



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Capital Adequacy Framework for Islamic Banks (Capital Components) Concept Paper

Issued on: 15 July 2015

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This concept paper sets out the Bank's proposals (refer to paragraph 10) to detail out the computation of the weighted average Countercyclical Capital Buffer requirements for private credit exposures held in jurisdictions where the national authority has announced the Countercyclical Capital Buffer rate for that jurisdiction, in line with the requirements set out under Basel III*.

The Bank invites written comments on the above proposals and feedback, if any, shall be submitted by 14 August 2015 to:

Pengarah
Jabatan Perbankan Islam dan Takaful
Bank Negara Malaysia
Jalan Dato' Onn
50480 Kuala Lumpur
Email: pfpcconsult@bnm.gov.my

Electronic submission is encouraged.

In addition, this concept paper also incorporates proposals from the Bank's discussion paper, issued on 23 October 2014, on *Capital Adequacy Framework for Financial Holding Companies (Banking groups)*.

Submission received may be made public unless confidentiality is specifically requested for the whole or part of the submission.

In the course of preparing your feedback, kindly direct any queries to Nurhayati Mohd Khalid at nurhayati@bnm.gov.my or 03-26988044 (ext. 8289) or Mohammad Hafiz Norazmar at mhn@bnm.gov.my or 03-26988044 (ext.7993).

* *Basel III: A global regulatory framework for more resilient banks and banking systems*, Basel Committee on Banking Supervision, December 2010 (revised June 2011).

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PART A OVERVIEW

1. Introduction

1.1. Regulatory capital requirements seek to ensure that risk exposures of an Islamic financial institution are backed by an adequate amount of high quality capital which absorbs losses on a going concern basis. This ensures the continuing ability of an Islamic financial institution to meet its obligations as they fall due while also maintaining the confidence of customers, depositors, creditors and other stakeholders in their dealings with the institution. Capital requirements also seek to further protect depositors and other senior creditors in a gone concern situation by promoting an additional cushion of assets that may be used to meet claims in liquidation.

Policy objective

1.2. The Capital Adequacy Framework for Islamic Banks sets out the approach for computing regulatory capital adequacy ratios, as well as the levels of those ratios at which Islamic financial institution is required to operate at. The framework has been developed based on internationally-agreed standards on capital adequacy promulgated by the Basel Committee on Banking Supervision (BCBS).

Scope of policy

1.3. This policy document sets out the general requirements concerning regulatory capital adequacy, and the components of eligible regulatory capital. It shall be read together with the *Capital Adequacy Framework for Islamic Bank (Risk-Weighted Assets)* which details out the requirements for computing risk-weighted assets.

2. Applicability

2.1. This policy document is applicable to all Islamic financial institutions.

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3. Legal provisions

- 3.1. The requirements in this policy document are specified pursuant to section 57(2), section 60, section 127, section 155(2) and section 277 of Islamic Financial Services Act 2013 (IFSA).

4. Effective date

- 4.1. This policy document comes into effect:
- i. on 1 January 2016 for an Islamic banking institution, subject to the transition arrangements set out in Part G; and
 - ii. on 1 January 2019 for a financial holding company.

5. Interpretation

- 5.1. The terms and expression used in this policy document shall have the same meanings assigned to them in the IFSA, unless otherwise defined in this policy document.

- 5.2. For purpose of this policy document –

“**S**” denotes a standard, requirement or specification that must be complied with. Failure to comply may result in one or more enforcement actions;

“**G**” denotes guidance which may consist of such information, advice or recommendation intended to promote common understanding and sound industry practices which are encouraged to be adopted;

“**financial group**” refers to a licensed Islamic bank and its subsidiaries or a financial holding company and its subsidiaries, as the case may be;

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“financial holding company” refers to a financial holding company approved pursuant to section 124(3) of the IFSA and holds investment directly or indirectly in corporations that are engaged predominantly in Islamic banking business;

“financial subsidiary” refers to any entity, whether incorporated in Malaysia or otherwise, engaged substantively in, or acquiring holdings in other entities engaged substantively in, any of the following activities: banking, provision of finance, securities broking, fund management, asset management, leasing and factoring and similar activities that are ancillary to the conduct of these activities.

“Islamic banking institution” means a licensed Islamic bank or a licensed bank, as the case may be;

“Islamic financial institution” means an Islamic banking institution or a financial holding company, as the case may be;

“licensed bank” means a licensed bank under the Financial Services Act (FSA) approved under section 15(1)(a) of the FSA to carry on Islamic banking business in accordance with the Guidelines on Skim Perbankan Islam (SPI).

6. Policy document superseded

- 6.1. The *Capital Adequacy Framework for Islamic Banks (Capital Components)* issued on 28 November 2012 is superseded.

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PART B GENERAL REQUIREMENTS

7. Level of application

7.1. An Islamic banking institution shall comply with the capital adequacy requirements in this policy document at the following levels:

- i. entity level¹, referring to the global operations of the Islamic banking institution (i.e. including its overseas branch operations) on a stand-alone basis, and including its Labuan banking subsidiary; and
- ii. consolidated level, which includes entities covered under the entity level requirement, and the consolidation² of all financial and non-financial subsidiaries, except takaful subsidiaries which shall be deducted in the calculation of Common Equity Tier 1 Capital³.

7.2. A financial holding company shall comply with the capital adequacy requirements in this policy document at the consolidated level in accordance with paragraph 7.1(ii).

7.3. Where consolidation of the subsidiaries required under paragraphs 7.1(ii) and 7.2 is not feasible⁴, an Islamic financial institution shall seek the Bank's approval to:

- i. in the case of a financial subsidiary, deduct such investments in accordance with paragraph 31.2; and
- ii. in the case of a non-financial subsidiary, apply a risk weight of 1250% to such investments in accordance with paragraphs 2.51, 3.4 and 3.179 of the policy *Capital Adequacy Framework for Islamic Banks (Risk-Weighted Assets)*.

7.4. In addition to paragraph 7.1(i), a licensed bank carrying on the Skim Perbankan Islam⁵ (hereafter referred to as an "SPI") shall comply with this

¹ Also referred to as the "solo" or "stand-alone" level.

² In accordance with Malaysian Financial Reporting Standards (MFRS).

³ In accordance with paragraph 31.2.

⁴ For example, where non-consolidation for regulatory capital purposes is otherwise required by law.

policy document at the level of the SPI, as if the SPI is a standalone Islamic bank.

- 7.5. A summary of the general treatment referred to in paragraphs 7.1 to 7.4 as well as that applicable for other equity investments, is set out in Appendix 1.

8. Capital adequacy ratios

- S** 8.1. An Islamic financial institution shall calculate its Common Equity Tier 1 (CET1) Capital, Tier 1 Capital and Total Capital Ratios in the following manner

i.	$\text{CET1 Capital Ratio} = \frac{\text{CET1}}{\text{Total RWA}}$
ii.	$\text{Tier 1 Capital Ratio} = \frac{\text{Tier 1 Capital}}{\text{Total RWA}}$
iii.	$\text{Total Capital Ratio} = \frac{\text{Total Capital}}{\text{Total RWA}}$

- S** 8.2. The numerators of the capital adequacy ratios are defined as follows:
- CET1 Capital as defined in paragraph 11.1;
 - Tier 1 Capital shall be the sum of CET1 Capital and Additional Tier 1 Capital as defined in paragraph 12.1; and
 - Total Capital shall be the sum of Tier 1 Capital and Tier 2 Capital as defined in paragraph 13.1.
- S** 8.3. Total risk-weighted assets (RWA) shall be calculated as the sum of credit RWA, market RWA, operational RWA, and large exposure risk requirements as determined in accordance with the Capital Adequacy Framework for Islamic

⁵ In accordance with section 15 of the FSA and the *Guidelines on Skim Perbankan Islam*.

Banks (Risk-Weighted Assets).

The sum of the above shall be further adjusted to take into account any profit-sharing investment accounts (PSIA) recognised as a risk absorbent for capital adequacy purposes, in the manner stipulated under the *Guidelines on Recognition and Measurement of PSIA as Risk Absorbent*.

In calculating the consolidated level capital, a financial institution shall apply the Bank's rules for calculating RWA for an overseas subsidiary's risk exposures, and not the capital rules of the host supervisor.

- S** 8.4. Any exposures which are deducted in the calculation of CET1 Capital, Tier 1 Capital, and Total Capital shall not be subject to any further capital charges in the computation of RWA.

9. Minimum capital adequacy requirements

- S** 9.1. An Islamic financial institution shall hold and maintain, at all times, the following minimum capital adequacy ratios:

CET1 Capital Ratio	Tier 1 Capital Ratio	Total Capital Ratio
4.5%	6.0%	8.0%

- S** 9.2. The Bank may, in writing, specify higher minimum capital adequacy requirements for an Islamic financial institution, having regard to the specific risk profile of the Islamic financial institution.

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10. Capital buffer requirements

- S** 10.1. An Islamic financial institution shall hold and maintain capital buffers, as specified by the Bank, in the form of CET1 Capital above the minimum CET1 Capital, Tier 1 Capital and Total Capital adequacy levels set out in paragraphs 9.1 or 9.2 respectively⁶. The capital buffers shall comprise the sum of the following:
- i. a Capital Conservation Buffer (CCB) of 2.5%; and
 - ii. a Countercyclical Capital Buffer (CCyB), determined as the weighted-average of the prevailing CCyB rates applied in the jurisdictions in which an Islamic financial institution has credit exposures.
- S** 10.2. For an Islamic banking institution, the capital buffer requirements in paragraph 10.1 will be phased-in starting 1 January 2016, as set out in paragraphs 37.11 and 37.2.
- S** 10.3. For the purpose of paragraph 10.1(ii), an Islamic financial institution shall apply the following:
- i. The CCyB to be maintained by an Islamic financial institution shall be calculated as follows:

$$\frac{\sum_c (RWA_c \times CCyB_c)}{\sum_c RWA_c}$$

where:

RWA_c the sum of the following:

- (a) RWA in respect of the private sector credit exposures in the banking book in jurisdiction c ⁷; and

⁶ For the avoidance of doubt, an Islamic financial institution's CET1 Capital shall first be used to meet the minimum ratios before the remainder can count towards its capital buffers. For example, an Islamic financial institution with 8% CET1 Capital Ratio and which does not have any Additional Tier 1 or Tier 2 capital instruments would meet all minimum capital adequacy requirements but would not meet the capital buffer requirements.

⁷ This excludes exposures to a banking institution but includes exposures to a non-bank financial

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(b) RWA equivalent for trading book capital charges for specific risk, incremental risk charges (i.e. default and migration risks) and securitisation in jurisdiction c

CCyB _{c} the prevailing CCyB rate applied in jurisdiction c ⁸, unless specified otherwise by the Bank

- ii. In determining the jurisdiction to which a private sector credit exposure relates, an Islamic financial institution shall use an ultimate risk basis where possible⁹;
- iii. An Islamic financial institution shall calculate the CCyB based on the prevailing CCyB rates in the jurisdictions that are applicable at the date which an Islamic financial institution calculates its capital adequacy ratios.
- iv. Where the prevailing CCyB rate applied in a jurisdiction outside Malaysia is more than 2.5%, the CCyB rate for that jurisdiction is capped at 2.5% for the purpose of calculating the Islamic financial institution's CCyB, unless specified otherwise by the Bank;
- v. If the national authority in a jurisdiction outside Malaysia has yet to announce the CCyB rate, the rate applicable for that jurisdiction is deemed to be 0%.

