

# Finansinspektionen's Regulatory Code

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## **Regulations amending Finansinspektionen's regulations and general guidelines (FFFS 2019:21) regarding occupational pension undertakings;**

**FFFS 2021:8**

Published on  
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decided on 22 June 2021.

Finansinspektionen prescribes pursuant to Chapter 5, section 2 of the Occupational Pension Undertakings Ordinance (2019:809) in respect of Finansinspektionen's regulations and general guidelines (FFFS 2019:21) regarding occupational pension undertakings

*in part* that Chapter 7, section 22 shall be repealed,  
*in part* that current Chapter 7, section 22a shall be designated Chapter 7, section 22,  
*in part* that Chapter 1, section 4; Chapter 7, sections 1, 3, 8, 9, 16, 28, 29, 30 and 45;  
and the heading immediately preceding Chapter 7, section 29 shall have the following wording,  
*in part* that the heading immediately following Chapter 7, section 27 shall be "Capital requirement for the risk of qualifying infrastructure investments",  
*in part* that a new section, Chapter 7, section 28a, shall be inserted with the following wording.

Finansinspektionen also provides the following general guidelines.

### **Chapter 1**

**Section 4** By virtue of Chapter 1, section 16 of the Occupational Pension Undertakings Act (2019:742) (2019:742), the Insurance Distribution Act (2018:1219) applies to occupational pension undertakings unless otherwise specified in the section.

Pursuant to the Insurance Distribution Act, the following also applies to an occupational pension's operations:

1. Chapter 1; Chapter 3, sections 1, 2 and 5; Chapters 4–6; Chapter 8; Chapter 10; Chapter 11, sections 1–4 and 14–20; Chapter 12; and Chapter 15, sections 1 and 5 of Finansinspektionen's regulations (FFFS 2018:10) regarding insurance distribution, and
2. Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors.

If an occupational pension undertaking provides advice to an individual employee or a self-employed person as referred to in Chapter 1, section 4, second paragraph, point 1 of the Occupational Pension Undertakings Act regarding insurance-based investment products or such pension insurance as referred to in Chapter 7, section 1 of the Insurance Distribution Act, Chapter 13, section 6 and Chapter 14 of Finansinspektionen's regulations regarding insurance distribution also apply.

The provisions set out in Chapters 11–12 of Finansinspektionen's regulations regarding insurance distribution or Commission Delegated Regulation (EU) 2017/2358 do not apply to collective bargaining-based occupational pension insurance or group insurance.

When applying the provisions referred to in the second and third paragraphs, that which applies to insurance undertakings shall apply to occupational pension undertakings.

## Chapter 7

**Section 1** Chapter 8, sections 1–6a of the Occupational Pension Undertakings Act (2019:742) contain provisions concerning calculation of the risk-based capital requirement.

**Section 3** An occupational pension undertaking shall calculate the risk-based capital requirement (RCR) in accordance with the following formula:

$$RCR = RCR_{MI} + RCR_{Operational} - Aa - Aa_{SP}$$

where the adjusted aggregation of the capital requirements for market risk and insurance risk,  $RCR_{MI}$ , shall be calculated in accordance with the following formula:

$$RCR_{MI} = \sqrt{RCR_M^2 + RCR_I^2},$$

where

- $RCR_M$  is the capital requirement for market risk calculated in accordance with sections 8–30,
- $RCR_I$  is the capital requirement for insurance risk calculated in accordance with sections 31–43,
- $RCR_{Operational}$  is the capital requirement for operational risk calculated in accordance with section 44,
- $Aa$  is an adjustment amount, calculated in accordance with section 45, and
- $Aa_{SP}$  is an adjustment amount for supplemental policies, calculated in accordance with Chapter 8, section 6a of the Occupational Pension Undertakings Act (2019:742).

**Section 8** Chapter 8, sections 3 and 3a of the Occupational Pension Undertakings Act (2019:742) contains provisions concerning which risks are included in the capital requirement for market risk.

