is not of importance in this context. A shareholder, as a rule, may sell its shares at any time, which means that there could be more shareholders with different preferential treatment.

According to Article 92(1) of the Capital Requirements Regulation, institutions shall at all times satisfy the own funds requirement that it has a Common Equity Tier 1 capital ratio of 4.5% and a Tier 1 capital ratio of 6%.

Finansinspektionen shows in its investigation that calculations in which the preference shares and the corresponding part of the share premium reserve are not eligible either as Common Equity Tier 1 capital or Tier 1 capital result in non-compliant capital for the consolidated situation during the period 1 January 2014–16 September 2015 with regard to the requirements on Common Equity Tier 1 capital and Tier 1 capital.

In addition to its Common Equity Tier 1 capital, the consolidated situation shall have, in accordance with Chapter 2, sections 1 and 2 and Chapter 3, sections 1 and 2 of the Capital Buffers Act, Common Equity Tier 1 capital that corresponds to the combined buffer requirement. During the period 2 August 2014–16 September 2015 the consolidated situation did not meet the combined buffer requirement, either.

During the specified periods, Resurs did not satisfy the capital requirements that are laid down in the capital requirement regulations. At its lowest point, the consolidated situation had both a Common Equity Tier 1 capital ratio and Tier 1 capital ratio of -0.5 per cent.

In summary, Finansinspektionen makes the assessment that only the original shares in Cidron and the 24 per cent of the share premium reserve that is related to the original shares could be used as Common Equity Tier 1 capital or Tier 1 capital (cf. Articles 26(1), 28(1) and 52(1) of the Capital Requirements Regulation). This means that Resurs has not been in compliance with the applicable capital requirement regulations for its consolidated situation.

Resurs stated in its response on 4 May 2016 that the bank has no objections to Finansinspektionen's assessment with regard to the Common Equity Tier 1 capital ratio and the Tier 1 capital ratio for its consolidated situation. Resurs also did not have any objections to Finansinspektionen's assessment of the combined buffer requirement.

3.3. Responsible institution

The capital requirement regulations state which institution is responsible for the full consolidation and ensuring that the capital requirements set forth therein are met.

Articles 11(2) and 18 of the Capital Requirements Regulation state that an institution controlled by a parent financial holding company in a Member State is responsible for the full consolidation. The institution is also responsible for ensuring that the obligations prescribed for the Common Equity Tier 1 capital ratio and the Tier 1 capital ratio are met. Corresponding provisions were previously set forth in Chapter 9 of the Capital Adequacy Act.

According to Article 99 of the Capital Requirements Regulation, the institution at least once every six months shall report the size of its own funds to the competent authorities. Articles 5 and 6 of Commission Implementing Regulation[2] state that such reporting shall occur on a quarterly basis.

Finansinspektionen makes the assessment that Resurs is the responsible institution for the full consolidation and for ensuring that the obligations with regard to the capital requirements are met.

Resurs has not raised any objections to Finansinspektionen's assessment in the matter of the responsible institution in its response on 4 May 2016.

4 Consideration of intervention

4.1 Applicable provisions

As mentioned previously, Finansinspektionen makes the assessment that Resurs has been in violation of the capital requirement regulations on three points:

1. during the period 1 August 2013–16 September 2015, Resurs was non-compliant in its reporting of its consolidated situation.

[2] Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council.

2. during the period 1 January 2014–16 September 2015, Resurs did not meet the requirements on the lowest Common Equity Tier 1 capital ratio and Tier 1 capital ratio in its consolidated situation.
3. during the period 2 August 2014–16 September 2015, Resurs did not meet the combined buffer requirement for its consolidated situation.

On 2 August 2014, new provisions entered into force in Chapter 15 of the Banking and Financing Business Act regarding sanctions. The new provisions entail that, in part, the Swedish word "straffavgift" was replaced with "sanktionsavgift" and Finansinspektionen was given the possibility to decide on significantly higher fines that what was previously possible with regard to "straffavgift". (FI uses "administrative fine" for both Swedish terms.) According to a transitional provision for the new provisions, however, older regulations shall apply for breaches that occurred before the new provisions entered into force.

