



Bangko Sentral ng Pilipinas

OFFICE OF THE GOVERNOR

Circular No. 595
Series of 2008

Subject : Interim Tier 1 Capital for Banks Under Rehabilitation

The Monetary Board in its Resolution No. 1462 dated 21 December 2007 approved the following guidelines on the issuance of capital notes that will qualify as interim Tier 1 capital for banks under rehabilitation:

Section 1. Banks under rehabilitation shall be allowed, upon prior BSP approval, to issue capital notes that shall qualify as interim Tier 1 capital: *Provided*, That the Philippine Deposit Insurance Corporation (PDIC) shall be the holder of the said capital notes: *Provided, further*, That any transfer from PDIC of said capital notes shall require prior BSP approval.

Section 2. The interim Tier 1 capital notes shall have the following minimum features:

- (1) It must be perpetual, unsecured and subordinated;
- (2) It must be issued and fully paid-up. Only the net proceeds received from the issuance shall be included as Tier 1 capital. The proceeds of the issuance must be immediately available without limitation to the bank;
- (3) It must neither be secured nor covered by a guarantee of the issuer or related party or other arrangement that legally or economically enhances the priority of the claim of the PDIC as against depositors, other creditors of the bank and holders of Lower Tier 2 (LT2) and Upper Tier 2 (UT2) capital instruments;
- (4) The PDIC, as holder of the interim capital notes must not have a priority claim, in respect of its principal and coupon payments of the interim Tier 1 capital notes in the event of winding up of the bank, which is higher than or equal with that of depositors, other creditors of the bank and holders of LT2 (e.g. limited life redeemable preferred stock) and UT2 (e.g. perpetual and cumulative preferred stock) capital instruments. The PDIC must waive its right to set-off any amount it owes the bank against any subordinated amount owed to it due to the interim Tier 1 capital notes;
- (5) It must not be repayable without the prior approval of the BSP: *Provided*, That repayment may be allowed only in connection with a call option after a minimum of five (5) years from issue date: *Provided, however*, That a call option may be exercised within the first five (5) years from issue date upon entry of new investors;

PANANALAPING MATATAG, BANSANG PANATAG

Provided, further, That such repayment prior to maturity shall be approved by the BSP only if it is simultaneously replaced with issues of new capital which is neither smaller in size nor of lower quality than the original issue, unless the bank's capital ratio remains more than adequate after redemption.

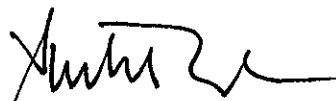
It must not contain any clause, which requires acceleration of payment of principal, except in the event of insolvency. The agreement governing its issuance must not contain any provision that mandates or creates an incentive for the bank to repay the outstanding principal of the interim Tier 1 capital notes, e.g., a cross-default or negative pledge or a restrictive covenant, other than a call option, which may be exercised by the bank;

- (6) The PDIC, as holder of the interim Tier 1 capital notes, shall have the right to convert, upon prior notice to the BSP, the interim Tier 1 capital notes into perpetual and non-cumulative preferred shares convertible into common shares which may be sold to new investors: *Provided,* That the rate of conversion shall be fixed at the time of subscription of the interim Tier 1 capital notes;
- (7) The coupons must be non-cumulative;
- (8) The bank must have full discretion over the amount and timing of coupon payments and it must have full control and access to waived payments;
- (9) Any coupon to be paid must be paid only to the extent that the bank has profits distributable determined in accordance with existing BSP regulations. The coupon rate, or the formulation for calculating coupon payments must be fixed at the time of issuance of the interim Tier 1 capital notes and must not be linked to the credit standing of the bank;
- (10) It must not have step-up provisions in the coupon rate in conjunction with the call option;
- (11) All other transactions involving the capital notes shall require prior BSP approval.

Section 3. The bank must submit a written opinion from its external auditor that the features of the interim Tier 1 capital notes shall be accounted for as equity instruments in accordance with PAS 32.

This Circular shall take effect fifteen (15) calendar days after its publication either in the Official Gazette or in a newspaper of general circulation.

FOR THE MONETARY BOARD



AMANDO M. TETANGCO, JR.
Governor

11 January 2008