10.4. The Bank shall have regard to the level of capital buffers maintained by the Islamic financial institution as part of the Bank's assessment in considering the application on proposed dividend¹⁰. For the avoidance of doubt, the Bank shall have full discretion to elect to approve a reduced amount, reject the application or impose other restrictions as the Bank deems fit.

entity and public sector entity that are risk-weighted based on their external ratings similar to a corporate.

⁸ As announced by the relevant national authority.

⁹ For allocation of exposures to a multinational company, an Islamic financial institution shall, to the best of the Islamic financial institution's knowledge and information, determine where the risk ultimately lies and not allocate exposures solely on the basis of where the exposure is booked.

¹⁰ And share buybacks in the case of a licensed Islamic banking institution.

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PART C COMPONENTS OF CAPITAL

11. Common Equity Tier 1 Capital

- S** 11.1. CET1 Capital shall consist of the following¹¹:
- i. ordinary shares issued by the Islamic financial institution that meet the criteria specified in paragraph 14.1;
 - ii. share premium resulting from the issue of ordinary shares;
 - iii. retained earnings net of any interim and/or final dividend declared¹² and any interim losses. Any quarterly interim profits may be included in CET1 Capital, subject to a review/audit by the Islamic financial institution's external auditors¹³;
 - iv. other disclosed reserves¹⁴;
 - v. qualifying minority interest, as determined in paragraph 17.1; and
 - vi. regulatory adjustments applied in the calculation of CET1 Capital, as determined in Part E.

12. Additional Tier 1 Capital

- S** 12.1. Additional Tier 1 Capital shall consist of the following:
- i. Additional Tier 1 capital instruments issued by the Islamic financial institution¹⁵ that meet the criteria specified in paragraph 15.1, and are not included in CET1 Capital;
 - ii. share premium resulting from the issue of instruments referred to in

¹¹ For the purpose of paragraph 7.4, CET1 Capital of an SPI shall consist of an allocation of the banking institution's CET1 Capital and CET1 Capital generated by the SPI (collectively known as Islamic Banking Fund), and regulatory adjustments applied in the calculation of CET1 Capital.

¹² In accordance with applicable MFRS.

¹³ Quarterly financial statements shall be reviewed in a timely manner by the Islamic financial institution's approved external auditors, and no qualified opinion has been made on any of the Islamic financial institution's quarterly financial statements in the preceding 12 months.

¹⁴ Disclosed reserves including other accumulated comprehensive income, but excluding share premium.

¹⁵ For the purpose of paragraph 7.44, allocation of a banking institution's Additional Tier 1 capital instruments, if any, which is not issued specifically for the purpose of the SPI shall not be recognised as regulatory capital for the SPI.

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- paragraph 12.1(i)¹⁶;
- iii. qualifying CET1 and Additional Tier 1 capital instruments issued by consolidated subsidiaries of the Islamic financial institution and held by third parties, as determined in paragraph 17.2; and
 - iv. regulatory adjustments applied in the calculation of Additional Tier 1 Capital, as determined in Part E.

13. Tier 2 Capital

S 13.1. Tier 2 Capital shall consist of the following:

- i. Tier 2 capital instruments issued by the Islamic financial institution¹⁷ that meet the criteria specified in paragraph 16.1, and are not included in Tier 1 Capital;
- ii. share premium resulting from the issue of instruments referred to in paragraph 13.1(i)¹⁸;
- iii. qualifying CET1, Additional Tier 1 and Tier 2 capital instruments issued by consolidated subsidiaries of the Islamic financial institution and held by third parties, as determined in paragraph 17.3;
- iv. financing loss provisions¹⁹:
 - a. surplus eligible provisions²⁰ over expected losses²¹, subject to a maximum of 0.6% of total credit RWA determined under the Internal Ratings-Based approach for credit risk; and
 - b. collective impairment provisions and regulatory reserves, to the

¹⁶ Share premium that is not eligible for inclusion in CET1 Capital will only be permitted to be included in Additional Tier 1 Capital if the shares giving rise to the stock surplus are permitted to be included in Additional Tier 1 Capital.

¹⁷ For the purpose of paragraph 7.4, allocation of a banking institution's Tier 2 capital instruments, if any, which is not issued specifically for the purpose of the SPI, shall not be recognised as regulatory capital for the SPI.

¹⁸ Share premium that is not eligible for inclusion in Tier 1 Capital will only be permitted to be included in Tier 2 Capital if the shares giving rise to the stock surplus are permitted to be included in Tier 2 Capital.

¹⁹ The provisions shall be gross of tax effects.

²⁰ In accordance with paragraphs 3.211 to 3.213 of the *Capital Adequacy Framework for Islamic Bank (Risk-Weighted Assets)*.

²¹ In accordance with paragraphs 3.200 to 3.210 of the *Capital Adequacy Framework for Islamic Bank (Risk-Weighted Assets)*.

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- extent that they are not ascribed to financing classified as impaired, subject to a maximum of 1.25% of total credit RWA determined under the Standardised Approach for credit risk; and
- v. regulatory adjustments applied in the calculation of Tier 2 Capital, as determined in Part E.

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PART D CRITERIA FOR INCLUSION IN CAPITAL

14. Ordinary shares

- S** 14.1. An ordinary share shall qualify as a CET1 capital instrument if it meets all the following criteria:
- i. it is directly issued and paid-up;
 - ii. it represents the most subordinated claim in liquidation of the Islamic financial institution;
 - iii. ordinary shares absorb the first and proportionately greatest share of any losses as they occur²², and each ordinary share absorbs losses on a going concern basis proportionately and pari passu with all ordinary shares;
 - iv. the paid-up amount is neither secured nor covered by a guarantee of the Islamic financial institution or an affiliated entity²³ or subject to any other arrangement that legally or economically enhances the seniority of the claim;
 - v. principal is perpetual and never repaid outside of liquidation²⁴;
 - vi. shareholders are entitled to a claim on the residual assets that is proportional with their respective share of issued capital, after all senior claims have been repaid in liquidation (i.e. has an unlimited and variable claim, not a fixed or capped claim);
 - vii. distributions are paid out of distributable items (including retained earnings), with the level of distributions not in any way tied or linked to the amount paid up at issuance and is not subject to a contractual cap, except to the extent that the Islamic financial institution is unable to pay

²² For the avoidance of doubt, the requirement for a permanent write-off feature in capital instruments as set out in paragraph 34.1(ii) does not negate this criterion being met by ordinary shares.

²³ An affiliate is defined as a company that controls, or is controlled by, or is under common control with, the Islamic financial institution. Control of a company is defined as (i) ownership, control, or holding with power to vote 20% or more of a class of voting securities of the company; or (ii) consolidation of the company for financial reporting purposes.

²⁴ Except for discretionary repurchases or other means of capital reduction arrangements allowable under relevant law and regulations. Repayment of principal shall also be subject to the prior written approval of the Bank.

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distributions that exceed the level of distributable items;

- viii. there are no circumstances under which distributions are obligatory, and non-payment is therefore not an event of default;
- ix. distributions are paid only after all legal and contractual obligations have been met and payments on more senior capital instruments have been made, thereby precluding any preferential distributions, including in respect of other ordinary shares;
- x. the paid-up amount is recognised as equity capital for determining balance sheet insolvency;
- xi. the paid-up amount is classified as equity under the Malaysian Financial Reporting Standards (MFRS);
- xii. ordinary shares are clearly and separately disclosed on the Islamic financial institution's balance sheet;
- xiii. the Islamic financial institution does nothing to create an expectation at issuance that the instrument will be bought back, redeemed or cancelled nor do the statutory contractual terms provide any feature which might give rise to such an expectation;
- xiv. the purchase of the ordinary share is not directly or indirectly funded by the Islamic financial institution;
- xv. the ordinary share is not purchased by the Islamic financial institution or its affiliated party over which it exercises control or significant influence; and
- xvi. the ordinary share is only issued with the approval of the shareholders of the Islamic financial institution, either given directly by shareholders or, if permitted by law, given by the board of directors or by other persons duly authorised by the shareholders.

S 14.2. In instances where an Islamic financial institution issues different classes of ordinary shares with different levels of voting rights (including non-voting shares), all classes of ordinary shares must be identical in all respects except the level of voting rights in order to qualify as a CET1 capital instrument.

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- S** 14.3. For the purpose of paragraph 14.1(i), where an instrument is paid-up by way of issuance of shares and not by cash (e.g. payment for take-over of another company in the form of ordinary shares), an Islamic financial institution is required to obtain the prior written approval of the Bank to include the shares issued as regulatory capital.

15. Additional Tier 1 capital instruments

- S** 15.1. An instrument shall qualify as an Additional Tier 1 capital instrument if it meets all the following criteria:
- i. the instrument is issued and paid-up;
 - ii. the instrument is subordinated to depositors, general creditors and other holders of subordinated debt of the Islamic financial institution;
 - iii. the instrument is neither secured nor covered by a guarantee of the Islamic financial institution or an affiliated entity or other arrangement that legally or economically enhances the seniority of the claim vis-à-vis depositors, general creditors and other holders of subordinated debt of the Islamic financial institution;
 - iv. the instrument is perpetual, and shall therefore not have a maturity date, step-up features or other incentives for the Islamic financial institution to redeem the instrument²⁵;
 - v. the instrument may be callable at the initiative of the Islamic financial institution only after a minimum of five years, subject to the following conditions:
 - a. the exercise of a call option must receive the prior written approval of the Bank;
 - b. the Islamic financial institution must not do anything which creates an expectation that the call will be exercised; and

²⁵ Other incentives to redeem include a call option combined with a requirement or an investor option to convert the instrument into shares if the call is not exercised, or a call option combined with a change in the reference rate where the credit spread over the second reference rate is greater than the initial payment rate less the swap rate. For the avoidance of doubt, conversion from a fixed rate to a floating rate, or vice versa, in combination with a call option without any increase in credit spread will not in itself be viewed as an incentive to redeem.

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- c. the call option must not be exercised unless:
 - i. the called instrument is replaced with capital of the same or better quality, and the replacement of this capital is done at conditions which are sustainable for the income capacity of the Islamic financial institution²⁶; or
 - ii. the Islamic financial institution demonstrates to the satisfaction of the Bank that its capital position is and can be sustained well above the minimum capital adequacy requirements and capital buffer requirements, as outlined in paragraphs 9 and 10 respectively, after the call option is exercised;
- vi. any repayment of principal²⁷, other than through the exercise of a call option, (e.g. through repurchase) must be with the prior written approval of the Bank and the Islamic financial institution shall not assume or create market expectations that approval will be given;
- vii. dividends/coupons must be paid out of distributable items, and such distributions must meet the following conditions:
 - a. distributions/payments shall be at the full discretion of the Islamic financial institution at all times^{28,29};
 - b. cancellation of discretionary payments must not constitute an event of default;
 - c. the Islamic financial institution must have full access to cancelled payments to meet obligations as they fall due³⁰; and
 - d. cancellation of distributions/payments must not impose restrictions on the Islamic financial institution except in relation to distributions to ordinary shareholders;

²⁶ Replacement issues may be concurrent with, but not after the instrument is called.

