

適用於認可機構吸收虧損能力規定的規則及
對《稅務條例》的修訂
Rules on Loss-Absorbing Capacity
Requirements for Authorized Institutions &
Amendments to the Inland Revenue Ordinance

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1. 為何需要這些規則?

WHAT ARE THESE RULES FOR?

金融穩定及存款人保障

Financial stability and depositor protection

- 銀行倒閉可能危害香港金融體系以至整體經濟，以及令存款人無法取得存款。為避免出現這種情況，將來瀕臨倒閉銀行很大可能事先需要投資者提供額外資金。

The failure of a bank can damage the Hong Kong financial system and the wider economy, and cut depositors off from their money. To prevent this from happening, in the future a failing bank is likely to require additional money from investors *ex-ante*.

- 該等規則會規定銀行須發行一種全新債務，可以在銀行陷入困境時予以撇銷或轉換為股份。以此方式於處置行動中從銀行的資產負債表中剔除有關債務，可增加資金供應。

These Rules will require banks to issue a new type of debt that can be written off or converted into shares if the bank runs into trouble. Removing debt from a bank's balance sheet in this way during resolution has the effect of providing a funding boost.

- 結果是透過由投資者承擔虧損，瀕臨倒閉銀行的財務狀況可回復穩健。一方面可避免動用公帑挽救銀行的股東及投資者，另一方面可維持金融穩定，並確保存款人得到保障。

The result is that a failing bank can be restored to financial health by imposing losses on investors. This avoids the need for a bail-out of the bank's shareholders and investors with taxpayers money while maintaining financial stability and ensuring that depositors are protected.

2. 香港處置機制概述及政策理念
OVERVIEW OF HONG KONG
RESOLUTION REGIME &
POLICY RATIONALE

處置機制：國際環境

Resolution: international context

- 自二零零七年以來，歐盟國家和美國面對嚴重的金融危機，在沒有其他選擇下動用了大量納稅人資金以挽救具系統重要性的金融機構，以免這些機構倒閉繼而威脅金融穩定。這突顯了“大到不能倒”的現象。投資者及金融機構行政人員於順境時坐享豐厚回報，機構倒閉時的成本卻由公帑承擔。

The experience of the global financial crisis from 2007 onward illustrated that the only way then to avoid the failure of systemically important financial institutions (“FIs”) from threatening financial stability was taxpayer-funded bail-outs. This is the “Too Big to Fail” problem. Investors and executives get high rewards in the good times, leaving the public purse to pick up the cost.

- 二十國集團領導人於是要求金融穩定理事會謀求對策，以應付“大到不能倒”的現象。金融穩定理事會因應要求，制訂嶄新的關於處置機制的國際標準，發表於《有效的金融機構處置機制主要元素》(《主要元素》)。

As a result, the Financial Stability Board (“FSB”), mandated by G-20 leaders to address the “Too Big to Fail” problem, issued new international standards for the “resolution” of systemically important FIs in its “Key Attributes of Effective Resolution Regimes for Financial Institutions” (“Key Attributes”).

- 《金融機構(處置機制)條例》(第628章)(《處置條例》)於二零一六年六月由立法會通過，設立了符合《主要元素》所載的標準而適用於香港金融機構的處置機制。《處置條例》的主要條文於二零一七年七月七日生效。

The Financial Institutions (Resolution) Ordinance (Cap. 628) (“FIRO”) was enacted by the Legislative Council (“LegCo”) in June 2016, establishing a resolution regime for FIs in Hong Kong which meets the standards set by the Key Attributes. The main provisions of the FIRO came into force on 7 July 2017.

香港金融機構處置機制

Hong Kong resolution regime for FIs

- 《處置條例》建立了適用於香港金融機構的跨界別處置機制，涵蓋銀行界、保險界及證券及期貨界。處置機制旨在利便有秩序處置不再可持續經營的金融機構。

The FIRO establishes a cross-sectoral resolution regime for FIs in Hong Kong, covering the banking sector, the insurance sector, and the securities and futures sector. The regime is designed to facilitate the orderly resolution of non-viable FIs.

- 三個現有的界別監管機構(即金融管理專員、證監會及保險業監管局)，擔當歸現時其監管的受涵蓋金融機構的處置機制當局。處置機制當局負責規劃及實施(於必要時)有秩序地處置不再可持續經營的具系統重要性的金融機構。

Each of the three existing sectoral regulators (namely the Monetary Authority (“MA”), the Securities and Futures Commission and the Insurance Authority) is the resolution authority (“RA”) for within scope FIs under its respective existing purview. The RAs are responsible for planning for and, if necessary, executing, orderly resolution of a non-viable systemically important FI.