The breaches to the capital requirement regulations identified by Finansinspektionen began before the new intervention rules entered into force but persisted for a period of time after the rules had entered into force.

Finansinspektionen accounts below for the current wording of the relevant provisions in Chapter 15 of the Banking and Financing Business Act. Where necessary, it is stated in which respects the provisions previously (i.e. prior to 2 August 2014) were worded differently.

Finansinspektionen, in accordance with Chapter 15, section 1 of the Banking and Financing Business Act, shall intervene if a credit institution fails to fulfil its obligations pursuant to the same act, other regulations that regulate the institution's operations, the institution's articles of association or internal instructions based on regulations that regulate its operations. According to the same provision, Finansinspektionen can intervene by, for example, ordering a credit institution to implement measures that will rectify a certain situation or by issuing the credit institution a remark. If the breach is serious, the authorisation of the credit institution shall be withdrawn or, if sufficient, a warning issued.

Chapter 15, section 1b of the Banking and Financing Business Act states that when determining the size of the administrative fine, Finansinspektionen shall give special consideration to how serious the breach is and how long it has existed. Special consideration shall be given to the nature of the breach, its concrete and potential effects on the financial system, damages incurred and the degree of liability. There was previously no similar provision in the legislation. As described below, however, the previous wording stated that some of the mentioned circumstances should be considered when determining the size of the administrative fine.

Chapter 15, section 1b of the Banking and Financing Business Act also prescribes that Finansinspektionen may refrain from intervening if the breach is negligible or excusable, if the credit institution rectifies the matter or if any other

authority has taken action against the institution and such action is deemed sufficient. A corresponding provision was previously included in Chapter 15, section 1, third paragraph of the Banking and Financing Business Act.

According to Chapter 15, section 1c, second paragraph of the Banking and Financing Business Act, a mitigating factor could be whether the institution to a significant extent through active cooperation facilitated Finansinspektionen's investigation and whether the institution quickly terminated the breach after it was reported to or identified by Finansinspektionen. There was previously no similar provision in the legislation.

According to Chapter 15, section 7 of the Banking and Financing Business Act, Finansinspektionen may combine a remark or warning with an administrative fine.

According to Chapter 15, section 8 of the Banking and Financing Business Act, the administrative fine shall be set at the most to

a. ten per cent of the credit institution's turnover the immediately preceding financial year,
b. two times the profit recorded by the institution as a result of the breach, if the amount can be determined, or
c. two times the costs avoided by the institution as a result of the breach, if the amount can be determined.

The preparatory works for the provision state that it is the highest amount of the three alternatives that sets the maximum amount for the fine (Bill 2013/14:228 p. 235).

Previously, the administrative fine could be at the most SEK 50 million, although at the most ten per cent of the credit institution's turnover the immediately preceding financial year.

The new rules for the administrative do not allow an amount smaller than SEK 5,000. The fine may also not be of such a size that the institution then does not meet the requirements set out in Chapter 6, section 1 of the Banking and Financing Business Act, i.e. that the fine not be so large that the institution risks not being able to meet its obligations.

When the administrative fine is determined, according to Chapter 15, section 9 of the Banking and Financing Business Act special consideration shall be given for such circumstances as those set out in sections 1b and 1c and to the institution's financial position, and, if it is possible to determine, to the profit that the institution earned as a result of the breach or the avoidance of costs. There was a previous provision that was to some extent similar to the new provision. It prescribed that special consideration be given to the seriousness of the breach that led to the remark or warning and the period of time the breach had existed.

