Kriterien für Eigenkapitalbestandteile

Criteria for classification as common shares for regulatory capital purposes[1)]

1.	Represents the most subordinated claim in liquidation of the bank.[2)]
2.	Entitled to a claim of the residual assets that is proportional with its 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).
3.	3. Principal is perpetual and never repaid outside of liquidation (setting aside discretionary repurchases or other means of effectively reducing capital in a discretionary manner that is allowable under national law).
4.	The bank does nothing to create an expectation at issuance that the instrument will be bought back, redeemed or cancelled nor do the statutory or contractual terms provide any feature which might give rise to such an expectation.
5.	Distributions are paid out of distributable items (retained earnings included). The level of distributions are not in any way tied or linked to the amount paid in at issuance and are not subject to a cap (except to the extent that a bank is unable to pay distributions that exceed the level of distributable items).
6.	There are no circumstances under which the distributions are obligatory. Non payment is therefore not an event of default.
7.	Distributions are paid only after all legal and contractual obligation have been met and payments on more senior capital instruments have been made. This means that there are no preferential distributions, including in respect of other elements classified as the highest quality issued capital.
8.	It is the issued capital that takes the first and proportionately greatest share of any losses as they occur. Within the highest quality capital, each instrument absorbs losses on a going concern basis proportionately and pari passu with all the others.
9.	The paid in amount is recognised as equity capital (i.e. not recognised as a liability) for determining balance sheet insolvency.
10.	The paid in amount is classified as equity under the relevant accounting standards.
11.	It is directly issued and paid-up.
12.	The paid in amount is neither secured nor covered by a guarantee of the issuer or related entity or subject to any other arrangement that legally or economically enhances the seniority of the claim.
13.	It is only issued with the approval of the owners of the issuing bank, either given directly by the owners or, if permitted by applicable law, given by the Board of Directors or by other persons duly authorised by the owners.
14.	It is clearly and separately disclosed on the bank's balance sheet.

[1)] The criteria also apply to non joint stock companies, such as mutuals, cooperatives or savings institutions, taking into account their specific constitution and legal structure. The application of the criteria should preserve the quality of the instruments by requiring that they are deemed fully equivalent to common shares in terms of their capital quality as regards loss absorption and do not possess features which could cause the condition of the bank to be weakened as a going concern during periods of market stress. Supervisors will exchange information on how they apply the criteria to non joint stock companies in order to ensure consistent implementation.
[2)] Throughout the criteria the term "bank" is used to mean bank, banking group or other entity (e.g. holding company) whose capital is being measured.

Criteria for inclusion in Tier 1 Additional Going Concern Capital

1.	Issued and paid-in
2.	Subordinated to depositors, general creditors and subordinated debt of the bank
3.	Is neither secured nor covered by a guarantee of the issuer or related entity or other arrangement that legally or economically enhances the seniority of the claim vis-à-vis bank creditors.
4.	Is perpetual, i.e. there is no maturity date and there are no incentives to redeem.
5.	May be callable at the initiative of the issuer only after a minimum of five years: a. To exercise a call option a bank must receive prior supervisory approval; and b. A bank must not do anything which creates an expectation that the call will be exercised; and c. Banks must not exercise a call unless: i. They replace the called instrument 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 bank; or ii. The bank demonstrates that its capital position is well above the minimum capital requirements after the call option is exercised.
6.	Any repayment of principal (e.g. through repurchase or redemption) must be with prior supervisory approval and banks should not assume or create market expectations that supervisory approval will be given
7.	Dividend/coupon discretion: a. the bank must have full discretion at all times to cancel distributions/payments. b. cancellation of discretionary payments must not be an event of default. c. banks must have full access to cancelled payments to meet obligations as they fall due. d. cancellation of distributions/payments must not impose restrictions on the bank except in relation to distributions to common stockholders.

Fortsetzung : Criteria for inclusion in Tier 1 Additional Going Concern Capital	
8.	Dividends/coupons must be paid out of distributable items.
9.	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 banking organisation's current credit standing.
10.	The instrument cannot contribute to liabilities exceeding assets if such a balance sheet test forms part of national insolvency law.
11.	Instruments classified as liabilities must have principal loss absorption through either (i) conversion to common shares at an objective pre-specified trigger point or (ii) a write-down mechanism which allocates losses to the instrument at a pre-specified trigger point. The write-down will have the following effects: a. reduce the claim of the instrument in liquidation; b. reduce the amount re-paid when a call is exercised; and c. partially or fully reduce coupon/dividend payments on the instrument.
12.	Neither the bank nor a related party over which the bank exercises control or significant influence can have purchased the instrument, nor can the bank directly or indirectly have funded the purchase of the instrument.
13.	The instrument cannot have any features that hinder recapitalisation, such as provisions that require the issuer to compensate investors if a new instrument is issued at a lower price during a specified time frame.
14.	If the instrument is not issued out of an operating entity or the holding company in the consolidated group (e.g. a special purpose vehicle – "SPV"), proceeds must be immediately available without limitation to an operating entity or the holding company in the consolidated group in a form which meets or exceeds all of the other criteria for inclusion in Tier 1 Additional Going Concern Capital.
Additional requirements	
•	The criteria above will also apply to instruments which appear in the consolidated accounts as minority interest.
•	This element of capital will be net of the appropriate corresponding deductions related to holding of non-common equity capital instruments in other financial institutions.

Criteria for inclusion in Tier 2 Capital

1.	Issued and paid-in
2.	Subordinated to depositors and general creditors of the bank
3.	Is neither secured nor covered by a guarantee of the issuer or related entity or other arrangement that legally or economically enhances the seniority of the claim vis-à-vis depositors and general bank creditors.
4.	Maturity: a. minimum original maturity of at least 5 years. b. recognition in regulatory capital in the remaining 5 years before maturity will be amortised on a straight line basis. c. there are no incentives to redeem.
5.	May be callable at the initiative of the issuer only after a minimum of five years: a. to exercise a call option a bank must receive prior supervisory approval; and b. a bank must not do anything which creates an expectation that the call will be exercised; and c. banks must not exercise a call unless: i. they replace the called instrument 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 bank; or ii. the bank demonstrates that its capital position is well above the minimum´capital requirements after the call option is exercised.
6.	The investor must have no rights to accelerate the repayment of future scheduled payments (coupon or principal), except in bankruptcy and liquidation.
7.	The instrument may not have a credit sensitive dividend feature, that is a dividend that is reset periodically based in whole or in part on the banking organisation's current credit standing.
8.	The bank or a related party cannot have knowingly purchased, or directly or indirectly have funded the purchase of, the instrument.
9.	If the instrument is not issued out of an operating entity or the holding company in the consolidated group (e.g. an SPV), proceeds must be immediately available without limitation to an operating entity or the holding company in the consolidated group in a form which meets or exceeds all of the other criteria for inclusion in Tier 2 Capital.
Additional requirements	
•	These criteria will also apply to instruments which appear in the consolidated accounts as minority interest.
•	This element of capital will be net of the appropriate corresponding deductions related to holding of non-common equity capital instruments in other financial institutions.

Anmerkung: Die Konsultationspapiere des Baseler Gremiums sind im Internet unter http://www.bis.org/press/p091217.htm abrufbar und stehen bis zum 16. April 2010 zur Kommentierung offen.