²⁷ Repayments due to tax or regulatory events are permitted subject to the assessment by the Bank that the Islamic financial institution was not in a position to anticipate the event at issuance.

²⁸ Features such as “dividend pushers” are prohibited. An instrument with a dividend pusher obliges the issuing Islamic financial institution to make a dividend/coupon payment on the instrument if it has made a payment on another (typically more junior) capital instrument or share.

²⁹ Any waived distributions/payments are non-cumulative i.e. are not required to, and must not, be made up by the Islamic financial institution at a later date.

³⁰ Any structuring of bonus payment to make up for unpaid dividends is also prohibited.

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- viii. the instrument cannot have a credit sensitive dividend feature, that is a dividend/coupon that is reset periodically based in whole or in part on the credit standing of the Islamic financial institution or any of its affiliated entities;
- ix. the instrument cannot contribute to liabilities exceeding assets if such a balance sheet test forms part of national insolvency law governing the provisions of the instrument;
- x. the provisions governing the instrument require the instrument to be written-off³¹, or the instrument to be converted into ordinary shares, if the consolidated or entity level CET1 Capital Ratio of the Islamic financial institution³² falls below a pre-specified level, which shall be no lower than 5.125%. The aggregate amount to be written-off or converted into ordinary shares for all these instruments, on breaching the trigger level, must at least be the amount needed to immediately restore the consolidated and entity level CET1 Capital Ratio of the Islamic financial institution to 5.75%³³. If this is not possible, then the full principal value of the instrument must be written-off or converted into ordinary shares;
- xi. the instrument cannot have any features that hinder recapitalisation, such as provisions that require the Islamic financial institution to compensate investors if a new instrument is issued at a lower price during a specified time frame;
- xii. if the instrument is issued out of a special purpose vehicle (SPV), proceeds must be immediately available without limitation to the Islamic financial institution in a form which meets or exceeds all of the other criteria for inclusion in Additional Tier 1 Capital³⁴;
- xiii. the provisions governing the issuance of the capital instrument require

³¹ Subject to paragraph 34.3.

³² As disclosed in its published financial reports/statements or in Pillar 3 disclosures.

³³ Accordingly, for the purpose of paragraph 7.4, if the consolidated or entity or SPI level CET1 Capital Ratio of an institution falls below 5.125%, the aggregate amount to be converted into ordinary shares must at least be the amount needed to immediately restore the consolidated, entity, and SPI level CET1 Capital Ratio of the institution to 5.75%.

³⁴ For the avoidance of doubt, a capital instrument, issued out of an SPV must satisfy the requirements under paragraph 17.4 to qualify as Additional Tier 1 Capital or Tier 2 Capital (as applicable).

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the instrument to be written-off³¹, or the instrument to be converted into ordinary shares, upon the occurrence of a trigger event, which shall be determined by the requirements set out in paragraphs 33.1 to 33.3. The amount to be written-off or converted into ordinary shares must be the full principal value of the instrument;

- xiv. the purchase of the instruments is not directly or indirectly funded by the Islamic financial institution;
- xv. the instrument is not purchased by the Islamic financial institution or its affiliated party over which it exercises control or significant influence; and
- xvi. the instrument issued shall be structured using unrestricted non-exchange based contracts (e.g. *Musharakah*, *Mudarabah* or *Wakalah*), in addition to meeting other Shariah requirements.

- S** 15.2. Additional Tier 1 capital instruments issued by a fully consolidated subsidiary may be included as regulatory capital in the consolidated capital of an Islamic financial institution if the provisions governing the instruments fulfil all the criteria for inclusion in Additional Tier 1 capital as set out in paragraph 15.1 and the instruments are written-off or converted into ordinary shares when:
- i. the consolidated CET1 Capital Ratio of the Islamic financial institution falls below a pre-specified level, which shall be no lower than 5.125%; and
 - ii. a trigger event as specified in paragraphs 33.1 to 33.3 takes place in relation to the financial group (i.e. Islamic financial institution and its subsidiaries).

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Response to feedback received on the Discussion Paper*

In ensuring the loss absorbent quality of capital instruments recognised as regulatory capital at the consolidated level of a financial holding company, the Discussion Paper proposed that the capital instrument contains an additional loss absorbency clause referenced to the financial group. A number of respondents highlighted that this additional group-level loss absorbency requirement could result in potential adverse impact on the marketability and pricing of Basel III capital instruments issued by the Islamic banking subsidiaries.

The inclusion of the group-level loss absorbency trigger reflects the Bank's view that for a capital instrument to be recognised as regulatory capital at the consolidated level of a financial holding company, the capital instrument must have the ability to absorb losses at the level of the group. The group-level trigger is also designed to avert contagion risk between entities within the group that could put the interest of depositors or creditors of the Islamic banking institution at risk. The Bank also wishes to clarify that where a financial holding company has already met the group level capital requirements, an Islamic banking institution within the group would not be restricted from issuing capital instruments to meet its internal capital targets without the group level trigger. However, these capital instruments would not be recognised as regulatory capital at the consolidated level of the financial holding company.

The Bank therefore intends to maintain the requirement that the capital instrument contains an additional loss absorbency clause referenced to the financial group, while keeping this issue under review as more progress is made in the implementation of recovery and resolution plans (including in a cross-border context) for financial groups. In addition, the Bank will continue to monitor the ability of the Islamic financial institutions to raise reasonably priced loss-absorption funding with the group-level trigger in place.

* Discussion paper on *Capital Adequacy Framework for Financial Holding Companies (Banking groups)* issued on 23 October 2014.

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16. Tier 2 capital instruments

- S** 16.1. An instrument shall qualify as a Tier 2 capital instrument if it meets all the following criteria:
- i. the instrument is issued and paid-up;
 - ii. the instrument is subordinated to depositors and general creditors of the Islamic financial institution;
 - iii. the instrument is neither secured nor covered by a guarantee of the Islamic financial institution or an affiliated entity or other arrangement that legally or economically enhances the seniority of the claim vis-à-vis depositors and general creditors of the Islamic financial institution;
 - iv. the instrument has an original maturity of at least five years, and there are no step-up features or other incentives for the Islamic financial institution to redeem the instrument;
 - v. the instrument may be callable at the initiative of the Islamic financial institution only after a minimum of five years, subject to the following conditions:
 - a. the exercise of a call option must receive prior written approval of the Bank;
 - b. the Islamic financial institution must not do anything which creates an expectation that the call will be exercised³⁵; and
 - c. the call option must not be exercised unless:
 - i. the called instrument is replaced with capital of the same or better quality, and the replacement of this capital is done at conditions which are sustainable for the income capacity of the Islamic financial institution³⁶; or
 - ii. the Islamic financial institution demonstrates that its capital position is well above the minimum capital adequacy

³⁵ An option to call the instrument after five years but prior to the start of, or during, the period in which the instrument will be gradually derecognised will not be viewed as an incentive to redeem as long as the Islamic financial institution does not do anything that creates an expectation that the call will be exercised at that point.

³⁶ Replacement issues may be concurrent with, but not after the instrument is called.

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requirements and capital buffer requirements, as outlined in paragraphs 9 and 10 respectively, after the call option is exercised;

- vi. any repayment of principal, other than through the exercise of a call option, (e.g. through repurchase) must be with the prior written approval of the Bank and the Islamic financial institution shall not assume or create market expectations that approval will be given;
- vii. the holder of the capital instrument must have no rights to accelerate the repayment of future scheduled payments (coupon or principal), except in bankruptcy or liquidation;
- viii. the instrument cannot have a credit sensitive dividend feature, that is a dividend/coupon that is reset periodically based in whole or in part on the credit standing of the Islamic financial institution or any of its affiliated entities;
- ix. if the instrument is issued out of an SPV, proceeds must be immediately available without limitation to the Islamic financial institution in a form which meets or exceeds all of the other criteria for inclusion in Tier 2 Capital³⁴;
- x. the provisions governing the issuance of the capital instrument require the instrument to be written-off³¹, or the instrument to be converted into ordinary shares, upon the occurrence of a trigger event, which shall be determined by the requirements set out in paragraphs 33.1 to 33.3. The amount to be written-off or converted into ordinary shares must be the full principal value of the instrument;
- xi. the purchase of the instruments is not directly or indirectly funded by the Islamic financial institution; and
- xii. the instrument is not purchased by the Islamic financial institution or its affiliated party over which it exercises control or significant influence.

- S** 16.2. Tier 2 capital instruments issued by a fully consolidated subsidiary may be included as regulatory capital in the consolidated capital of an Islamic financial institution if the provisions governing the instruments fulfil all the criteria for inclusion in Tier 2 Capital as set out in paragraph 16.1 and the instruments are written-off or converted into ordinary shares when a trigger event as specified in paragraphs 33.1 to 33.3 takes place in relation to the financial group.
- S** 16.3. In the final four years of its contractual maturity, the instrument will be gradually derecognised from Tier 2 Capital on a straight line basis:

Years to maturity (x)	Amount recognised in Tier 2 Capital
$x > 4$	100%
$3 < x \leq 4$	80%
$2 < x \leq 3$	60%
$1 < x \leq 2$	40%
$x \leq 1$	20%

17. Minority interest and capital instruments issued out of consolidated subsidiaries and held by third parties

- S** 17.1. Minority interest arising from the issue of ordinary shares by a fully consolidated Islamic banking subsidiary^{37,38} of the Islamic financial institution may be recognised in consolidated CET1 Capital if the ordinary share giving rise to the minority interest, if issued by the Islamic financial institution itself, meets the criteria for inclusion in CET1 Capital³⁹. The amount of minority interest that will be recognised in consolidated CET1 Capital in paragraph 11.1(v) shall be calculated as follows:

$$A - (B \times C)$$

where:

³⁷ An Islamic banking subsidiary in this paragraph shall mean to only include a deposit-taking entity that is subject to minimum prudential standards and level of supervision by an authority that subscribes to the Core Principles for Effective Banking Supervision promulgated by the BCBS. For the avoidance of doubt, this excludes the inclusion of any capital issued to third parties by non-banking subsidiaries, such as leasing, factoring or fund management companies.

³⁸ Where a fully-consolidated subsidiary of a Islamic financial institution has its own subsidiaries, the calculation of regulatory capital attributable to third parties shall be undertaken in respect of that subsidiary and its subsidiaries as a consolidated group.

³⁹ For the purpose of this paragraph, any reference to the term "Islamic financial institution" in paragraph 14 shall mean to refer to any "fully-consolidated banking subsidiary of the financial institution".