4.2 Response from the bank

Resurs makes the statement in its response on 4 May 2016 that non-compliance by the bank with the relevant capital requirement regulations has not had an effect on the financial system and neither was there a risk that it would have. With regard to the size of a potential administrative fine, the bank has asserted that it should be noted that the change in ownership that resulted in the incorrect reporting occurred in 2012 and that the error occurred technically in conjunction with the amendment to the law that entered into force in the autumn of 2013. The bank also makes the statement that the reporting of the incorrect capital adequacy largely occurred during a period when the administrative fine for a credit institution could be at the most SEK 50 million. The bank therefore takes the position that any administrative fine should be based on the previous rules.

In terms of the action taken by Resurs, the bank highlights that it informed Finansinspektionen about the circumstances at its own initiative. The bank states that it also participated in the investigation and willingly assisted Finansinspektionen by providing information on an ongoing basis. Resurs also highlights that it has taken the initiative on its own to implement measures to rectify the matter, for example by starting the liquidation of Cidron immediately after the bank became aware of the incorrect capital requirement reporting. The bank thereby considers the error to be irrevocably rectified and since then only to have historic relevance. As of September 2015 the error has no effect on either the bank's or the consolidated situation's operations, financial position or similar, in the opinion of Resurs.

4.3 Assessment of the breaches

As stated previously in this decision, Finansinspektionen's investigation finds that Resurs reported an incorrect consolidated situation and that the consolidated situation has been undercapitalised.

The bank has thus been non-compliant with applicable capital requirement regulations and thus disregarded its obligations. According to Chapter 15, section 1, first paragraph of the Banking and Financing Business Act, Finansinspektionen shall thereby intervene against the bank. However, Finansinspektionen may refrain from intervening if the breach is negligible or excusable, or if the credit institution has rectified the matter (1b, second paragraph of the same chapter).

The rules that have been breached aim to maintain stability and good customer and consumer protection in the firm and are a central part of the commercial regulation of banks and credit market companies.

The consolidated situation has also been reported incorrectly. Reporting by firms serves as a basis for Finansinspektionen's work to identify and analyse risks in both individual firms and sectors. It also serves as a basis for extensive analyses at the European level. Correct reporting is thus a fundamental requirement for

Finansinspektionen's ability to fully discharge its assignment. It is also necessary to present an accurate capital situation if potential investors are to obtain a fair presentation of the firm.

The bank has thus breached regulations that are of key importance, and the deficiencies are notable. They also occurred over a long period of time. The consolidated situation has been non-compliant with regard to the Common Equity Tier 1 capital ratio and the Tier 1 capital ratio for a period of more than one year and eight months. The combined buffer requirement was also not met for a period of more than one year and one month. The incorrect reporting of the consolidated situation occurred for an even longer period of time, more than two years.

Given this background, the breaches cannot be considered negligible or excusable. It is also Finansinspektionen's opinion that neither does the fact that Resurs has taken measures to rectify the deficiencies serve as sufficient grounds for the authority to refrain from intervening.

Finansinspektionen finds that as a whole the identified deficiencies have been of such a nature that there are grounds to intervene against Resurs.

4.4 Sanction

The identified breaches should result in the bank being issued a remark, and this remark should be combined with an administrative fine.

Resurs's annual turnover in 2015 amounted to approximately SEK 2.2 billion. It has not been possible to determine the profit attributable to Resurs, or the costs the bank avoided, as a result of the breaches. The highest administrative fine, determined now in accordance with current regulations, would be ten per cent of Resurs's turnover in 2015, i.e. approximately SEK 220 million.

Prior to 2 August 2014, the administrative fine at the most could be set at SEK 50 million, although it was capped at 10 per cent of the turnover of the bank during the previous year. This means that the highest administrative fine for Resurs, if the fine had been determined in accordance with the previously applicable provision, would have been SEK 50 million.

