Unofficial Translation

This translation is for the convenience of those unfamiliar with the Thai language

Please refer to Thai text for the official version

The Notification of the Bank of Thailand

No. FPG. 22/2563

Re: Regulations on Components of Capital for Locally Incorporated Banks (No.2)

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1. Rationale

The Bank of Thailand has issued the regulations on capital supervision under the Basel III framework based on the Basel Committee on Banking Supervision (BCBS)'s guidelines on Basel III: A global regulatory framework for more resilient banks and banking systems (revised version: June 2011). The regulations are to ensure that locally Incorporated Banks sufficiently hold good quality capital that can absorb losses during normal and stressed periods and to preserve the stability of the overall financial system. In addition, this regulation has been revised to accommodate the implementation of the new Thai financial reporting standard No. 9: Financial instruments (TFRS 9), which came into effect since 1 January 2020 (B.E.2563) onwards.

The bank of Thailand deems it appropriate to amend the regulations on eligibility criteria for financial instruments qualified as banking capital. The amendment aims to support the bank's capital funding via an issuance of financial instruments qualified as banking capital. Therefore, the Bank of Thailand has amended the regulations on Additional Tier1 (AT1) capital instrument so that issuance banks are allowed to pay interests or other returns to holders without prior approval from the BOT, provided that the banks' BIS Ratio is higher than the specified ratio as prescribed by the BOT. Moreover, this amendment has revoked the clause requiring banks to have the rights to postpone the schedule for payment of interests for Tier 2 capital instrument.

2. Statutory Power

By virtue of Section 4, Section 29, and Section 71 of the Financial Institution Business Act B.E. 2551 (2008), the Bank of Thailand hereby issues the regulations on components of capital (No. 2) for locally incorporated banks as detailed herein.

3. Scope of Application

This Notification shall apply to all commercial banks according to the law on financial institution business exception of foreign bank branches.

4. Repealed/Amended Notifications

Repeal Attachment 4: Criteria for inclusion of financial instruments in Tier 1 capital (Additional tier 1) and Attachment 5: Criteria for inclusion of financial instruments in Tier 2 capital of the Bank of Thailand No. FPG. 7/2562 Re: Regulations on Components of Capital for Locally Incorporated Banks, dated 7th May 2019 and replace by the Attachment 4 and 5 of this notification.

5. Effective date

This Notification shall come into force as from the day following the date of its publication in the Government Gazette.

Announced on 24 th Novermber 2020

(Mr. Sethaput Suthiwartnarueput)
Governor
Bank of Thailand

Regulatory Policy Department
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Attachment 4

Criteria for inclusion of financial instruments in Tier 1 capital (Additional tier 1)

1. Financial instruments to be included in Tier 1 capital (Additional Tier 1) shall be met with all the following criteria:

(1) Issued and paid-in

(2) In liquidation of commercial banks, holders of financial instruments included in Tier 1 capital will receive the payment after preferential creditors, depositors, general creditors and all types of subordinated creditors, as well as holders of financial instruments included in Tier 2 capital of commercial banks.

(3) Neither secured by collaterals, nor covered by guarantees or insurance of commercial banks or related persons of commercial banks that legally or economically enhances the seniority of the claim.

(4) Principal is perpetual, that is, there is no maturity date and there are no step-ups or other incentives to redeem.

(5) Commercial banks shall not create an expectation of holders of Tier 1 capital that the instruments would be repurchased or redeemed before maturity, and shall not create market expectations that the Bank of Thailand would approve for the early redemption.

(6) Commercial banks may redeem debt instruments included in Tier 1 capital after a minimum of 5 years from the issue date. Such redemption could be made only when:

(6.1) Approved by the Bank of Thailand, where commercial banks shall submit the redemption and substitution plans for such instruments to the Bank of Thailand at least 30 days prior to the redemption.

In addition, the redemption and substitution plans shall commit that commercial banks will issue the same type of instruments or instruments with better quality to replace the instruments to be redeemed immediately or prior to the redemption. Such substitution of instruments shall occur while commercial banks are able to maintain capability to operate the business.

(6.2) Commercial banks could demonstrate that such redemption does not cause the capital ratios of commercial banks to be lower than the minimum capital requirements specified by the Bank of Thailand.