**Section 9** When producing the adjusted aggregation of the capital requirements that are included in the capital requirement for market risk in accordance with Chapter 8, section 3 of the Occupational Pension Undertakings Act (2019:742), an occupational pension undertaking shall use the formula specified in section 6.

When calculating in accordance with the first paragraph, the undertaking shall use the following correlation matrix:

i \ j	Interest rate risk	Equity risk	Property risk	Spread risk	Foreign exchange rate risk	Concentration risk	Qualifying infrastructure investments
Interest rate risk	1	0.50	0.50	0.50	0	0	0.50
Equity price risks	0.50	1	0.75	0.50	0	0	0.75
Property risk	0.50	0.75	1	0.50	0	0	0.75
Spread risk	0.50	0.50	0.50	1	0	0	0.50
Foreign exchange rate risk	0	0	0	0	1	0	0
Concentration risk	0	0	0	0	0	1	0
Qualifying infrastructure investments	0.50	0.75	0.75	0.50	0	0	1

**Section 16** An occupational pension undertaking shall calculate the capital requirement for equity risk for type A shares, type B shares and type C assets.

*Type A shares* means shares that are admitted to trading on a regulated market or are traded on an MTF. In addition, this includes shares that are traded on a trading venue that is equivalent to a regulated market or an MTF outside of the European Economic Area (EEA), in a state that is a member of the Organisation for Economic Co-operation and Development (OECD). The terms *regulated market* and *MTF* have the same meaning as in the Securities Market Act (2007:528).

*Type B shares* means shares other than type A shares that are traded on trading venues that are equivalent to the trading venues referred to in the second paragraph outside of the EEA and OECD.

*Type C assets* means both shares other than type A shares and type B shares, and also assets that are not encompassed by the subgroup for interest rate risk, the subgroup for property risk or the subgroup for spread risk. If the asset is a qualifying infrastructure investment, it is not a type C asset.

**Section 28** In order for an occupational pension undertaking's investment in an infrastructure unit to be a qualifying infrastructure investment, the requirements set out in section 28a and the following conditions shall be met:

1. The undertaking makes the investment in the form of interest-bearing assets, in shares other than type A and type B shares as referred to in section 16 or in any other asset that is not included in the subgroup for interest rate risk, the subgroup for property risk or the subgroup for spread risk.
2. The cash flows generated by the infrastructure entity for its creditors and shareholders are predictable.
3. If the undertaking makes the investment in the form of interest-bearing assets, the scope of the agreement shall encompass limitations on the ability of the infrastructure entity to perform activities that may harm its creditors. This means that new liabilities may only be issued if the existing creditors consent to this, unless such

new issues of liabilities are permitted in accordance with the documentation for the existing liability.

4. If a credit assessment from an external credit assessment institution is available for the infrastructure entity, the entity shall have a credit rating equivalent to a credit quality step between zero and three.

5. If the undertaking makes the investment in the form of assets for which there is no credit assessment from an external credit rating institution, the assets shall be located in countries that are members of the EEA or OECD.

6. If the undertaking makes the investment within a fund structure where it is possible to redeem units, the scope of the agreement shall include restrictions on redemption that aim to ensure that all unit-holders are treated equally in economic terms.

7. If the infrastructure entity's revenue does not come from payments from a large number of users, the party that has agreed to buy the goods or services provided by the infrastructure entity shall be one of the following:

- a) an entity that is listed under Article 180(2) of Commission Delegated Regulation (EU) 2015/35, or
- b) an entity with a rating from an external credit rating institution with a credit rating equivalent to a credit quality step between zero and three.

The cash flows referred to in the first paragraph, point 2 shall be regarded as being predictable if all except an immaterial portion of the revenues fulfils at least one of the following criteria:

- 1. The revenues are subject to provisions of acts that regulate the pricing of or rate of return from certain goods or services (rate-of-return regulation).
- 2. The revenues are subject to a contract that contains terms to the effect that a buyer shall pay a fixed amount if the vendor does not complete the purchase in accordance with the agreement (take-or-pay contract).
- 3. The level of output and the price or the usage and price independently fulfil one of the following criteria:

- a) They are regulated in law or in another statute.
- b) They are contractually fixed.
- c) They are predictable due to low demand risk.