The transitional provision to the statutory amendment that entered into force on 2 August 2014 (SFS 2014:982) states that older regulations shall apply to breaches that occurred before entry into force of the amendment. If the breach had ceased before the entry into force of the new regulation, the highest possible administrative fine would have been determined by the previous wording of Chapter 15, section 8 of the Banking and Financing Business Act. When, as in this case, a breach occurs for a long period of time and an amendment to a law enters into force during this time that makes it possible to decide on a stricter sanction than what was previously possible, the issue arises about how the sanction should be determined given the amendment to the law.

If the breach began immediately before or ended immediately after the entry into force of the amended law, there can be grounds to decide the size of the administrative fine in accordance with the regulations that applied during the greatest part of the period in question. In this case, however, the previous, milder wording of Chapter 15, section 8 of the Banking and Financing Business Act applied for approximately one-half of the time during which the consolidated situation was incorrectly reported, and approximately one-third of the time that the consolidated situation was undercapitalised. Finansinspektionen believes that this should mean that the administrative fine should be set at a lower amount than what would have been the case if the current legislation had been applicable during the entire period during which the breach had occurred. The starting point should be that an intended cap on the administrative fine is determined based on how much of the breach had occurred before and after the change in the law. When the breaches, like in this case, have occurred for approximately an equal amount of time before and after the change in the law, it is reasonable to assume that the cap for the administrative fine is determined as the average of the highest fines according to both applicable regulations, i.e. SEK 135 million.

The administrative fine can be seen as a gradation of the breaches. When the size of the administrative fine is determined, according to Chapter 15, section 9 of the Banking and Financing Business Act compared to sections 1b and 1c of the same chapter, special consideration shall be given to how serious the breach is and how long it has occurred. This includes giving special consideration to the nature of the breach, its concrete and potential effects on the financial systems, damages incurred and the degree of liability.

Finansinspektionen has outlined previously in this decision its assessment of the breaches. The circumstances that have been presented as sufficient grounds for the authority to intervene are also those that should be taken into consideration when determining the size of the administrative fine.

When determining the size of the administrative fine, special consideration shall also be given to the concrete and potential effects on the financial system, damages incurred and the degree of liability.

The breaches in this case have not had any concrete effects on the financial system. Neither have they resulted in any damages for third parties.

On the other hand, as mentioned above, the capital requirement requirements are of central importance for protecting both financial stability in general and individual consumers and other creditors. The capital requirements aim to create a level of resistance so that financial shocks of any kind do not result in losses for individuals or costs for tax payers. In other words, there are serious potential effects of breaching the capital requirement regulations, even if these effects were not realised in this particular case. However, there is a serious risk that this could occur.

With regard to “the degree of liability”, the preparatory works say that this provides Finansinspektionen with an opportunity to recognise whether there were mitigating circumstances in that a breach was due to behaviour which, due to special circumstances, could be considered to be less reprehensible than otherwise (Bill 2013/14:228 p. 240).

In the current case, the bank had not noticed that the entry into force of the legislative amendment also entailed that Cidron would be included in the consolidated situation. This in turn led to the breaches specified in this decision. It is naturally of fundamental importance that financial undertakings stay informed about the rules that apply to their operations and apply these rules correctly. The fact that the breach is due to a mistake rather than a conscious act does not excuse the errors. However, Finansinspektionen still makes the assessment that there may be grounds on which not to take as strict an approach to such a breach as when undercapitalisation is due to extensive credit losses caused by consciously excessive risk-taking. This applies in particular if no actual damages were incurred by the general public and it was easy for Resurs to quickly rectify the error. In addition, the assessment is made that the risk of serious effects for the financial system in this case was less significant than if the bank itself had not had sufficient capital. Therefore, as a whole, the current breaches of the capital requirement regulations are not classified as the most serious of their type.

Mitigating circumstances shall also include if a bank significantly has facilitated Finansinspektionen’s investigation through active cooperation or quickly rectified the breach following its notification to or identification by Finansinspektionen. According to the preparatory works (Bill 2013/14:228 p. 241), this assumes that the undertakings on its own initiative provides important information that Finansinspektionen itself does not already have at its disposal or can easily find.

