

From the Banking Regulation and Supervision Agency:

**COMMUNIQUE ON THE CAPITAL INSTRUMENTS THAT WILL BE INCLUDED
IN OWN FUNDS OF BANKS**

(Published in Official Gazette dated June 7, 2018, Nr. 30444)

SECTION ONE

Objective and Scope and Basis and Definitions

Objective and Scope

ARTICLE 1 – (1) The objective of this Communique is to set down the procedures and principles related to write-off, write-down or conversion of the capital instruments that will be included in own funds of banks.

Basis

ARTICLE 2 – (1) This Communique has been prepared on the basis of Articles 44 and 93 of the Banking Law Nr 5411 dated 19/10/2005 and Articles 7 and 8 of the Regulation on Own Funds of Banks (Regulation) dated 05/09/2013.

Definitions

ARTICLE 3 – (1) The following terms used in this Communique shall have meanings designated to them below;

- a) Independent audit firms: Independent audit firms defined in Article 3 of the Regulation on Independent Audit of the Banks that has been published in the Official Gazette dated April 2, 2015 and numbered 29314,
- b) Bank: Bank defined in Article 3 of the Law,
- c) Common Equity Tier 1 Capital: Common Equity Tier 1 capital defined in Article 6 of the Regulation,
- ç) Write-up: Write-up of the Additional Tier 1 capital instruments that are subject to temporary write-down provided that they meet the required criteria,
- d) Write-down: Permanent or temporary write-down of the capital instruments that are included in own funds pursuant to point (i) or point (j) of paragraph 2 of the Article 7 and (ğ) of paragraph 2 of the Article 8 of the Regulation relevantly,
- e) Conversion range: Number of common shares that will be given in return for the capital instruments that are included in own funds,
- f) Conversion rate: Factor that determines the number of common shares that will be given in return for nominal amount of the the capital instruments that are included in own funds,
- g) Fund: Saving Deposit Insurance Fund (SDIF),

- g) Temporary write-down: Temporary write-down of the Additional Tier 1 capital instruments to the extent to restore fully the Common Equity Tier 1 capital ratio (solo or consolidated basis) to 5,125%, pursuant to point (i) paragraph 2 of the Article 7 of the Regulation,
- h) Additional Tier 1 Capital: Additional Tier 1 capital defined in Article 7 of the Regulation.
- i) Tier 2 Capital: Tier 2 capital defined in Article 8 of the Regulation,)
- i) Law: Banking Law Nr. 5411 dated 19/10/2005,
- j) Board: Banking Regulation and Supervision Board,
- k) Agency: Banking Regulation and Supervision Agency,
- l) The capital instruments that will be included in own funds of banks: Debt instruments and subordinated loans that are included in own funds in accordance with Articles 7 and 8 of Regulation,
- m) Trigger event: The event that solo or consolidated basis Common Equity Tier 1 capital ratio falls below 5,125% level,
- n) Regulation: Regulation on Own Funds of Banks published in the Official Gazette dated September 05, 2013 Nr. 28756.

SECTION TWO

Write-off, Write-down or Conversion of the Capital Instruments that will be Included in Own Funds

Opinion of independent audit firm

ARTICLE 4 – (1) It must be mandatory to obtain the opinion of the independent audit firm which confirms that the all eligibility criteria for the Additional Tier 1 capital instruments and Tier 2 capital instruments that are laid down in the Articles 7 and 8 of the Regulation have been met.

The subordination order in the event of write-off, write-down or conversion

ARTICLE 5 – (1) In terms of the subordination order of the capital instruments that are included in own funds, Additional Tier 1 capital instruments shall be written-off, written-down or converted prior to any write-off, write-down or conversion of Tier 2 capital instruments.

The general principles regarding the written-off, written-down or conversion

ARTICLE 6 – (1) In determining the amounts that will be written-off, written-down or converted, the nominal value of the capital instruments that are included in own funds shall be taken. With respect to subordinated loans the amounts to be written-off, written-down or converted shall be based on their principal amounts.

(2) In the event where a bank has more than one type of Additional Tier 1 capital instrument containing write-off, write-down or conversion provision, such instruments will be treated pari passu. The same would apply for Tier 2 capital instruments.

(3) The transactions of conversion, or dividend or interest payment after write-down, or repayment in the event of an early call of capital instruments that are included in own funds shall be made on the basis of residual amount of converted or writtendown amount.