However, with the exception of the following cases, commercial banks may early redeem debt instruments included in Tier 1 capital before a minimum of 5 years from the issue date on the condition that the approval is granted by the Bank of Thailand in accordance to the compliance of (6.1) and (6.2) above:

- There are changes in tax legislations causing changes in tax benefits of commercial banks or

- There are changes in capital requirement regulations resulting in the disqualification of debt instruments currently included in Tier 1 capital.

For the early redemption of such instruments as aforementioned, commercial banks are required to receive the consent from the holders of such instruments in the case that there are no such agree-upon terms and conditions specified in term sheets or prospectus.

(7) Commercial banks could buy-back[1] financial instruments included in Tier 1 capital by complying with the following:

(7.1) Approved by the Bank of Thailand, where commercial banks are required to submit the repurchase and substitution plans for such instruments to the Bank of Thailand for consideration on a case by case basis. The buy-back of preferred shares included in Tier 1 capital may be considered as an indirect decrease of capital which is prohibited under Section 80 (1) of the Financial Institutions Business Act B.E. 2551 and commercial banks may be also considered as possession of their own shares which is prohibited under Section 66 of the amended Public Limited Company Act B.E. 2535. Therefore, such buy-back of preferred shares are required to be approved by the Bank of Thailand for a decrease of capital, and the condition for such buy-back of their own shares are required to be valid under Section 66/1 of the amended Public Limited Company Act B.E. 2535.

[1] A buy-back is to buy the instruments back from the willing holders of instruments (sellers) by commercial banks who are the issuers (buyers) under the agreed-upon prices. The buy-back of instruments could only be a part of the issued lot. This is different from the redemption, where the holders of instruments are repaid with the prices specified in the prospectus and if there is term or condition written in the prospectus to be able to redeem, the whole lot of instruments will be inevitably redeemed without any consent from the holders.

(7.2) Commercial banks shall strictly comply with accounting standards regarding the buy-back of financial instruments included in Tier 1 capital.

(8) Payment of interest or other returns of financial instruments included in Tier 1 capital shall be complied with the following:

(8.1) Commercial banks shall have full discretion at all times to cancel payments of interests or other returns on the instruments. There shall not be provision that commercial banks are required to pay interest or other returns to holders of financial instruments included in Tier 1 capital if returns have been paid to holders of Common Equity Tier 1[2]. However, if commercial banks do not pay interest or other returns to holders of financial instruments included in Tier 1 capital, the commercial banks are unable to pay returns to holders of Common Equity Tier 1[3].

(8.2) Returns are non-cumulative and any cancellation of return payments is not considered as an event of default.

(8.3) Commercial banks shall have full access to cancel payments of interests or other returns to holders of financial instruments included in Tier 1 capital, if it is necessary to meet debts or obligations as they fall due.

(8.4) Commercial banks are allowed to pay interests or other returns to holders without prior approval from the BOT, provided that the banks' accumulated profits are sufficient for the interest payment or other returns. In addition, the payment made shall not result in the failure to meet the requirement as prescribed by the BOT according to Regulations on Supervision of Capital for Commercial Banks, the assessment methodology and supervisory measures for domestic systemically important banks (D-SIBs) and other regulations related to capital.

(9) The financial instruments could not have a credit sensitive return feature, that is, returns shall not be reset periodically based in whole or in part on the credit standing of commercial banks.

(10) Eligible financial instruments to be included in Tier 1 capital shall have all of the following criteria:

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[2] This action is called dividend pusher

[3] This action is called dividend stopper

(10.1) Able to absorb losses on a going-concern basis, which is comparable to common equity; by having the following conditions: (1) could be converted into common shares when commercial banks have Common Equity Tier 1 to total risk-weighted assets ratio (CET1 ratio) lower than the trigger level specified by commercial banks[4] (trigger point) or (2) could be written-down when CET1 ratio lower than the trigger level specified by commercial banks. The conversion and write-down shall result in the following:

- Reducing the claim of holders of instruments, or reducing the amount to be paid by commercial banks in the redemption when applicable, as well as reducing burdens for payment of returns in term of interests or others of such instruments.