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- A total qualifying minority interest⁴⁰
- B surplus CET1 Capital of the subsidiary, calculated as CET1 Capital of the subsidiary⁴¹ minus the lower of the following:
 - I. 7.0%⁴² of the subsidiary's total RWA calculated at the entity level; or
 - II. 7.0% of the portion of the Islamic financial institution's consolidated RWA relating to that subsidiary.
- C percentage of CET1 Capital of the subsidiary held by minority shareholders

S 17.2. Tier 1 capital instruments issued by a fully consolidated subsidiary^{38,43} of the Islamic financial institution and held by third parties may be recognised in consolidated Tier 1 Capital if the instrument, if issued by the Islamic financial institution itself, meets the criteria for inclusion in CET1 Capital or Additional Tier 1 Capital^{44, 45}. The amount of this capital that will be recognised in consolidated Tier 1 Capital is calculated as follows:

$$A - (B \times C)$$

where:

- A total qualifying Tier 1 capital instruments (i.e. CET1 and Additional Tier 1) of the subsidiary issued to third parties⁴⁰
- B surplus Tier 1 Capital of the subsidiary, calculated as Tier 1 Capital of the subsidiary⁴¹ minus the lower of the following:

⁴⁰ Including associated reserves, but prior to the application of regulatory adjustments.

⁴¹ Including associated reserves and regulatory adjustments.

⁴² Corresponding to the minimum CET1 capital requirement of 4.5% plus the capital conservation buffer of 2.5%.

⁴³ For the avoidance of doubt, this includes both Islamic banking and non-banking subsidiaries, but excludes takaful subsidiaries and other subsidiaries which are not consolidated for regulatory purposes.

⁴⁴ For the purpose of this paragraph, any reference to the term "Islamic financial institution" in paragraphs 14 and 15 shall mean to refer to any "fully-consolidated subsidiary of the Islamic financial institution". For example, the early redemption of an instrument by a subsidiary shall be subject to the Bank's approval, in addition to that of the relevant host supervisor.

⁴⁵ An Islamic financial institution may recognise Shariah-compliant capital instruments issued by subsidiaries in other jurisdictions based on the Shariah views in the respective jurisdictions, unless specifically disallowed by the Bank.

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- I. 8.5%⁴⁶ of the subsidiary's total RWA calculated at the entity level; or
 - II. 8.5% of the portion of the Islamic financial institution's consolidated RWA relating to that subsidiary.
- C percentage of Tier 1 Capital of the subsidiary held by third parties

The capital that will be recognised in consolidated Additional Tier 1 Capital under paragraph 12.1(iii) shall exclude amounts recognised in consolidated CET1 Capital as calculated in paragraph 17.1.

- S** 17.3. Total capital instruments issued by a fully consolidated subsidiary^{38,43} of the Islamic financial institution and held by third parties may be recognised in consolidated Total Capital if the instrument, if issued by the Islamic financial institution itself, meets the criteria for inclusion in CET1 Capital, Additional Tier 1 Capital or Tier 2 Capital^{45,47}. The amount of this capital that will be recognised in consolidated Total Capital is calculated as follows:

$$A - (B \times C)$$

where:

- A total qualifying capital instruments (i.e. CET1, Additional Tier 1 and Tier 2) of the subsidiary issued to third parties⁴⁰
- B surplus Total Capital of the subsidiary, calculated as Total Capital of the subsidiary⁴¹ minus the lower of the following:
 - I. 10.5%⁴⁸ of the subsidiary's total RWA calculated at the entity level; or
 - II. 10.5% of the portion of the Islamic financial institution's consolidated RWA relating to that subsidiary.
- C percentage of Total Capital of the subsidiary held by third parties

⁴⁶ Corresponding to the minimum Tier 1 capital requirement of 6% plus the capital conservation buffer of 2.5%.

⁴⁷ For the purpose of this paragraph, any reference to the term "Islamic financial institution" in paragraphs 14, 15 and 16 shall mean to refer to any "fully-consolidated subsidiary of the Islamic financial institution".

⁴⁸ Corresponding to the minimum Total Capital requirement of 8% plus the capital conservation buffer of 2.5%.

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The capital that will be recognised in consolidated Tier 2 Capital in paragraph 13.1(ii) shall exclude amounts recognised in consolidated CET1 Capital as calculated in paragraph 17.1 and amounts recognised in consolidated Additional Tier 1 Capital as calculated in paragraph 17.2.

- S** 17.4. Capital issued to third parties out of an SPV may be included in entity and consolidated level Additional Tier 1 Capital or Tier 2 Capital, as if the Islamic financial institution had issued the capital directly to third parties, only if⁴⁹:
- i. the SPV is domiciled in Malaysia⁵⁰;
 - ii. the SPV is controlled⁵¹ and managed by the Islamic financial institution, and would, in accordance with MFRS, be fully consolidated;
 - iii. the SPV is set up for the sole purpose of the capital issuance for the Islamic financial institution⁵² and does not conduct any other business or activity;
 - iv. the SPV has no external creditors at any time⁵³;
 - v. the entire proceeds from the capital issuance through the SPV⁵⁴ shall be immediately available without limitation to the Islamic financial institution in a form which meets or exceeds all of the criteria for inclusion in Additional Tier 1 or Tier 2 Capital, as applicable;
 - vi. the provisions governing the issuance of the instruments issued by the SPV and the Islamic financial institution shall substantially be the same (e.g. maturity), and accordingly, the capital instrument issued by the SPV shall meet all the relevant criteria (as required in paragraph 15.1 for

⁴⁹ For the avoidance of doubt, an Additional Tier 1 and Tier 2 capital instrument issued out of an SPV pursuant to this paragraph is not subject to the treatment set out in paragraphs 17.2 and 17.3.

⁵⁰ Including Labuan.

⁵¹ Use of an independent SPV is allowed in structures that require the use of such SPVs, which includes the issuance of Islamic capital instruments structured using the exchange-based contracts (e.g. *Murabahah* or *Ijarah*).

⁵² In addition, an SPV may be established to issue tranches of one instrument where the only change in the terms and conditions of the tranches is a variation in distribution or payments to be made on the instrument. An SPV must not issue different forms of an instrument even if they belong to the same category of capital instruments.

⁵³ Nonetheless, this does not preclude miscellaneous creditors (e.g. tax authorities, administrators) to the extent that they are *de minimis*.

⁵⁴ This does not preclude the use of the proceeds to fund assets that relate to the operation of the SPV to the extent that they are *de minimis*.

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Additional Tier 1 Capital and paragraph 16.1 for Tier 2 Capital) for inclusion as if the Islamic financial institution itself were to issue the instrument^{55, 56}.

- S** 17.5. In cases where the capital has been issued to third parties through an SPV via a fully consolidated subsidiary of the Islamic financial institution⁵⁷, such capital may, subject to the requirements in paragraph 17.4, be treated as if the subsidiary itself had issued it directly to the third parties and may be included in the Islamic financial institution's consolidated Additional Tier 1 Capital or Tier 2 Capital in accordance with the treatment outlined in paragraphs 17.2 and 17.3.
- 17.6. An illustrative example of the treatment for minority interest and capital instruments issued out of consolidated subsidiaries and held by third parties is provided in Appendix 2.

⁵⁵ For example, if an SPV issues a Tier 2 capital instrument to investors and upstreams the proceeds by investing in a Tier 1 capital instrument issued by the Islamic financial institution, the transaction will be recognised in Tier 2 Capital.

⁵⁶ In the case of issuance of Islamic capital instruments structured using the exchange-based contracts through an SPV (e.g. *Murabahah* or *Ijarah*) or any other indirect structures (e.g. Commodity *Murabahah*), the contracts between the Islamic financial institution and the SPV or any parties involved shall be structured in a manner which in combination meets or exceeds the criteria for inclusion in capital. For example, any purchase undertaking shall be designed in a manner that does not legally or economically enhance the seniority of capital issued.

⁵⁷ The SPV must be controlled and managed by the fully consolidated subsidiary, except as mentioned in footnote 51.

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PART E REGULATORY ADJUSTMENTS

18. Goodwill and other intangibles

- S** 18.1. Goodwill, including any goodwill included in the valuation of significant capital investments in unconsolidated entities, and all other intangibles⁵⁸ must be deducted in the calculation of CET1 Capital. The full amount shall be deducted net of any associated deferred tax liability that would be extinguished if the intangible asset becomes impaired or is derecognised under the relevant MFRS.
- S** 18.2. For the avoidance of doubt, negative goodwill shall not be added back in the calculation of CET1 Capital.

19. Deferred tax assets and liabilities

- S** 19.1. Deferred tax assets (DTAs) that rely on the future profitability of the Islamic financial institution to be realised shall be deducted in the calculation of CET1 Capital⁵⁹. In this regard, a DTA may be netted against its associated deferred tax liability (DTL) only if the DTA and DTL relate to taxes levied by the same taxation authority and offsetting is permitted by the relevant taxation authority. DTLs permitted to be netted against DTAs shall exclude amounts that have been netted against the deduction of goodwill, intangibles and defined benefit pension assets.
- S** 19.2. For the avoidance of doubt, net DTLs shall not be added back in the calculation of CET1 Capital.

⁵⁸ As defined under the relevant MFRS. This shall include mortgage servicing rights, if any.

⁵⁹ An overinstallment of tax or current year tax losses carried back to prior years may give rise to a claim or receivable from the government or local tax authority. Such amounts are typically classified as current tax assets for accounting purposes. As the recovery of such a claim or receivable does not rely on the future profitability of the Islamic financial institution, it shall be assigned the relevant sovereign risk weighting.

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20. Property revaluation gains/losses

- S** 20.1. The amount of cumulative unrealised gains arising from the changes in the fair value or revaluation of land and buildings⁶⁰ shall be treated as follows:
- i. cumulative unrealised gains shall be deducted in the calculation of CET1 Capital; and
 - ii. 45% of the cumulative unrealised gains shall be added back in the calculation of Tier 2 Capital⁶¹.
- S** 20.2. The amount of cumulative unrealised losses arising from the changes in fair value or revaluation of land and buildings shall be fully recognised in the calculation of CET1 Capital.
- S** 20.3. For the purpose of recognition of cumulative unrealised gains in Tier 2 Capital in accordance with paragraph 20.1(ii) the valuation of land and buildings shall be certified by an independent professional valuer at least once every three years⁶² or where there is evidence that the value has been or is likely to be substantially impaired.

21. Cumulative gains/losses of financial instruments classified as “available-for-sale” or “designated at fair value”

⁶⁰ Referring to the revaluation gains of properties that are subject to the *Revaluation Model* under MFRS 116 *Property, Plant and Equipment*, and the *Fair Value Model* under MFRS 140 *Investment Property*. In addition, any recognition of revaluation gains of property in the retained earnings arising from the application of MFRS1 *First-Time Adoption of Malaysian Financial Reporting Standards* are also subject to this treatment.

⁶¹ For the avoidance of doubt, any impairment charge or accumulated amortisation/depreciation against any land and buildings is not netted against unrealised gains from any other land and buildings.

⁶² For the avoidance of doubt, recognition of revaluation gains of property in the retained earnings arising from the application of MFRS 1 *First-Time Adoption of Malaysian Financial Reporting Standards* is only subject to a one-off certification by an independent professional valuer.