(4) Capital instruments that are included in own funds which are subject to write-down pursuant to point (j) of paragraph 2 of the Article 7 and (ğ) of paragraph 2 of the Article 8 of the Regulation, shall not be written-up.

Other principles regarding conversion

ARTICLE 7 – (1) It is obligatory to get approval of the General Assembly prior to the issuance of a capital instrument with a conversion mechanism,

(2) Of the capital instruments that will be included in own funds with a conversion mechanism, all prior authorisation necessary to immediately issue the relevant number of shares specified in the instrument's terms and conditions/prospectus shall be taken by the relevant authorities before the issuance.

(3) The capital instruments that are included in own funds shall not be converted into the preferred shares.

(4) The terms and conditions/prospectus of the capital instruments that are included in own funds shall include the elements stated in either point (a) or point (b) of this paragraph and the element stated in the point (c) of this paragraph.

(a) Conversion rate and maximum amount of common share that will be issued in the event of conversion.

(b) Conversion range.

(c) Conversion rate or the method used for the calculation of conversion range in order to determine the share price.

(5) As a result of the conversion into the common share of the capital instruments that are included in own funds where the limits mentioned in the first paragraph of the Article 18 of the Banking Law are exceeded, or fallen below these limits in order to persons who acquire these shares to use shareholder rights except dividends, the permission of the Board shall be required provided that these shareholders bear the conditions required for founders. Until the permission will be given by the Board within the framework of this Law or in the event of the permission is not given, the shareholder rights except dividends shall be used by the Fund during the six months period that is given by the Board to the related persons for disposing off the shares without the requirement for any other transaction upon the Agency's notification.

(6) The shares that are issued as a result of conversion into the common share shall not be taken into consideration in calculations that will be made within the scope of the provisions of the Regulation on Capital Conservation and Counter Cyclical Capital Buffers that has been published in the Official Gazette dated November 5, 2013 and numbered 28812 and other limitations that are determined by the Board regarding the profit distributions.

SECTION THREE

The Capital Instruments that will be Included in Additional Tier 1 Capital

The Occurrence of Trigger Event

ARTICLE 8 – (1) In the occurrence of trigger event of the capital instruments that are included into Additional Tier 1 capital, the bank shall inform the Agency and the holders of the Additional Tier 1 capital instruments without any delay.

(2) The amounts to be written-off, written-down or converted of the capital instruments that are included in Additional Tier 1 capital shall be determined within one month period without prejudice to the measures to be taken by the Agency pursuant to powers that are given by the Law. The Board shall be authorized to change this period if it is seen as necessary.

The Write-Up Following the Temporary Write-Down

ARTICLE 9– (1) The write-up following the temporary write-down shall only be applied for the instruments that are included in Additional Tier 1 Capital which have been subject to a write-down in the case of trigger event occurred.

(2) The write-up following the temporary write-down or any distributions payable after a write-down is discretionary for the bank provided that the criteria that are laid down in the first paragraph of the Article 10 has been met.

The Criteria for the Write-Up following the Temporary Write-Down

ARTICLE 10 – (1) In order to the write-up after a temporary write-down the following criteria needs to be met.

- a) The write-up after a temporary write-down shall be based on the bank's net profit of current period.
- b) The maximum amount to be attributed to the sum of write-up amount of the instrument together with the coupon/dividend payments on the reduced amount of the principal shall be more than the net profit of current period of the bank multiplied by the sum of the nominal amount of all instruments before write-down that have been subject to a write-down. This calculation shall be made at the moment when the write-up is operated.
- c) A write-up shall be operated on a pro rata basis among similar Additional Tier 1 instruments that have been subject to a write-down.
- ç) The sum of any write-up after a temporary write-down and payment of coupons/dividends on the reduced amount of the principal shall be treated as a profit distribution and they shall be subject to the Regulation on Capital Conservation and Counter-Cyclical Capital Buffers and other limitations that are determined by the Board regarding the profit distributions.

SECTION FOUR

Final Provisions

Entry into force

ARTICLE 11 – (1) This Communique enters into force on the date of its publication.

Enforcement

ARTICLE 12 – (1) The provisions of this Communique are enforced by the Chairman of the Banking Regulation and Supervision Agency.