- 處置機制當局可施行一系列穩定措施(轉讓予買家、過渡機構或資產管理工具、內部財務重整(即撇銷負債及／或將負債轉換為股本)、以及作為最後一著的轉讓予暫時公有公司)。

The FIRO provides the RAs with a menu of stabilization options (transfer to a purchaser, a bridge institution or an asset management vehicle, bail-in (i.e. write-off and/or conversion of liability into equity), and, as a last resort, transfer to a temporary public ownership company.

吸收虧損能力 - 政策理念

Loss-absorbing capacity (“LAC”) – policy rationale

- 內部財務重整穩定措施是《處置條例》設立的處置機制下的主要工具之一。內部財務重整穩定措施可用以撇銷被處置金融機構的負債，或將該等負債轉換為股本。

The bail-in stabilization option is a key tool under the FIRO’s resolution regime. It can be used to write off, or convert into equity, the liabilities of an FI in resolution.

- 此舉讓作為銀行界實體處置機制當局的金融管理專員可在無須動用公帑的情況下，重組不再可持續經營的認可機構的資本，從而令該認可機構的投資者及債權人承擔倒閉的成本。這將激勵投資者和債權人在正常時期監控認可機構，促進市場紀律和減少道德風險。

This enables the MA as the RA for banking sector entities to recapitalise a non-viable authorized institution (“AI”) without the use of public funds. The costs of failure are instead borne by investors and creditors of the AI. This would incentivise the investors and creditors to monitor the AI during normal times, promoting market discipline and reducing moral hazard.

- 然而，部分負債(例如後償、無抵押債務)相比其他負債較容易被用於施行內部財務重整。為確保施行內部財務重整的權力有效，被處置認可機構必須有充足的負債，可迅速用於內部財務重整，即充足的吸收虧損能力。

However, some liabilities (e.g. subordinated, unsecured debt) can be more easily bailed in than others. For the bail-in power to be effective, AIs in resolution must have a sufficient stock of liabilities that can be readily bailed in, i.e. sufficient LAC.

吸收虧損能力 - 政策理念(續)

LAC – policy rationale (cont'd)

- 具備充足吸收虧損能力，是金融管理專員能運用內部財務重整穩定措施支持有秩序處置不再可持續經營的認可機構的先決條件。吸收虧損能力亦有助於施行轉讓穩定措施，把不再可持續經營的金融機構的部分或所有資產、權利或負債或其發行的部分或所有證券轉移予受讓方，從而有秩序處置該機構。

Having sufficient LAC is a pre-requisite to the MA being able to apply the bail-in stabilization option to support the orderly resolution of a non-viable AI. LAC can also support the orderly resolution of a non-viable AI where a transfer stabilization option has been applied to move some or all of the assets, rights or liabilities of, or securities issued by, that AI to a transferee.

- 以吸收虧損能力便利有秩序處置不再可持續經營的認可機構，有助(i)盡量減低對金融穩定構成的影響；(ii)確保關鍵功能的持續性(例如為普羅大眾提供的接受存款功能)；以及(iii)避免以公帑承擔虧損。

Facilitating the orderly resolution of a non-viable AI with LAC helps to (i) minimise any impact on financial stability; (ii) ensure the continuity of critical functions (e.g. deposit-taking function for the general public); and (iii) avoid exposing public funds to loss.

- 金融穩定理事會(香港為其成員司法管轄區之一)已就具全球系統重要性銀行的總吸收虧損能力最低要求發出指引(《總吸收虧損能力細則清單》)。

The FSB – of which Hong Kong is a member jurisdiction – has issued guidance (the “FSB TLAC Term Sheet”) on minimum requirements for total LAC for global systemically important banks (“G-SIBs”).

吸收虧損能力規定的規則 – 法律依據

LAC Requirement Rules – Legal Basis under FIRO

- 《處置條例》第19條訂明以下等等事項：

(1) 處置機制當局可為以下事宜，訂立規則 —

- (a) 就受涵蓋金融機構或其集團公司，訂明吸收虧損能力規定；或
- (b) 相關目的。

Section 19 of the FIRO provides that, among other things:

“(1) A resolution authority may make rules –

- (a) prescribing loss-absorbing capacity requirements for within scope financial institutions or their group companies; or
- (b) for connected purposes.”