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- S** 21.1. 55% of cumulative unrealised gains arising from the changes in fair value of financial instruments, other than financing and receivables, classified as “available-for-sale” shall be deducted in the calculation of CET1 Capital.
- S** 21.2. For financing and receivables classified as “available-for-sale” or “designated at fair value”, the amount of unrealised gains arising from the changes in fair value shall be fully deducted in the calculation of CET1 Capital.
- S** 21.3. For the avoidance of doubt, the amount of cumulative unrealised losses arising from the changes in fair value of financial instruments, including financing and receivables, classified as “available-for-sale” shall be fully recognised in the calculation of CET1 Capital.

22. Profit equalisation reserve (PER)

- 22.1. The portion of PER attributable to an Islamic banking institution (ie. shareholder’s portion of PER) shall be fully deducted in the calculation of CET1 Capital⁶³.

23. Cash flow hedge reserve

- S** 23.1. The amount of the cash flow hedge reserve⁶⁴ that relates to the hedging of items that are not fair valued on the balance sheet (including projected cash flows) shall be derecognised in the calculation of CET1 Capital. In this regard, positive amounts shall be deducted and negative amounts shall be added back in the calculation of CET1 Capital.

⁶³ In accordance with paragraph 5.9 of the *Guidelines on Profit Equalisation Reserve*.

⁶⁴ This treatment specifically identifies and removes the element of the cash flow hedge reserve that gives rise to artificial volatility in common equity, as the reserve only reflects the fair value of the derivative and not the changes in the fair value of the hedged future cash flow.

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24. Regulatory reserve for financing

- S** 24.1. The amount of regulatory reserve attributable to financing maintained in accordance with paragraph 15.1 of the guidelines on *Classification and Impairment Provisions for Loans/Financing* shall be deducted in the calculation of CET1 Capital⁶⁵.

25. Shortfall of eligible provisions to expected losses

- S** 25.1. Where the Islamic financial institution has adopted the Internal Ratings-Based approach for credit risk, any shortfall of eligible provisions⁶⁶ to expected losses⁶⁷ shall be deducted in the calculation of CET1 Capital. The full amount shall be deducted and shall not be reduced by any tax effects that could be expected to occur if provisions were to rise to the level of expected losses.

26. Valuation adjustments

- S** 26.1. The amount arising from the valuation adjustments computed in accordance with paragraphs 5.18 and 5.19 of the *Capital Adequacy Framework for Islamic Banks (Risk-Weighted Assets)* that exceed the valuation adjustments made under MFRS shall be deducted in the calculation of CET1 Capital.

27. Increases in equity capital resulting from a securitisation transaction

- S** 27.1. Any increase in equity capital resulting from a securitisation transaction, such as that associated with expected future margin income resulting in a gain-on-

⁶⁵ Financing loss provisions are partially recognised in Tier 2 Capital as set out in paragraph 13.1(iv)(b).

⁶⁶ In accordance with paragraphs 3.211 to 3.213 of the *Capital Adequacy Framework for Islamic Banks (Risk-Weighted Assets)*.

⁶⁷ In accordance with paragraphs 3.200 to 3.210 of the *Capital Adequacy Framework for Islamic Banks (Risk-Weighted Assets)*.

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sale, shall be deducted in the calculation of CET1 Capital.

28. Cumulative gains/losses due to changes in own credit risk on fair valued liabilities

- S** 28.1. All unrealised fair value gains and losses on financial liabilities that are due to changes in the Islamic financial institution's own credit risk shall be derecognised in the calculation of CET1 Capital. In this regard, positive amounts shall be deducted and negative amounts shall be added back in the calculation of CET1 Capital.
- S** 28.2. In addition, all accounting valuation adjustments on derivatives liabilities that are due to changes in the Islamic financial institution's own credit risk shall be derecognised in the calculation of CET1 Capital. For the avoidance of doubt, the offsetting between valuation adjustments that are due to changes in the Islamic financial institution's own credit risk and those arising from the counterparties' credit risk is not allowed.

29. Defined benefit pension fund assets and liabilities

- S** 29.1. For each defined benefit pension fund that is an asset on the balance sheet, the asset shall be deducted in the calculation of CET1 Capital net of any associated deferred tax liability which would be extinguished if the asset becomes impaired or derecognised under MFRS. The amount of defined benefit pension fund liabilities, as included on the balance sheet, shall be fully recognised in the calculation of CET1 Capital.
- S** 29.2. Assets in the fund to which the Islamic financial institution has unrestricted and unfettered access may, with the prior written approval of the Bank, offset the deduction. Such offsetting assets shall be risk weighted as if they were owned

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directly by the Islamic financial institution⁶⁸.

30. Investments in own capital instruments

- S** 30.1. All direct, indirect⁶⁹ and synthetic⁷⁰ holdings of an Islamic financial institution's own capital instruments⁷¹ in the trading and banking book⁷², including any own capital instruments which the Islamic financial institution is contractually obliged to purchase and any other financing⁷³ provided for the purpose of purchasing own capital instruments, shall be deducted in the calculation of capital. In applying the deductions, Islamic financial institutions must deduct the investment from the same component of capital for which it would qualify⁷⁴.
- S** 30.2. In instances where an Islamic financial institution has an indirect exposure to its own capital instrument (e.g. through an investment in a collective investment scheme or holdings of an index security), the Islamic financial institution shall look through the holdings to determine their underlying holdings of capital⁷⁵.

⁶⁸ This treatment addresses the concern that assets arising from pension funds may not be capable of being withdrawn and used for the protection of depositors and other creditors of an Islamic financial institution. The concern is that their only value stems from a reduction in future payments into the fund. The treatment allows for Islamic financial institutions to reduce the deduction of the assets if they are able to address these concerns and show that the assets be easily and promptly withdrawn from the fund.

⁶⁹ Indirect holdings are exposures or parts of exposures that, if a direct holding loses its value, will result in a loss to the Islamic financial institution substantially equivalent to the loss in value of the direct holding. An indirect holding may arise when the Islamic financial institution invests in an unconsolidated intermediate entity that has an exposure to the capital of the Islamic financial institution itself.

⁷⁰ A synthetic holding may arise when an Islamic financial institution invests in an instrument where the value of the instrument is directly linked to the value of the capital of the Islamic financial institution itself.

⁷¹ Including treasury stock.

⁷² With the exposure amount in trading and banking book determined in accordance with the definition of exposures under the respective credit or market risk rules. For the avoidance of doubt, the exposure amount for derivatives shall refer to the delta equivalent position and not the notional value of the financial instrument.

⁷³ Both funded or unfunded (e.g. guarantees) exposures.

⁷⁴ Unless already derecognised under the relevant MFRS.

⁷⁵ If the Islamic financial institution finds it operationally impractical to look through the holdings of an index security, the Islamic financial institution may, with the prior written approval of the Bank, use a conservative estimate. The methodology for the estimate shall demonstrate that in no case will the actual exposure be higher than the estimated exposure and the estimation should be updated at least annually to reflect the best estimates of the exposure. The full value shall be deducted in instances where this requirement cannot be met.

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S 30.3. For the purpose of paragraph 30.1, gross long positions may be netted against gross short positions in the same underlying exposure only if the short positions involve no counterparty risk⁷⁶. In the case of an index security, the Islamic financial institution may only net a gross long position against a short position only if it is in the same underlying index. In such an instance, the short position may involve counterparty risk, which will be subject to the relevant counterparty credit risk charge as calculated in accordance with Appendix VI of *Capital Adequacy Framework for Islamic Banks (Risk-Weighted Assets)*.

31. Investments in the capital of unconsolidated financial and takaful entities

S 31.1. Investments in the capital instruments of unconsolidated financial^{77 78} and takaful entities shall:

- i. include direct, indirect⁷⁹ and synthetic⁸⁰ holdings of capital instruments. An Islamic financial institution shall look through indirect exposures (e.g. through an investment in a collective investment scheme or holdings of an index security) to determine its underlying holdings of capital⁷⁵;
- ii. refer to the net long positions⁷⁶ in both the banking book and trading book⁷². In this regard, the gross long position can be offset against the short position in the same underlying exposure where the maturity of the short position either matches the maturity of the long position or has a

⁷⁶ This includes netting positions in cash instruments and derivatives over the same underlying exposures.

⁷⁷ These refer to investments in entities outside the scope of regulatory consolidation, namely those that have not been consolidated at all or have not been consolidated in such a way as to result in their assets being included in the calculation of risk-weighted assets. For the avoidance of doubt, this shall only include investments in financial and insurance/takaful subsidiaries for entity level reporting.

⁷⁸ For the purpose of paragraphs 31.1 to 31.4, this shall include financial entities and their holding companies.

⁷⁹ An indirect holding may arise when an Islamic financial institution invests in an unconsolidated intermediate entity that has an exposure to the capital of an unconsolidated financial or takaful entity and thus gains an exposure to the capital of that financial or takaful entity.

⁸⁰ A synthetic holding may arise when an Islamic financial institution invests in an instrument where the value of the instrument is directly linked to the value of the capital of an unconsolidated financial or takaful entity.

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residual maturity of at least one year⁸¹;

- iii. include underwriting positions held longer than five working days after the issuance date of the capital instruments⁸²; and
- iv. with the prior written approval of the Bank and subject to conditions that may be specified (including the period of exclusion), exclude certain investments where these have been made in the context of resolving or providing financial assistance to reorganise a distressed institution.

S 31.2. The investments in the capital instruments of unconsolidated financial and takaful entities, as described in paragraph 31.1, shall be deducted in the calculation of capital as follows:

- i. where the Islamic financial institution owns more than 10% of the issued ordinary share capital of a non-affiliated issuing entity, the entire amount of investments in capital instruments;
- ii. where the issuing entity is an affiliate of the Islamic financial institution²³, the entire amount of investments in capital instruments; and
- iii. where the Islamic financial institution does not own more than 10%⁸³ of the issued ordinary share capital of a non-affiliated issuing entity, the amount of all capital instruments held in excess of 10% of the Islamic financial institution's common equity⁸⁴.

In addition, the Bank will also require that all reciprocal cross holdings of capital instruments that are designed to artificially inflate the capital position of an Islamic financial institution be deducted.

S 31.3. In applying the deductions in paragraph 31.2, an Islamic financial institution

⁸¹ Any counterparty credit risk associated with short positions used to offset long positions shall remain included in the calculation of RWA.

⁸² For the avoidance of doubt, underwriting positions held for five working days or less (including pre-issuance underwriting obligations and undrawn amount of an underwriting facility) shall be risk weighted.

⁸³ This also includes the scenario where the Islamic financial institution does not own any of the issuing entity's ordinary shares capital.

⁸⁴ The common equity for purposes of calculating the 10% threshold shall be calculated after applying the regulatory adjustments set out in paragraphs 18 to 30 above to the sum of items set out in paragraphs 11.1(i) to (v).

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shall apply the corresponding deduction approach by deducting an investment from the same component of capital for which the capital would qualify if it was issued by the Islamic financial institution itself. In applying the corresponding deduction approach, if the capital instrument of the entity in which the Islamic financial institution has invested in does not meet the criteria for inclusion in CET1 Capital, Additional Tier 1 Capital, or Tier 2 Capital of the Islamic financial institution, the capital is to be considered as an ordinary share for purposes of this regulatory adjustment⁸⁵ and thus deducted in the calculation of CET1 Capital.