In this case, Resurs itself notified Finansinspektionen about the incorrect reporting of the consolidated situation and quickly took action that resulted in the liquidation of Cidron. These are therefore mitigating circumstances that shall be considered when determining the size of the administrative fine. The bank has not said that the consolidated situation has been undercapitalised, but it has helped Finansinspektionen in its investigation regarding this issue. It is Finansinspektionen’s opinion that the bank's cooperation has not been more active than what is reasonably expected from a firm that is under the authority's supervision. It has thus not been such that Resurs can be considered to have significantly facilitated Finansinspektionen’s investigation through an active cooperation and this should therefore in general not be considered a mitigating circumstance.

In summary, Finansinspektionen finds that even if there are grounds to take a strict approach to breaches to the capital requirement regulations, and the breaches occurred over a long period of time, there are circumstances that shall

be considered to be mitigating in nature when determining the size of the administrative fine.

As a whole, Finansinspektionen finds that it is reasonable to set the administrative fine at SEK 35 million. This administrative fine is not so large as to jeopardise the bank's solvency and liquidity requirements in accordance with Chapter 6, section 1 of the Banking and Financing Business Act.

The administrative fine goes to the Government and is invoiced by Finansinspektionen after the decision enters into force.

FINANSINSPEKTIONEN

Sven-Erik Österberg
Chairman of the Board of Directors

Linda Löfgren
Legal Counsellor
Credit Institutions Banking Law

A decision in this matter was made by the Board of Directors of Finansinspektionen (Sven-Erik Österberg, Chair, Maria Bredberg Pettersson, Sonja Daltung, Marianne Eliason, Anders Kvist, Astri Muren, Hans Nyman, Gustaf Sjöberg and Erik Thedéen, Director General) following a presentation by Legal Counsellor Linda Löfgren. Chief Legal Counsel Per Håkansson, Executive Director Uldis Cerps, Department Director Martina Jäderlund, Head of Division Sara Björkman, Supervisor Christel Brattlöf and Capital Requirement Expert Andreas Borneus also participated in the final proceedings.

Appendices
Appendix 1 – How to appeal
Appendix 2 – Applicable provisions

Copy: Resurs Bank AB Managing Director

N O T I F I C A T I O N R E C E I P T

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FI Ref. 15-13887
Notification no. 1

Remark and sanction fee

Document:

Decision regarding a remark and administrative fine for Resurs Bank Aktiebolag (publ) announced on **13 September 2016**

I have received the document on this date.

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If you use the enclosed envelope, there is no charge for returning the receipt.

Do not forget to **specify the date of receipt**.

Appendix 1

How to appeal

It is possible to appeal the decision if you consider it to be erroneous by writing to the Administrative Court. Address the appeal to the Administrative Court in Stockholm, but send or submit the appeal to Finansinspektionen, Box 7821, 103 97 Stockholm.

Specify the following in the appeal:

- Name and address
- The decision you are appealing against and the case number
- Why you consider the decision is incorrect
- What change you would like and why you believe the decision should be changed.

Remember to sign the letter.

The appeal must be received by Finansinspektionen within three weeks from the day you have received the decision.

Finansinspektionen will forward your appeal to the Administrative Court in Stockholm if it has been received on time and Finansinspektionen does not itself change its decision in the manner you have requested.

Appendix 2

Applicable provisions

Consolidated situation

Articles 11(2) and 18 of the Capital Requirements Regulation state that consolidation shall be done by all institutions and financial institutions that are subsidiaries, or in relevant cases subsidiaries of the same parent financial holding company or parent mixed financial holding company.

Up until 1 January 2014, the provisions regarding financial groups and which undertakings shall be included in the group were set out in Chapter 9 of the Capital Adequacy and Large Exposures Act (2006:1371). The provisions agreed to a material extent with the provisions in the Capital Requirements Regulation.