- The write-down and conversion shall increase Common Equity Tier 1, in accordance with generally accepted accounting standards.

- Amount of financial instruments to be written-down or converted to common shares shall be, at least, equal to the amount that needed to return CET1 ratio to be higher than the level specified by commercial banks (trigger point), if this is not possible, the principle value shall be written-off or fully converted into common shares.

(10.2) Able to absorb losses on the occurrence of a non-viability trigger event[5] (at the point of non-viability) where commercial banks are unable to continue operating businesses. There shall be provisions on a gone-concern basis that such instruments (1) will be converted to common shares or (2) will be written off when the authorities decide to give financial assistance to the commercial banks.

(11) Neither commercial banks themselves nor related persons of commercial banks could purchase financial instruments that could be included in their own capital, nor could commercial banks directly or indirectly have funded to any person such as subsidiaries or related persons of commercial banks with purposes to purchase such financial instruments. The Bank of Thailand shall not allow commercial banks to

[4] The trigger level specified by commercial bank shall be CET1 ratio higher than 5.125%

[5] Examples of such event are (1) the assets of commercial banks are insufficient for their depositors and creditors (2) the capital of commercial banks have reach the level that may detrimentally affect their depositors and creditors (3) commercial banks are unable to recapitalise on their own e.g. there are no investors interested in restoration of commercial banks.

include proceeds from selling such instruments, for an amount invested by their subsidiaries or related persons, in their capital.

(12) Financial instruments included in Tier 1 capital could not have any features that require commercial banks to compensate holders of instruments, if newly issued instruments of commercial banks give higher returns during the specified time frame (no provision that hinder recapitalisation).

2. Regulation on payment of interests or returns of financial instruments included in Tier 1 capital (Additional Tier 1)

2.1 Commercial banks may consider paying interests or other returns of financial instruments included in Tier 1 capital (Additional Tier 1) by complying with the following:

(1) In the case where the payment date of interests or other returns is exactly the same as the end date of accounting period, commercial banks could use estimated net profits of such accounting period when making consideration to pay interests or other returns of financial instruments included in Tier 1 capital.

(2) In the case where the payment date of interests or other returns is after the end date of accounting period, commercial banks could use net profits from financial statements of previous accounting period when making consideration to pay interests or other returns of financial instruments included in Tier 1 capital.

2.2 Commercial banks could specify conditions for partial payment of interests or other returns of financial instruments included in Tier 1 capital in the prospectus.

In addition, when commercial banks record accounting transactions for payment of interests or other returns of financial instruments included in Tier 1 capital under 2.1 and 2.2 in the corresponding accounting period in accordance with generally accepted accounting standards, there shall not be net losses shown in the income statement of such accounting period.

Attachment 5

Criteria for inclusion of financial instruments in Tier 2 capital

1. Financial instruments to be included in Tier 2 capital shall be met with all the following criteria:

(1) Issued and paid-in

(2) In liquidation of commercial banks, holders of financial instruments included in Tier 2 capital will receive the payment after preferential creditors, depositors, and general creditors of commercial banks.

(3) Neither secured by collaterals, nor covered by guarantees or insurance of commercial banks or related persons of commercial banks that legally or economically enhances the seniority of the claim

(4) Have minimum original maturity at least five years and the recognition of such instruments as capital in the remaining five years before maturity will be amortised on a straight line basis. There shall be no condition specified as step-ups or other incentives to redeem in such instruments.

(5) Commercial banks shall not create an expectation of holders of Tier 2 capital that the instruments would be repurchased or redeemed before maturity.

(6) Commercial banks may redeem debt instruments included in Tier 2 capital after a minimum of 5 years from the issue date. Such redemption could be made only when:

(6.1) Approved by the Bank of Thailand, where commercial banks shall submit the redemption and substitution plans for such instruments to the Bank of Thailand at least 30 days prior to the redemption.

In addition, the redemption and substitution plans shall commit that commercial banks will issue the same type of instruments or instruments with better quality to replace the instruments to be redeemed immediately or prior to the redemption. Such substitution of instruments shall occur while commercial banks are able to maintain capability to operate the business.