- S** 31.4. The amount of capital holdings which is not deducted in paragraph 31.2(iii) shall continue to be risk weighted⁸⁶. For the application of risk weighting, the amount of the holdings must be allocated on a pro-rata basis between those held below and those held above the threshold.

32. Other requirements

- S** 32.1. In applying the regulatory adjustments against a particular tier of capital and if the Islamic financial institution does not have enough of that tier of capital to satisfy the deduction, any shortfall shall be deducted in the calculation of the next higher tier of capital⁸⁷.
- S** 32.2. The Bank may specify in writing a specific regulatory adjustment in this framework in respect of an Islamic financial institution, having regard to the specific risk profile of the Islamic financial institution.

⁸⁵ An investment in an instrument issued by a regulated financial entity is not required to be deducted if that instrument is not deemed as its regulatory capital under the rules of the relevant authority.

⁸⁶ Instruments in the trading book shall be treated in accordance with the market risk rules and instruments in the banking book shall be treated in accordance with the credit risk rules.

⁸⁷ For example, if an Islamic financial institution does not have enough Additional Tier 1 Capital to meet the deductions, the shortfall will be deducted in the calculation of CET1 Capital.

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PART F OTHER REQUIREMENTS

33. Requirements to ensure loss absorbency at the point of non-viability

- S** 33.1. The provisions governing the issuance of an Additional Tier 1 or Tier 2 capital instrument shall contain clauses that require the instrument to be written-off, or the instrument to be converted into ordinary shares, upon the occurrence of a trigger event, which shall be the earlier of the following:
- (i) a Relevant Malaysian Authority notifies the Islamic financial institution in writing that the Relevant Malaysian Authority is of the opinion that a write-off or conversion is necessary, without which the Islamic financial institution or financial group, as the case may be, would cease to be viable; or
 - (ii) the Relevant Malaysian Authority publicly announces that a decision has been made by the Bank, the Malaysia Deposit Insurance Corporation (PIDM), or any other federal or state government in Malaysia, to provide a capital injection or equivalent support to an Islamic financial institution, without which the Islamic financial institution or financial group, as the case may be, would cease to be viable.
- S** 33.2. For the purpose of paragraph 33.1, the Relevant Malaysian Authority shall refer to the following:
- i. the Bank, jointly with PIDM, where an Islamic financial institution is a *member institution*, as prescribed under the Malaysia Deposit Insurance Corporation Act 2011⁸⁸; or
 - ii. the Bank, where an Islamic financial institution is not a member institution.
- 33.3. In assessing whether an Islamic financial institution or a financial group, as the case may be, would cease to be viable in accordance with paragraph 33.1, the Relevant Malaysian Authority may consider, among others, whether any of the

⁸⁸ As defined in section 2 of the Malaysia Deposit Insurance Corporation Act 2011.

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following circumstances exist ⁸⁹:

- i. the Islamic financial institution fails to follow any directive of compliance issued by the Bank, which is necessary to preserve or restore its or the financial group's financial soundness;
- ii. the Islamic financial institution fails to meet all or any of its financial obligations as they fall due, that may significantly impair its ability to meet regulatory capital requirements on a continuing basis;
- iii. the capital of the Islamic financial institution or financial group has reached a level or is eroding in a manner that may detrimentally affect its depositors, creditors or the public, and the Islamic financial institution or financial group is unable to recapitalise on its own;
- iv. the Islamic financial institution's assets are insufficient to provide protection to depositors and creditors; or
- v. any other state of affairs exist in respect of the Islamic financial institution or financial group that would put the interest of depositors or creditors at risk, including the loss of confidence of depositors and the public.

For the avoidance of doubt, the Relevant Malaysian Authority shall have the full discretion to elect not to require a write-off or conversion when the Islamic financial institution or financial group has ceased, or is about to cease, to be viable or when a capital injection or equivalent support has been provided. Even if the option is not exercised, holders of the Islamic financial institution's Additional Tier 1 and Tier 2 capital instruments may still be exposed to losses from the resolution of the Islamic financial institution or financial group.

34. Write-off or conversion mechanisms for achieving principal loss absorption and/or loss absorbency at the point of non-viability

- S** 34.1. In respect of the requirement in paragraphs 16.1(x), 15.1(xiii) and 16.1(x) for a capital instrument to be written-off:

⁸⁹ The circumstances may be mutually exclusive and should not be viewed as an exhaustive list.

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- i. the write-off shall reduce:
 - a. the claim of the instrument in liquidation;
 - b. the amount re-paid when a call option is exercised; and
 - c. coupon or dividend payments on the instrument;
- ii. the write-off shall be permanent;
- iii. the provisions governing the issuance of the instrument must specify that a write-off shall not constitute an event of default for that capital instrument or trigger cross-default clauses; and
- iv. the write-off must generate CET1 Capital under MFRS and the instrument will only receive recognition in Additional Tier 1 Capital or Tier 2 Capital up to the level of CET1 Capital generated by a full write-off of the instrument.

S 34.2. In respect of the requirement in paragraphs 15.1(x), 15.1(xiii), and 16.1(x) for a capital instrument that to be converted into ordinary shares:

- i. the Islamic financial institution must maintain at all times all prior authorisation necessary to immediately issue the relevant number of ordinary shares specified in the provisions governing the issuance of the instrument should the trigger event occur^{90,91};
- ii. the conversion formula and/or ratio for determining the number of ordinary shares received upon conversion of the instrument must be determined in advance in the provisions governing the issuance of the instrument and must include a cap on the maximum number of ordinary shares that holders will receive upon conversion;
- iii. the offering documents and other marketing literature of the capital instrument shall contain cautionary statements that highlight the possibility that certain investors may not be permitted to fully exercise

⁹⁰ The contractual terms of the instrument therefore need to be formulated within perimeters permitted under company law and the Islamic financial institution's memorandum and articles of association. Where necessary, an Islamic financial institution shall seek all necessary approvals from shareholders at the point of issuance of an Additional Tier 1 or Tier 2 instrument with conversion features.

⁹¹ For the purpose of paragraph 7.4, the amount of Islamic Additional Tier 1 and Tier 2 capital instruments converted into ordinary shares, must immediately be reallocated to the SPI in the form of Islamic Banking Fund (IBF).

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their rights as shareholders, or may be required to pare down their holdings in shares, after conversion to comply with legal and regulatory requirements;

- iv. the issuance of any new ordinary shares as a result of the trigger event must occur prior to any public sector injection of capital (or equivalent support);
- v. any ordinary shares arising from the conversion may be the ordinary shares of either the issuing Islamic financial institution, its parent company or any other affiliated entity, including any successor in resolution, that are Shariah-compliant⁹²;
- vi. the provisions governing the issuance of the instrument must specify that a conversion shall not constitute an event of default for that instrument or trigger cross-default clauses; and
- vii. the conversion must generate CET1 Capital under MFRS and the instrument will only receive recognition in Additional Tier 1 Capital or Tier 2 Capital up to the level of CET1 Capital generated by a full conversion of the instrument.

S 34.3. In applying the requirements under paragraphs 15.1(x), 15.1(xiii) and 16.1(x), only conversion into ordinary shares is allowed for capital instruments structured using unrestricted non-exchange-based contracts (e.g. *Musarakah*, *Mudarabah* or *Wakalah*). For the avoidance of doubt, instruments structured using exchange-based contracts (e.g. *Murabahah*, *Tawarruq* or *Ijarah*)⁹³ may either be written-off or converted into ordinary shares. Where the provisions governing the instrument require the instrument to be written-off, the write-off mechanism shall be in accordance with Appendix 5⁹⁴.

S 34.4. In respect of the requirement in paragraph 15.1(x), an Islamic financial

⁹² Notwithstanding this requirement for purposes of paragraph 7.4, conversion can be made into ordinary shares of the banking institution (which is licensed under FSA) as the entity has a SPI operations.

⁹³ For the purpose of applying the requirement under paragraph 16.1(x).

⁹⁴ Use of other mechanisms shall be subject to prior written approval of the Bank.

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institution may provide for a hierarchy of write-off or conversion among Additional Tier 1 capital instruments, where certain instruments are written-off or converted before others in the event of a partial write-off or conversion. The terms governing such hierarchy shall be clearly stipulated and provided for in the issue and offering documents. In the event where no hierarchy is provided, all Additional Tier 1 capital instruments shall absorb losses proportionately.

35. Disclosure requirements

- S** 35.1. The full terms and conditions^{95,96} of all Additional Tier 1 and Tier 2 capital instruments included in regulatory capital⁹⁷ shall be made available on the Islamic financial institution's website no later than 2 weeks after the issuance date⁹⁸.

36. Regulatory process and submission requirements

- S** 36.1. An Islamic financial institution is required to obtain the Bank's written approval prior to the issuance of regulatory capital by the Islamic financial institution, or the issuance to third parties out of an SPV and included in entity and consolidated level Additional Tier 1 Capital or Tier 2 Capital. An application must be supplemented with the following:
- i. a confirmation of compliance by the Chief Executive Officer that the proposed capital instruments comply with all the criteria for inclusion in capital as set out in paragraphs 15 and 16, as well as paragraphs 33 and 34⁹⁹;
 - ii. indicative issue and offering documents (e.g. prospectus, offering

⁹⁵ Including any other relevant pricing supplements.

⁹⁶ For the purpose of paragraph 7.4, the terms and conditions shall clearly provide that the conversion is into ordinary shares of the banking institution which operates the SPI.

⁹⁷ For the avoidance of doubt, the terms and conditions of capital instruments issued by subsidiaries and held by third party investors shall also be disclosed to the extent that such capital is recognised at the consolidated level.

⁹⁸ If the issuance is under a programme, the principal terms and condition of the programme shall also be made available on the website.

⁹⁹ This should include an annexe that sets out to demonstrate compliance with the applicable requirements by making references to the relevant parts of the offering documents.

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circular, pricing supplement, information memorandum, trust deed, financing agreement) and as soon as practicable, the final issue and offering documents;

- iii. for the purpose of ensuring compliance with the requirements set out in paragraphs 33 and 34, an external legal opinion:
 - a. confirming that write-off or conversion into ordinary shares at the relevant trigger point is enforceable under the Islamic financial institution's memorandum and articles of association, and relevant company and/or securities law;
 - b. confirming that write-off or conversion into ordinary shares at the relevant trigger point does not constitute an event of default for that instrument or trigger cross-default clauses;
 - c. highlighting other potential impediments to the write-off or conversion of the instrument into ordinary shares upon a trigger event and how they have been resolved; and
 - d. confirming that the hierarchy provided for in paragraph 34.4 does not impede the ability of the capital instruments to be immediately written-off or converted into ordinary shares.
- iv. a confirmation from an accounting firm that the write-off or conversion generates CET1 Capital under MFRS at the relevant trigger point; and
- v. for the purpose of ensuring compliance with Shariah requirements, the Chairman of the Shariah Committee shall submit:
 - a. a confirmation that the write-off mechanism is Shariah-compliant, if the mechanisms other than those specified in Appendix 5 are used; and
 - b. an explanation of the salient features of the Shariah contract and Shariah-compliant mechanisms¹⁰⁰ used in structuring the capital instruments, if not already provided in the terms and conditions.

