



立法會秘書處 法律事務部  
LEGAL SERVICE DIVISION  
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : B&M/2/1/29/4/1C(2018)  
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By Fax (2856 0922)

6 November 2018

Ms Estrella CHEUNG  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)3  
Financial Services and the Treasury Bureau  
24/F, Central Government Offices  
2 Tim Mei Avenue, Tamar  
Hong Kong

Dear Ms CHEUNG,

**Subcommittee on Financial Institutions (Resolution)  
(Loss-absorbing Capacity Requirements-Banking Sector) Rules**

We are scrutinizing the legal and drafting aspects of the captioned Rules and have the following questions for your clarification:

General issues

Please clarify whether under the Rules and the Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution ("the LAC Principles") issued by the Financial Stability Board ("FSB"), the LAC Debt Instruments issued by a Hong Kong resolution entity or a Hong Kong material subsidiary could be directly or indirectly used to absorb losses and provide recapitalisation resources to facilitate orderly resolution of a non-HK entity (e.g. a G-SIB) if the HK resolution entity or HK material subsidiary is associated with such non-HK entity. And if that is the case, whether such arrangement would adversely affect the viability or capital adequacy of the HK resolution entity or the HK material subsidiary in the resolution of the non-HK entity.

Please confirm that by making the Rules, the Monetary Authority ("MA") has satisfied the requirements in principles (ii), (iii), (iv) and (v) of the LAC Principles.

Principle (ix) of the LAC Principles provides that entities must be allowed to utilize Basel III buffers without entering resolution, please confirm that nothing in the Rules would interfere with such principle.

In paragraph 10 of the LegCo Brief (File Ref: B&M/2/1/29/4/1C(2018)) dated 16 October 2018, it is mentioned that authorized institutions ("AIs") which issue LCA debt instruments should be subject to appropriate restrictions in the sale and marketing of the instruments, please clarify if such restrictions are already included or reflected in the Rules or they will be imposed through other rules, codes or guidelines to be issued by the MA.

Please clarify if the "Note" in Rule 2(1) under "resolution authority", Rule 21(2), Rule 22(2), Rule 60 or Rule 61 is intended to have legislative effect. If that is the case, why such "Note" is not included in the legislative text. If not, please explain the intended effect or purposes of each of such "Note" in the Rules.

#### Part 1 (Preliminary)

Please clarify whether by virtue of the meaning of "reviewable decision" in Rule 2(1) and Rule 63, an aggrieved entity may apply to the Resolvability Review Board to review any decision made by the resolution authority ("RA") under the Rules.

Please clarify whether the RA would specify the grounds of its decision to identify a particular resolution strategy as the preferred resolution strategy covering the relevant entity in its notice to that entity under Rule 3 and why no procedure is provided for that entity to make written representations to the RA to object the term(s) or matter(s) specified in that notice by the RA. Please elaborate what factors would be taken into account by the RA when it identifies a particular resolution strategy to the relevant entity under Rule 3.

According to the relevant meaning under Rule 2(1), a "HK holding company (香港控權公司)" means an entity that is a holding company incorporated in HK of an authorized institution incorporated in HK, but is not itself an authorized institution. For the sake of clarity, please consider if it would be helpful to also refer to section 13 of the Companies Ordinance (Cap. 622) in that meaning.

#### Part 4 (Determination of Minimum LAC Ratios)

As a resolution entity's resolution component ratio is equal to its capital component ratio by virtue of Rule 19(1), please clarify whether the

variation of capital component ratio under Rule 18(4) automatically varies the resolution component ratio by the same amount.

It is noted that a resolution entity may apply under Rule 19(3) to vary its resolution component ratio. Please explain why no procedure is provided in Rule 18 for a resolution entity to apply for variation of its capital component as well.

Please explain why a resolution entity or material subsidiary is required to meet the LAC requirement 24 months after being classified as resolution entity or material subsidiary under Rule 28 and 29 respectively whereas a resolution entity or material subsidiary which is also a G-SIB or related to it under Rule 32(1) is obliged to meet the LAC requirement only three months after being classified as resolution entity or material subsidiary under Rule 32.

Please elaborate the relation and provide comparison between the minimum LAC ratios requirement in Part 4 of the Rules and the minimum capital adequacy ratio requirement in section 3B of the Banking (Capital) Rules (Cap. 155L) for an AI.

#### Part 6 (Disclosure)

Principle (xi) of the LAC Principles states that investors, creditors, counterparties, customers and depositors should have clarity about the order in which they will absorb losses in resolution, please explain whether Part 6 of the Rules would adequately achieve that objective of principle (xi).

#### Part 8 (Review by Resolvability Review Tribunal)

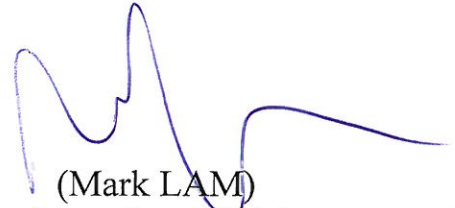
To avoid the misunderstanding that the reviewable decisions under Rule 63 are restricted to only three types of decisions made by the RA that are referred to in Rule 63(6), please consider if it would improve clarity of the rule by adding "without limiting subsection (1)" before "In this rule" in Rule 63(6).

#### Schedules 1 and 2

According to section 10 of FSB's Total Loss-absorbing Capacity ("TLAC") Term Sheet ("TLAC Term Sheet"), TLAC-eligible instruments must not include, among other things, liabilities arising from derivatives and debt instruments with derivative-like features. Please confirm that the derivative related criteria mentioned in TLAC Term Sheet above are adequately reflected in the qualifying criteria for external LAC debt instrument and internal LAC debt instrument in Schedules 1 and 2 to the Rules respectively.

It is appreciated that your reply in both languages could reach us as soon as possible, preferably by **12 November 2018**.

Yours sincerely,



(Mark LAM)  
Assistant Legal Adviser

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