(6.2) Commercial banks could demonstrate that such redemption does not cause the capital ratios of commercial banks to be lower than the minimum capital requirements specified by the Bank of Thailand.

(6.3) The Bank of Thailand is able to ensure that such early redemption does not cause the capital ratios to be lower than 9 percent[1], by taking into account the factors that may affect the capital position of commercial banks in the 3-year forwarded period, provided that there is no capitalisation. Such factors are:

- projected profits and losses from operation

- projected growth in risk weighted assets and

- projected provisions for assets in accordance with the Notification of the Bank of Thailand Re: Asset Classification and Provisioning of Financial Institutions

With the exception of the following cases, commercial banks may early redeem debt instruments included in Tier 2 capital before a minimum of 5 years from the issue date on the condition that the approval is granted by the Bank of Thailand in accordance to the compliance of (6.1) (6.2) and (6.3) above:

- There are changes in tax legislations causing changes in tax benefits of commercial banks or

- There are changes in capital requirement regulations resulting in the disqualification of debt instruments currently included in Tier 2 capital.

For the early redemption of such instruments as aforementioned, commercial banks are required to receive the consent from the holders of such instruments in the case that there are no such agree-upon terms and conditions specified in term sheets or prospectus.

(7) Commercial banks could buy back[2] financial instruments included in Tier 2 capital by complying with the following:

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[1] On 1 January 2016, the capital ratio is equal to 9% plus 0.625%, and the capital ratio shall be increased each subsequent year at 0.625% until it will be at 11.5% in 2019. This is a consequence that the Bank of Thailand requires commercial banks to hold Conservation Buffer of 2.5% in addition to minimum capital requirement ratio as such buffer will start at 0.625% on 1 January 2016 and increase each year by 0.625%, to reach its final level of 2.5% on 1 January 2019.

[2] A buy-back is to buy the instruments back from the willing holders of instruments (sellers) by commercial banks who are the issuers (buyers) under the agreed-upon prices. The buy-back of instruments could only be a part of the issued lot. This is different from the redemption, where the holders of instruments are repaid with the prices specified in the prospectus and if there is term or condition written in the prospectus to be able to redeem, the whole lot of instruments will be inevitably redeemed without any consent from the holders.

(7.1) Approved by the Bank of Thailand, where commercial banks are required to submit the repurchase and substitution plan for such instruments to the Bank of Thailand for consideration on a case by case basis. The buy-back of preferred shares included in Tier 2 capital may be considered as an indirect decrease of capital which is prohibited under Section 80 (1) of the Financial Institutions Business Act B.E. 2551 and commercial banks may be also considered as possession of their own shares which is prohibited under Section 66 of the amended Public Limited Company Act B.E. 2535. Therefore, such buy-back of preferred shares are required to be approved by the Bank of Thailand for a decrease of capital, and the condition for such buy-back of their own shares are required to be valid under Section 66/1 of the amended Public Limited Company Act B.E. 2535.

(7.2) Commercial banks shall strictly comply with accounting standards regarding the buy-back of financial instruments included in Tier 2 capital.

(8) The financial instruments could not have a credit sensitive return feature, that is, returns shall not be reset periodically based in whole or in part on the credit standing of commercial banks.

(9) Neither commercial banks themselves nor related persons of commercial banks could purchase financial instruments that could be included in their own capital, nor could commercial banks directly or indirectly have funded to any person such as subsidiaries or related persons of commercial banks with purposes to purchase such financial instruments. The Bank of Thailand shall not allow commercial banks to include proceeds from selling such instruments, for an amount invested by their subsidiaries or related persons, in their capital.

(10) Able to absorb losses on the occurrence of a non-viability trigger event[3] (at the point of non-viability) where commercial banks are unable to continue operating businesses. There shall be provisions on a gone-concern basis that such instruments (1) will be converted to common shares or (2) will be written off when the authorities decide to give financial assistance to the commercial banks

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[3] Examples of such event are (1) the assets of commercial banks are insufficient for their depositors and creditors (2) the capital of commercial banks have reach the level that may detrimentally affect their depositors and creditors (3) commercial banks are unable to recapitalise on their own e.g. there are no investors interested in restoration of commercial banks.