¹⁰⁰ For example, the mechanisms used for profit smoothening, redemption of principal amount, subordination of capital instruments and loss absorption requirements.

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- S** 36.2. For the purpose of paragraph 36.1, an Islamic financial institution shall seek the Bank's approval for either an individual issuance or for an issuance programme. Approval for an issuance programme allows subsequent issuances under the programme to be deemed approved for recognition to the extent that the criteria for inclusion in capital continues to be met. An Islamic financial institution is however required to notify the Bank prior to subsequent issuances under the approved programme.
- S** 36.3. An Islamic financial institution must also seek the Bank's written approval prior to any subsequent modification of the terms and conditions of an instrument that may affect its eligibility as regulatory capital.
- S** 36.4. An Islamic financial institution shall notify the Bank of any capital instrument issued out of foreign subsidiaries to third parties that is included in consolidated CET1 Capital, Additional Tier 1 Capital or Tier 2 Capital. This shall be supplemented with, where available, a copy of the approval letter from the host supervisor confirming inclusion of the capital instrument in the foreign subsidiary's regulatory capital, and copies of the indicative or where available, final issue and offering documents. In addition, for locally-incorporated foreign Islamic banking institutions, the Islamic banking institution shall notify the Bank if it issues a capital instrument which is included in the consolidated Additional Tier 1 Capital or Tier 2 Capital of (any of) its non-Malaysian parent(s) company.
- S** 36.5. In addition to the requirements set out in paragraphs 36.1 and 36.4 where an Islamic financial institution is required to provide the Bank with an external legal opinion confirming that the instrument complies with all relevant criteria for inclusion in capital from a law firm of the Bank's choice, the Islamic financial institution shall provide the Bank with such legal opinion and the related expenses shall be borne by the Islamic financial institution.

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S 36.6. An Islamic financial institution is required to obtain the Bank's written approval prior to making any planned reduction in its capital¹⁰¹, including capital instruments issued out of consolidated subsidiaries and held by third parties recognised in paragraphs 11.1(v), 12.1(iii) and 13.1(iii). The Islamic financial institution is required to demonstrate, through its capital plans, that the planned reduction of capital results in capital levels remaining well above the minimum capital adequacy requirements and capital buffer requirements, and consistent with its risk profile and business plans.

S 36.7. Any application under this policy document shall be directed to:

Pengarah
Jabatan Penyeliaan Konglomerat Kewangan or
Jabatan Penyeliaan Perbankan (as applicable)
Bank Negara Malaysia
Jalan Dato' Onn
50480 Kuala Lumpur

¹⁰¹ This includes a share buy back or an early redemption, repurchase or repayment of a capital instrument, including through the exercise of a call option.

PART G TRANSITIONAL ARRANGEMENTS

37. Transitional arrangements for Islamic banking institutions

Capital buffer requirements

S 37.1. The Capital Conservation Buffers shall be phased-in as follows:

Calendar year	Capital Conservation Buffer
2016	0.625%
2017	1.25%
2018	1.875%
2019 onwards	2.5%

S 37.2. The following scaling factors shall apply in determining the Countercyclical Capital Buffer:

Calendar year	Scaling factor
2016	25%
2017	50%
2018	75%
2019 onwards	100%

Capital instruments (other than minority interest and capital instruments issued out of consolidated subsidiaries and held by third parties)

S 37.3. The following paragraphs describe transition arrangements for regulatory capital instruments issued prior to 1 January 2013. For the avoidance of doubt, instruments issued in excess of the limits allowed for recognition prior to 1 January 2013 (e.g. Tier 2 Capital limited to 50% of Tier 1 Capital) will not be eligible for the gradual phasing-out treatment. Nevertheless, such instruments will be allowed to be fully recognised (i.e. without limitation) on and after 1 January 2013 if they meet all the criteria for inclusion set out in paragraphs 15 and 16, and have received the prior written approval of the Bank pursuant to paragraph 36.1.

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- S** 37.4. Additional Tier 1 and Tier 2 capital instruments issued on, or before, 16 December 2011¹⁰², excluding those which have call features and incentives to be redeemed, will be subject to the following transitional arrangements:
- i. a capital instrument meeting all the relevant criteria for inclusion¹⁰³ will continue to be fully recognised; and
 - ii. a capital instrument not meeting all the relevant criteria for inclusion will be subject to the gradual phase-out treatment.
- S** 37.5. Additional Tier 1 and Tier 2 capital instruments issued on, or before, 16 December 2011 that have call features and incentives to be redeemed, are subject to the following transitional arrangements:
- i. a capital instrument with an effective maturity date¹⁰⁴ on, or before, 16 December 2011 that remains not called after its effective maturity date:
 - a. will continue to be fully recognised if it meets all the relevant criteria for inclusion on a forward looking basis¹⁰⁵; and
 - b. will be subject to the gradual phase-out treatment if it does not meet all the relevant criteria for inclusion on a forward looking basis.
 - ii. a capital instrument with an effective maturity date between, and including, 17 December 2011 and 31 December 2012 that remains not called after its effective maturity date:
 - a. will continue to be fully recognised if it meets all the relevant criteria for inclusion on a forward looking basis;
 - b. will be subject to the gradual phase-out treatment if it meets all the relevant criteria for inclusion, with the exception of the items set out in paragraph 37.7, on a forward looking basis; and
 - c. with the exception of the items set out in paragraph 37.7, will be derecognised if it does not meet all other relevant criteria for

¹⁰² As indicated in paragraph 2.3 of the Bank's circular on *Implementation of Basel III* dated 16 December 2011.

¹⁰³ Paragraphs 15 and 16 for Additional Tier 1 and Tier 2 capital instruments respectively.

¹⁰⁴ The first date of the incentive to be redeemed (e.g. step-up) that a capital instrument may have.

¹⁰⁵ From the effective maturity date onwards.

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inclusion, on a forward looking basis; and

- iii. a capital instrument with an effective maturity date on, or after, 1 January 2013 that remains not called after its effective maturity date will be subject to the gradual phase-out treatment prior to the effective maturity date, and after its effective maturity date:
 - a. will be fully recognised if it meets all the relevant criteria for inclusion on a forward looking basis; and
 - b. will be derecognised if it does not meet all the relevant criteria for inclusion on a forward looking basis.

S 37.6. Additional Tier 1 and Tier 2 capital instruments issued between, and including, 17 December 2011 and 31 December 2012 shall be subject to the following transitional arrangements:

- i. a capital instrument meeting all the relevant criteria for inclusion will continue to be fully recognised¹⁰⁶;
- ii. a capital instrument meeting all the relevant criteria for inclusion, with the exception of the items set out in paragraph 37.7, will subject to the gradual phase-out treatment; and
- iii. with the exception of the items set out in paragraph 37.7, a capital instrument not meeting all other relevant criteria for inclusion, will be derecognised.

S 37.7. Additional Tier 1 and Tier 2 capital instruments with an effective maturity date, or issued between, and including, 17 December 2011 and 31 December 2012 which comply with the criteria for inclusion set out by the BCBS¹⁰⁷, but which do not meet the additional criteria specified by the Bank, will continue to be recognised after 1 January 2013, subject to the gradual phase-out treatment¹⁰².

¹⁰⁶ For the avoidance of doubt, any Additional Tier 1 and Tier 2 capital instruments issued on, or before, 31 December 2012 and approved by the Bank as fully complying with the requirements in the *Concept Paper – Risk-Weighted Capital Adequacy Framework and Capital Adequacy Framework for Islamic Banks (General Requirements and Capital Components)*, dated 25 May 2012, will continue to be fully recognised.

¹⁰⁷ *Basel III: A global regulatory framework for more resilient banks and banking systems*, Basel Committee on Banking Supervision, December 2010 (revised June 2011).

These are:

- i. paragraphs 15.1(xiii) and 15.1(xvi) for an Additional Tier 1 capital instrument, and paragraph 15.1(x) concerning Additional Tier 1 capital instruments classified as an equity under MFRS; and
- ii. paragraph 16.1(x) for a Tier 2 capital instrument.

S 37.8. The gradual phase-out treatment referred to in paragraphs 37.4 to 37.6 will allow for a limited recognition of certain capital instruments previously recognised but no longer meeting the criteria for inclusion in Additional Tier 1 Capital and Tier 2 Capital, eventually resulting in such instruments fully derecognised by 1 January 2022. The treatment for the limited recognition is as follows:

- i. determine the base for the phase-out treatment, which shall be the total amounts of Additional Tier 1 and Tier 2 ¹⁰⁸ capital instruments outstanding on 1 January 2013 eligible for the gradual phase-out treatment, counted separately;
- ii. the amount of capital instruments eligible for the gradual phase-out treatment that may be recognised shall be capped at 90% of the base in 2013 (as counted separately for Additional Tier 1 Capital and Tier 2 Capital), with the cap reducing by 10% in each subsequent year; and

Calendar year	Cap
2013	90%
2014	80%
2015	70%
2016	60%
2017	50%
2018	40%
2019	30%
2020	20%
2021	10%
2022 onwards	0%

¹⁰⁸ The amount of Tier 2 instruments in the base shall refer to outstanding amounts of Tier 2 capital instruments, less amounts derecognised over the last four years of its contractual maturity.

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iii. To the extent an instrument is redeemed, or derecognised, after 1 January 2013, the amount serving as the base is not reduced¹⁰⁹.

S 37.9. For the avoidance of doubt, CET1 capital instruments, regardless of issuance date, do not qualify for any of the transition arrangements described above.

37.10. A summary of the treatment referred to in paragraphs 37.4 to 37.7 is set out in Appendix 3, while an illustration of the gradual phase-out treatment specified in paragraph 37.8 is provided in Appendix 4.

Minority interest and capital instruments issued out of subsidiaries and held by third parties

S 37.11. The treatment of minority interest and capital instruments issued out of subsidiaries and held by third parties, as outlined in paragraph 17, will not be phased-in for an Islamic banking institution. The surplus capital attributable to third parties that is no longer eligible for inclusion in capital shall be excluded in full from the corresponding tier of capital starting from 1 January 2016.

¹⁰⁹ Individual Tier 2 capital instruments will also continue to be derecognised at a rate of 20% per year in the final four years of the contractual maturity, while the aggregate cap will be reduced at a rate of 10% per year.

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Regulatory adjustments

37.12. Regulatory adjustments specified in paragraphs 31.2(i) and (ii) will be phased-in as follows:

Calendar year	Portion to be deducted using the corresponding deduction approach
2013	0%
2014	20%
2015	40%
2016	60%
2017	80%
2018	100%

The remaining portion of regulatory adjustments not deducted in the calculation of CET1 Capital or Additional Tier 1 Capital using the corresponding deduction approach shall be deducted in the calculation of Tier 2 Capital¹¹⁰. Any shortfall shall be deducted in the calculation of the next higher tier of capital.

37.13. All other regulatory adjustments, as set out in Part E, will fully apply in the calculation of capital starting from 1 January 2013.