- 這適用於所有三個界別（銀行界、保險界、證券及期貨界）。鑑於香港銀行體系的系統重要性，以及有關銀行吸收虧損能力的國際標準，應優先處理為認可機構制定吸收虧損能力的工作。

This applies to all the 3 sectors (banking sector, insurance sector, securities & futures sector). In light of the systemic importance of the banking sector in Hong Kong and international guidance on LAC for banks, it is considered that development of LAC requirements should be prioritised for AIs.

**3. 適用於認可機構吸收虧損能力規定的規則
(《吸收虧損能力規則》)**

**RULES ON LOSS-ABSORBING CAPACITY
REQUIREMENTS FOR AUTHORIZED
INSTITUTIONS (“FIRO LAC RULES”)**

吸收虧損能力規則 – 主要建議

FIRO LAC Rules – key proposals

建議緊貼《總吸收虧損能力原則及細則清單》所載原則，並因應香港本身的情況作出適當修訂。
The proposals set out in the FIRO LAC Rules are closely aligned with the principles set out in the “FSB TLAC Term Sheet”, appropriately modified for the Hong Kong context.

相關內容 Aspect	建議 Proposal
須遵守外部/內部吸收虧損能力規定的實體 Entities subject to external/internal LAC requirement	<ul style="list-style-type: none"> • 若處置策略預期認可機構、認可機構的控權公司或認可機構的相聯營運實體(三者均在香港成立)會進入處置程序，金融管理專員可將該認可機構或認可機構的控權公司列為處置實體，並連同其一個或多於一間附屬公司列為處置集團。 Where a resolution strategy envisages an AI, a holding company of an AI or an affiliated operational entity (“AOE”) (in each case incorporated in Hong Kong) going into resolution, the MA can classify it as a resolution entity and, together with one or more of its subsidiaries, as a resolution group. • 處置實體必須以向在其處置集團之外的實體發行的吸收虧損能力票據符合外部吸收虧損能力規定。 Resolution entities must meet an external LAC requirement with LAC instruments issued to an entity outside its resolution group. • 在重要性條件的規限下，金融管理專員可將同一個處置集團(或海外的同等集團)內但並非處置實體的某間認可機構、認可機構的控權公司或認可機構的相聯營運實體(三者均在香港成立)列為重要附屬公司，並連同其一個或多於一間附屬公司列為重要子集團。 Subject to materiality conditions, the MA can classify an AI, a holding company of an AI or an AOE of an AI (in each case incorporated in Hong Kong) that is in a resolution group (or overseas equivalent) but not a resolution entity as a material subsidiary and, together with one or more of its subsidiaries, as a material sub-group. • 重要附屬公司必須以直接或間接向其處置集團內的處置體發行的吸收虧損能力票據符合內部吸收虧損能力規定。 Material subsidiaries must meet an internal LAC requirement with LAC instruments issued, directly or indirectly, to the resolution entity in its resolution group.

吸收虧損能力規則 - 主要建議(續)

FIRO LAC Rules – key proposals (cont'd)

相關內容 Aspect	建議 Proposal
外部/內部吸收虧損能力規定的校準 Calibration of external/ internal LAC requirement	<ul style="list-style-type: none"> 外部吸收虧損能力規定 = 2 x 最低監管規定 External LAC requirement = 2 x minimum regulatory requirement 外部吸收虧損能力規定 = 「模擬」外部吸收虧損能力規定 x 75%至100%的內部吸收虧損能力純量 Internal LAC requirement = “as if” external LAC requirement x internal LAC scalar of 75% to 100% 金融管理專員可按認可機構的特殊情況更改外部/內部吸收虧損能力規定 External/internal LAC requirement may be varied by the MA according to particular circumstances of an AI
符合吸收虧損能力規定的時間表 Timeline for meeting LAC requirements	<ul style="list-style-type: none"> 處置實體或重要附屬公司必須在金融管理專員作出有關分類後24個月內符合任何相關吸收虧損能力規定 Resolution entity or material subsidiary must meet any relevant LAC requirement within 24 months of being classified as such by the MA 若《總吸收虧損能力原則及細則清單》就任何為具全球系統重要性銀行集團旗下成員的實體指明較短的期間，則必須遵循該較短期間 Where the <i>FSB TLAC Term Sheet</i> specifies a shorter timeline for any entity that is part of a G-SIB group, that shorter timeline must be met
吸收虧損能力債務票據的銷售限制 Sale restrictions of LAC debt instruments	<ul style="list-style-type: none"> 在香港只可向專業投資者進行吸收虧損能力債務票據的一級市場發行，而且這類票據最低面額須為800萬港元 Primary issuance of LAC debt instruments in Hong Kong to be limited to Professional Investors only, and such instruments must have a minimum denomination of HKD 8 million 就吸收虧損能力債務票據進一步設立適當的銷售及推廣限制 Further appropriate restrictions to be placed on the sale and marketing of LAC debt instruments