Tier 1 capital and Common Equity Tier 1 capital

Article 26(1) of the Capital Requirements Regulation states that the Common Equity Tier 1 capital items in an institution shall consist of, for example:

a) Capital instruments, provided that the conditions laid down in Article 28 or, where applicable, Article 29 are met.
b) Share premium accounts related to the instruments referred to in point (a).

Article 28(1) of the Capital Requirements Regulation states that capital instruments shall only be included as Common Equity Tier 1 instruments if a number of conditions are met. Article 28(1)(h) of the Capital Requirements Regulation states that the instruments can be classified as Common Equity Tier 1 capital if the instruments meet the certain conditions as regards distributions. These conditions are that there may not be any preferential distribution treatment regarding the order of distribution payments, including in relation to other Common Equity Tier 1 instruments, and that the terms governing the instruments may not provide preferential rights to payment of distributions.

According to Article 25 of the Capital Requirements Regulation, an institution's Tier 1 capital consists of the sum of the Common Equity Tier 1 capital and the Additional Tier 1 capital.

Article 52(1) of the Capital Requirements Regulation states that a prerequisite for including a capital instrument as Tier 1 capital contributed is that it meets a number of conditions. One of the conditions states that, "the provisions governing the instruments require that, upon the occurrence of a trigger event, the principal amount of the instruments be written down on a permanent or temporary basis or the instruments be converted to Common Equity Tier 1 instruments".

Article 92(1) of the Capital Requirements Regulation states that subject to Articles 93 and 94, institutions shall at all times satisfy the following own funds requirements:

1. A Common Equity Tier 1 capital ratio of 4.5 per cent.

2. A Tier 1 capital ratio of 6 per cent.
3. A total capital ratio of 8 per cent.

Combined buffer requirement

Chapter 2, section 1 of the Capital Buffers Act (2014:966) states that, in addition to the requirements on Common Equity Tier 1 capital set out in Article 92 of the Capital Requirements Regulation and a decision on special own funds requirements in accordance with Chapter 2, section 1 of the Special Supervision of Credit Institutions and Securities Companies Act (2014:968), institutions shall have Common Equity Tier 1 capital corresponding to the combined buffer requirements calculated in accordance with section 2.

According to Chapter 2, section 2 of the same act, the combined buffer requirement consists of the sum of the requirement on Common Equity Tier 1 capital that in accordance with this act is determined by the capital conservation buffer, the institution-specific countercyclical capital buffer and

1. in cases where the systemic risk buffer is applied to exposures in another country, the highest of the systemic risk buffer and applicable capital buffer according to Chapter 5, section 6,
2. in the cases where the systemic risk buffer is applied to exposures in Sweden, the sum of the systemic risk buffer and the applicable capital buffer according to Chapter 5, section 6.

According to Chapter 3, section 1 of the same act, institutions shall have a capital conservation buffer at the individual and the group level. According to Chapter 2, section 2, the capital conservation buffer shall consist of the Common Equity Tier 1 capital corresponding to 2.5 per cent of the institution's total risk-weighted exposure amount.

Up until 1 January 2014, the basic rules regarding the own funds were set out in Chapter 3, section 1 of the Capital Adequacy Act, which in part referred to Chapter 2, section 3 of the same act. Chapter 6 of the capital adequacy regulations regulates in detail how the own funds should be calculated.

Responsible institution

Articles 11 and 18 of the Capital Requirements Regulation specify which institutions are responsible for the full consolidation as well as for ensuring that the obligations prescribed regarding Common Equity Tier 1 capital and Tier 1 capital are met. Corresponding provisions were previously set out in Chapter 9 of the Capital Adequacy Act.

According to Article 99 of the Capital Requirements Regulation, the institution shall submit at least on a semi-annual basis reports to the competent authorities about the size of the own funds.

The information shall be reported quarterly (Articles 5 and 6 of Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council).