

《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

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Financial Institutions (Resolution) (Loss-absorbing Capacity Requirements – Banking Sector) Rules

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

- 某些銀行的倒閉可能對香港金融體系以至整體經濟構成風險，以及令存款人無法取得存款。為防止這種情況發生，每間這樣的銀行都應該事先獲投資者提供額外資金，以備有必要時可用來救助該銀行。

The failure of certain banks could pose risks to the Hong Kong financial system and the wider economy, and cut depositors off from their money. To prevent this, each such bank should raise additional money from investors up front, that can be used to rescue the bank if necessary.

- 《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撇銷或轉換為股本。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。

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 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 AND POLICY RATIONALE

處置機制 - 國際環境

Resolution – international context

- 於二零零七年開始的全球金融危機中，要避免具系統重要性金融機構倒閉繼而威脅金融穩定，當時唯一的途徑是動用納稅人資金以挽救該等機構。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具系統重要性金融機構的國際標準，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 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.

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需動用公帑的情況下，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。為使內部財務重整能有效施行，被處置認可機構必須有充足可迅速用於內部財務重整的負債，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.

- 以吸收虧損能力利便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”).

**3. 《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》)
FINANCIAL INSTITUTIONS (RESOLUTION) (LOSS-
ABSORBING CAPACITY REQUIREMENTS –
BANKING SECTOR) RULES (“LAC RULES”)**

《吸收虧損能力規則》 – 主要建議

LAC Rules – key provisions

《吸收虧損能力規則》緊貼《總吸收虧損能力細則清單》所載原則，並因應香港本身的情況作出適當修訂。

The 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 PROVISIONS
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"> 若某處置策略預期某認可機構、某認可機構的控權公司或某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，金融管理專員可將它歸類為處置實體。 Where a resolution strategy envisages an AI, a holding company of an AI or an affiliated operational entity (“AOE”) of an AI (in each case incorporated in Hong Kong) going into resolution, the MA can classify it as a resolution entity. 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，金融管理專員可將與某處置實體(或海外的同等實體)屬同一個處置集團的某認可機構、某認可機構的控權公司或某認可機構的相聯營運實體(三者均在香港成立)歸類為重要附屬公司。 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 the same resolution group as a resolution entity (or overseas equivalent) as a material subsidiary. 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.

《吸收虧損能力規則》 - 主要建議(續)

LAC Rules – key provisions (cont'd)

相關內容 Aspect	建議 PROVISIONS
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 最低監管資本規定 External LAC requirement = 2 x minimum regulatory capital 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 • 最低債務要求：外部/內部吸收虧損能力規定的至少三分之一須由債務組成 Minimum debt requirement: at least one third of any external/internal LAC requirement must be met with debt
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歸類後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《總吸收虧損能力細則清單》就某具全球系統重要性銀行集團指明較短的期間，則屬該銀行集團的任何處置實體或重要附屬公司必須在金融管理專員作出有關歸類後3個月內符合任何相關吸收虧損能力規定 Where the <i>FSB TLAC Term Sheet</i> specifies a shorter timeline for a G-SIB group, any resolution entity or material subsidiary that is part of that group must meet any relevant LAC requirement within 3 months of classification by the MA
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200萬港元 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 2 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