4. 修訂《稅務條例》
AMENDMENTS TO THE INLAND REVENUE
ORDINANCE (“IRO”)

修訂《稅務條例》- 政策理念

Amendments to IRO – policy rationale

- 吸收虧損能力債務票據的吸收虧損能力特性引起利息支出應否如一般債務般享有利得稅減免方面的不確定性。

The loss-absorbing nature of LAC debt instruments creates uncertainty about whether interest expenses should be deductible for profits tax purposes, as is the case with normal debt.

- 最近香港的資本制度引入額外一級資本及二級資本票據亦面對同一問題。《稅務條例》於二零一六年作出修訂，釐清該等資本票據可獲得類似債務的稅務待遇。

The same issue arose when Additional Tier 1 and Tier 2 capital instruments were recently introduced into the Hong Kong capital regime. The IRO was amended in 2016 to clarify that those capital instruments would receive debt-like tax treatment.

- 擬議修訂會遵循二零一六年就新資本票據採取的做法，使吸收虧損能力債務票據可就稅務目的被視為債務。

These proposed amendments will follow the approach taken for the new capital instruments in 2016, by allowing LAC debt instruments to be treated as debt for tax purposes.

- 此外，擬議修訂將會在吸收虧損能力債務票據的利息支出扣減上為銀行集團締造公平競爭環境，而不論該等票據是由認可機構或香港成立的認可機構純淨控權公司發行。

In addition, the proposed amendments will create a level-playing field for banking groups in relation to interest expense deduction for LAC debt instruments irrespective of whether such instruments are issued out of an AI or a Hong Kong incorporated clean holding company of an AI.

修訂《稅務條例》 - 主要建議

Amendments to IRO – key proposals

- 由認可機構或香港成立的認可機構純淨控權公司發行的所有吸收虧損能力債務票據都會在《稅務條例》下獲得類似債務的稅務待遇，但須遵守限制及防止避稅條文。

All LAC debt instruments issued by an AI or a Hong Kong incorporated clean holding company of an AI will receive debt-like tax treatment under the IRO, subject to constraints and anti-avoidance provisions.

- 由認可機構或香港成立的認可機構純淨控權公司所得來自吸收虧損能力債務票據的利息、收益或利潤將被當作營業收入，因此須繳納利得稅，從而達到稅務對稱。

Interest, gains or profits derived from all LAC debt instruments made by an AI or a Hong Kong incorporated clean holding company of an AI will be deemed trading receipts and hence be chargeable to profits tax, thus upholding tax symmetry.

- 所有吸收虧損能力債務票據的轉讓於《印花稅條例》下可獲豁免印花稅。

Transfers of all LAC debt instruments will be exempt from stamp duty under the Stamp Duty Ordinance.

- 上述所有有關利息支出扣減、利息收入/收益/利潤徵稅及印花稅豁免的建議，都與認可機構的額外一級資本及二級資本票據獲得的現行稅務待遇相同。

All the above proposals on interest expense deductibility, interest income/gain/profits taxability and stamp duty exemption are same as current treatment in respect of Additional Tier 1 and Tier 2 capital instruments of AIs.

5. 工作計劃

NEXT STEPS

工作計劃

Next steps

- 諮詢於二零一八年三月十六日結束
Consultation period closed on 16 March 2018
- 金融管理專員將發表諮詢回應
The MA will issue consultation response
- 目標是於二零一八年下半年內將吸收虧損能力規則提交立法會，並隨即提交稅務修訂條例草案作首讀及二讀
Aim to introduce FIRO LAC Rules-into LegCo in the second half of 2018, followed by the introduction of the IRO Amendment Bill for first and second reading