

《2018年稅務(修訂)(第6號)條例草案》
Inland Revenue (Amendment) (No. 6) Bill 2018

2018年11月
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處置機制

Resolution Regime

- 《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。《處置條例》建立了適用於香港金融機構的跨界別處置機制，利便有秩序處置不再可持續經營的金融機構，以避免或減少具系統重要性金融機構一旦倒閉，需要動用納稅人資金挽救該等機構的情況。

The Financial Institutions (Resolution) Ordinance (Cap. 628) (“FIRO”) was enacted by the Legislative Council in June 2016, establishing a resolution regime for financial institutions (“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. FIRO establishes a cross-sectoral resolution regime for FIs in Hong Kong, and is designed to facilitate the orderly resolution of non-viable FIs so as to avoid or mitigate the risk of taxpayer-funded bail-outs should a systemically important FI fail.

- 《處置條例》賦予處置機制當局施行穩定措施的權力。穩定措施為(A) 內部財部重整穩定措施，容許處置機制當局取消或改動若干負債；或(B)各種轉讓穩定措施，將某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讓予第三方。

The FIRO provides the RAs with powers to apply stabilization options: (a) the bail-in stabilization option which allows the RAs to cancel or modify certain liabilities; and (b) various transfer stabilization options, whereby some or all of the assets, rights or liabilities of, or securities issued by, an FI can be transferred to a third party.

《金融機構(處置機制)(吸收虧損能力—銀行界)規則》 Financial Institutions (Resolution) (Loss-absorbing Capacity Requirements – Banking Sector) Rules

- 《金融機構(處置機制)(吸收虧損能力——銀行界)規則》 (《吸收虧損能力規則》)將規定銀行須向投資者發行一種全新債務，可以在銀行陷入困境時予以撤銷或轉換為股本。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，並由投資者承擔虧損。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。

Financial Institutions (Resolution) (Loss-absorbing Capacity Requirements – Banking Sector) Rules (“LAC Rules”) will require banks to issue a new type of debt to investors that can be written off or converted into equity if the bank runs into trouble. Removing debt from a bank’s balance sheet in this way (i.e. imposing losses on investors) during resolution has the effect of providing a funding boost. 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.

《2018年稅務(修訂)(第6號)條例草案》

定義： 監管資本證券

- 額外一級資本票據
- 二級資本票據
- 將監管資本證券的定義擴大至涵蓋：①
 - 銀行非資本LAC債務票據
 - 獲認可有資格在某非香港司法管轄區，被計算入與LAC規定相應的規定的負債

- 視作債務證券
- 監管資本證券的轉讓可獲豁免印花稅

稅務待遇

- 得自監管資本證券的利息、收益或利潤須視作營業收入，即使用於購買該證券的金錢是在香港境外提供或該交易是在香港境外實行
- 就監管資本證券而招致的利息支出可作利得稅扣減

限制 / 防止避稅

- 公平價值會計並不適用於釐定監管資本證券的發行人(或其指明有關連者)的應課稅利潤；以及監管資本證券轉換為股權、降值或提值所涉及的數額並不會被視作營業收入/作稅務扣除
- 防止避稅條文：
 - a) 支付予指明有關連者的利息扣減須受限制；
 - b) 獨立交易原則；及
 - c) 獨立企業原則。

- 新增“LAC銀行實體”的定義，即“香港相聯營運實體”或“香港純控權公司” ②
- 訂明現時適用於金融機構的限制及防止避稅條文，同樣適用於LAC銀行實體 ③

成為企業財資中心的資格

- 與金融機構一樣，訂明LAC銀行實體沒有資格成為合資格企業財資中心 ④

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Definition: Regulatory Capital Security ("RCS")

- Additional Tier 1 capital instrument
- Tier 2 capital instrument
- To **add** the following in the definition of RCS ①
 - **Banking non-capital LAC debt instrument**
 - **A liability recognized as being eligible to count towards a non-HK equivalent of LAC requirement**

- Treated as debt security
- Transfer of RCS is exempt from stamp duty

Tax Treatment

- **Interest income/gains/profits** arising from RCS are **treated as trading receipts** even if the moneys provided for the purchase are made available / transactions are effected outside HK
- **Interest expenses** arising from RCS are **allowable for deduction under profits tax**

Restrictions / Anti-Tax Avoidance

- **Fair value accounting cannot be used** in ascertaining the chargeable profits of RCS issuers (or its specified connected persons); and sums arising from conversion to equity / write-down or write-up of RCS would not be treated as trading receipts / deductible for tax purpose
- **Anti-avoidance provisions:**
 - a) Restrictions on interest deduction for sums paid to specified connected persons;
 - b) arm's length principle; and
 - c) separate enterprise principle.

- To add a **new definition of "LAC banking entity"** (an "HK affiliated operational entity" or a "clean HK holding company") ②
- To provide that a **LAC banking entity is subject to the same set of restrictions / anti-tax avoidance provisions** ③

Corporate Treasury Centre ("CTC") eligibility

- To provide that LAC banking entities, same as financial institutions, are **not** eligible to be qualifying CTCs ④