¹¹⁰ For 2013, the regulatory adjustments in paragraphs 31.2(i) and (ii) will be fully deducted in the calculation of Tier 2 Capital.

APPENDICES

Appendix 1 General treatment of equity investments

Type of investment		Treatment	
		At the entity level	At the consolidated level
Islamic Banks and other financial entities excluding takaful operators	Subsidiaries	Paragraph 31	Consolidate, or deduct from CET1 Capital if allowed under paragraph 7.3
	Others	Paragraph 31	
Takaful operators	Subsidiaries	Paragraph 31	
	Others		
Other commercial entities	Subsidiaries	Risk-weight at 1250% ¹¹¹	Consolidate, or risk-weight at 1250% ¹¹¹ if allowed under paragraph 7.3
	Others	Risk-weight in accordance with <i>Capital Adequacy Framework for Islamic Banks (Risk-Weighted Assets)</i>	

¹¹¹ In accordance with paragraphs 2.51, 3.4 and 3.179 of *Capital Adequacy Framework for Islamic Banks (Risk-Weighted Assets)*.

Appendix 2 Illustrative examples on minority interest and capital instruments issued out of consolidated subsidiaries held by third parties

An financial group consists of two legal entities that are both Islamic banking institutions. Islamic Bank P is the parent company and Islamic Bank S is the subsidiary and their unconsolidated balance sheets are set out below:

Islamic Bank P balance sheet		Islamic Bank S balance sheet	
Assets		Assets	
Financing to customers	100	Financing to customers	150
Investment in CET1 of Bank S	7		
Investment in the AT1 of Bank S	4		
Investment in the T2 of Bank S	2		
Liabilities and equity		Liabilities and equity	
Depositors	70	Depositors	127
Tier 2	10	Tier 2	8
Additional Tier 1	7	Additional Tier 1	5
Common equity	26	Common equity	10

The balance sheet of Islamic Bank P shows that in addition to its financing to customers, it owns 70% of the ordinary shares of Islamic Bank S, 80% of the Additional Tier 1 Capital of Islamic Bank S and 25% of the Tier 2 Capital of Islamic Bank S. The ownership of the capital of Islamic Bank S is therefore as follows:

Capital issued by Islamic Bank S			
	Amount issued to parent (Islamic Bank P)	Amount issued to third parties	Total
Common Equity Tier 1 (CET1)	7	3	10
Additional Tier 1 (AT1)	4	1	5
Tier 1 (T1)	11	4	15
Tier 2 (T2)	2	6	8
Total (TC)	13	10	23

The consolidated balance sheet of the banking group is set out below:

Consolidated balance sheet	
Assets	
Financing to customers	250
Liabilities and equity	
Depositors	197
Tier 2 issued by subsidiary to third parties	6
Tier 2 issued by parent company	10
Additional Tier 1 issued by subsidiary to third parties	1
Additional Tier 1 issued by parent company	7
Common equity issued by subsidiary to third parties (i.e. minority interest)	3
Common equity issued by parent company	26

For illustrative purposes, Islamic Bank S is assumed to have risk-weighted assets of 100. In this example, the minimum capital requirements of Islamic Bank S and the subsidiary's contribution to the consolidated requirements are the same since Islamic Bank S does not have any financing to Islamic Bank P. This means that it is subject to the following minimum plus Capital Conservation Buffer requirements and has the following surplus capital:

Minimum and surplus capital of Islamic Bank S		
	Minimum plus Capital Conservation Buffer	Surplus
CET1	7.0 (= 7.0% of 100)	3.0 (=10 – 7.0)
T1	8.5 (= 8.5% of 100)	6.5 (=10 + 5 – 8.5)
TC	10.5 (= 10.5% of 100)	12.5 (=10 + 5 + 8 – 10.5)

The following table illustrates how to calculate the amount of capital issued by Islamic Bank S to include in consolidated capital, following the calculation method set out in paragraph 17:

Islamic Bank S: amount of capital issued to third parties included in consolidated capital					
	Total amount issued (a)	Amount issued to third parties (b)	Surplus (c)	Surplus attributable to third parties (i.e. amount excluded from consolidated capital) (d) = (c) * (b)/(a)	Amount included in consolidated capital (e) = (b) – (d)
CET1	10	3	3.0	0.90	2.10
T1	15	4	6.5	1.73	2.27
TC	23	10	12.5	5.43	4.57

The following table summarises the components of capital for the consolidated group based on the amounts calculated in the table above. Additional Tier 1 is calculated as the difference between Common Equity Tier 1 and Tier 1 and Tier 2 is the difference between Total Capital and Tier 1.

	Total amount issued by parent company (all of which is to be included in consolidated capital)	Amount issued by subsidiaries to third parties to be included in consolidated capital	Total amount issued by parent company and subsidiary to be included in consolidated capital
CET1	26	2.10	28.10
AT1	7	0.17	7.17
T1	33	2.27	35.27
T2	10	2.30	12.30
TC	43	4.57	47.57

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Appendix 3 Transitional arrangements for capital instruments

Additional Tier 1 and Tier 2 capital instruments, excluding those which have call features and incentives to be redeemed

	Issuance date		
	On, or before, 16 December 2011 ¹¹²	Between 17 December 2011 and 31 December 2012 ¹¹³	On, or after, 1 January 2013
Meets all criteria	Recognised	Recognised	Recognised
Meets all criteria except for those set out in paragraph 37.7	Gradually phased-out	Gradually phased-out	Derecognised
Other than those set out in paragraph 37.7, does not fully meet criteria	Gradually phased-out	Derecognised	Derecognised

¹¹² Paragraph 37.4.

¹¹³ Paragraph 37.6.

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Additional Tier 1 and Tier 2 capital instruments issued on, or before, 16 December 2011 with call features and incentives to be redeemed

	Effective maturity date			
	On, or before, 16 December 2011 ¹¹⁴	Between 17 December 2011 and 31 December 2012 ¹¹⁵	On, or after, 1 January 2013 ¹¹⁶	
			Prior to effective maturity date	After effective maturity date
Meets all criteria	Recognised	Recognised	Gradually phased-out	Recognised
Meets all criteria except for those set out in paragraph 37.7	Gradually phased-out	Gradually phased-out	Gradually phased-out	Derecognised
Other than those set out in paragraph 37.7, does not fully meet criteria	Gradually phased-out	Derecognised	Gradually phased-out	Derecognised

Note: No transition arrangements are provided for CET1 capital instruments, regardless of issuance date.

¹¹⁴ Paragraph 37.5(37.5.i).

¹¹⁵ Paragraph 37.5(37.5.ii).

¹¹⁶ Paragraph 37.55(37.5.iii).

Appendix 4 Illustrative examples on the gradual phase-out treatment

Scenario 1: No capital instrument is redeemed¹¹⁷, or is called, during the transition period. Some Tier 2 capital instruments start the last four years of their contractual maturity before 1 January 2013.

- On 1 January 2013, Islamic Bank A has RM150 million Additional Tier 1 and RM350 million Tier 2 capital instruments, of which RM250 million is in the last three years of its contractual maturity. All these capital instruments qualify for the phase-out treatment.

Base for Additional Tier 1 capital instruments outstanding ¹¹⁸ on 1 January 2013 (million)	Base for Tier 2 capital instruments outstanding on 1 January 2013 (million)
150	$100 + [250 \times (0.6)] = 250$

Calendar year	Additional Tier 1 capital instruments (million)		Tier 2 capital instruments (million)		
	Cap ¹¹⁹	Amount recognised	Cap	Outstanding amount ¹²⁰	Amount recognised ¹²¹
2013	135	135	225	250	225
2014	120	120	200	200	200
2015	105	105	175	150	150
2016	90	90	150	100	100
2017	75	75	125	100	100
2018	60	60	100	100	100
2019	45	45	75	100	75
2020	30	30	50	100	50
2021	15	15	25	100	25
2022	0	0	0	100	0

¹¹⁷ Based on contractual maturity.

¹¹⁸ Paragraph 37.8(i).

¹¹⁹ Paragraphs 37.8(ii) and (iii).

¹²⁰ The outstanding amount for individual capital instruments shall continue to be derecognised at a rate of 20% per year.

¹²¹ Amount recognised under the gradual phase-out treatment is the lower of the aggregate cap and the amount outstanding.

Scenario 2: Some capital instruments are called, and some capital instruments start the last four years of their contractual maturity within the transition period.

- On 1 January 2013, Islamic Bank A has RM150 million Additional Tier 1 and RM450 million Tier 2 capital instruments. All these capital instruments qualify for the phase-out treatment.
- RM35 million of Additional Tier 1 capital instrument is called on 30 June 2016.
- RM70 million of Additional Tier 1 capital instrument was issued before 16 December 2011 and is not called on its effective maturity date, 31 July 2018. Based on a forward looking basis, the instrument does not meet all requirements in paragraph 15.
- RM20 million of Additional Tier 1 capital instrument was issued before 16 December 2011 and is not called on its effective maturity date, 31 August 2020. Based on a forward looking basis, the instrument meets all requirements in paragraph 15.
- RM400 million of Tier 2 capital instrument starts its last four years to maturity in 2015.

Base for Additional Tier 1 capital instruments outstanding on 1 January 2013 (million)	Base for Tier 2 capital instruments outstanding on 1 January 2013 (million)
150	450

Calendar year	Additional Tier 1 capital instruments (million)			Tier 2 capital instruments (million)		
	Cap	Outstanding amount	Amount recognised	Cap	Outstanding amount	Amount recognised
2013	135	150	135	405	450	405
2014	120	150	120	360	450	360
2015	105	150	105	315	450	315
2016	90	115 ¹²²	90	270	370	270
2017	75	115	75	225	290	225
2018	60	45	45	180	210	180
2019	45	45	45	135	130	130
2020	30	25 ¹²³	25	90	50	50
2021	15	25	15	45	50	45
2022	0	25	0	0	50	0

¹²² The outstanding amount shall exclude the amount of instruments that have been called.

¹²³ Although the amount of RM20 million will be removed from the outstanding amount for phase-out calculation, this shall be recognised as fully eligible for Additional Tier 1 capital instrument.

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Appendix 5 Write-off mechanisms for Tier 2 capital instruments structured using exchange-based contracts

Contracts	Write-off mechanism
<i>Murabahah, Tawarruq</i>	Write-off may be achieved through either of the following: <ul style="list-style-type: none"> i. Investor (as creditor) undertakes to waive his rights on the debts at the point of non-viability, via a <i>Wa'ad</i>; or ii. Investor (as creditor) agrees to waive his rights on the debts at the point of non-viability, as provided in the legal documentation¹²⁴.
<i>Ijarah</i>	Write-off may be achieved subject to the following: <ul style="list-style-type: none"> i. Investor (as lessor) agrees to waive his rights on accrued rental at the point of non-viability as provided in the legal documentation¹²⁴ with the lessee; and ii. Investor (as lessor) undertakes to transfer his ownership over the underlying asset (beneficial or otherwise) to the lessee without consideration, via a <i>Wa'ad</i>

¹²⁴ The waiver or transfer should be incorporated in the appropriate legal documentation (e.g. issue and offering documents, sale and purchase agreement, lease agreement).