**Section 28a** An occupational pension undertaking's investment in an infrastructure unit can be a qualifying infrastructure investment if

- 1. the undertaking ensures that the operations meet the requirements in applicable environmental protection rules in national legislation and EU legislation, and
- 2. the operations do not consist of energy production based on fossil fuels, or the extraction, processing, storage, sale or transport of fossil fuels, as long as such activities do not refer to a marginal portion of the operations that is being discontinued.

If it makes an investment outside of the EEA, the undertaking shall verify that the operations probably would meet the requirements in environmental protection rules that do not materially deviate from those that apply in the European Union. The undertaking, in such a case, shall also be able to make the assessment that the

operations would be profitable if they had been subject to the EU's emissions trading system.

The undertaking shall document its verifications and assessments.

*General guidelines*

The undertaking can meet the requirement set out in the first paragraph, point 1 by verifying that

- the operations, when required, have environmental authorisation, have dispensation from environmental protection provisions or are registered with a relevant authorisation authority, and that an environmental impact assessment report has been prepared, and
- there is no court ruling or decision from a government authority identifying the operations as being in breach of an environmental license or other environmental protection rules.

*Calculation of capital requirement for qualifying infrastructure investments*

**Section 29** An occupational pension undertaking shall calculate the capital requirement for the risk of qualifying infrastructure investments attributable to interest-bearing assets as spread risk in accordance with sections 19 and 23, where the exposure is allocated a risk weight of 70 per cent. This means that the exposure shall constitute 70 per cent of the market value.

**Section 30** An occupational pension undertaking shall calculate the capital requirement for the risk of qualifying infrastructure investments not attributable to interest-bearing assets as the value reductions resulting from market prices for the investments falling by 20 per cent.

**Section 45** An occupational pension undertaking shall calculate the adjustment amount ( $Aa$ ) for the loss-absorbing effect of deferred tax and conditional bonuses in accordance with the following formula:

$$Aa = Aa_{Tax} + Aa_{Cbon},$$

where

- $Aa_{Tax}$  is the adjustment amount for deferred tax, which corresponds to the reduction in deferred tax that may arise in the event of future losses, and
- $Aa_{Cbon}$  is the adjustment amount for conditional bonuses that is calculated in accordance with the following formula:

$$Aa_{Cbon} = \max[0; \min(Cbon; RCR_{MI} - nRCR_{MI})],$$

where

- $Cbon$  is the conditional bonus in accordance with Chapter 5 of the Occupational Pension Undertakings Act (2019:742),
- $RCR_{MI}$  is the adjusted aggregation of the capital requirements for market risk and insurance risk specified in section 3, and
- $nRCR_{MI}$  is calculated in the same way as  $RCR_{MI}$  but where the undertaking shall calculate the loss-absorbing effects of conditional bonuses.

When calculating  $nRCR_{Mt}$ , the undertaking shall also take into account future administrative measures, as well as legal, regulatory and contractual limitations on the allocation and reduction of conditional benefits.

## Chapter 8

**Section 5**<sup>1</sup> Chapter 9, section 23 of the Occupational Pension Undertakings Act (2019:742) contains provisions to the effect that an occupational pension undertaking may commission another party to undertake a certain piece of work or certain functions (outsourcing).

### *General guidelines*

An occupational pension undertaking that has commissioned another party to undertake work as part of a key function should appoint a person within the undertaking who is responsible for the outsourced operations.

This person should have the insight into and experience of the function's duties that is required in order to check that the outsourced operations are being performed and the results of the outsourcing.

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1. These regulations and general guidelines shall enter into force on 06 July 2021.
  2. For investments an undertaking has made prior to this entry into force, older regulations apply for the calculation of the capital requirement for market risk, if this leads to a lower capital requirement.

ERIK THEDÉEN

William Svärd

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<sup>1</sup> The amendment entails in part that the third paragraph of the general guidelines has been removed.