

Financial Institutions (Resolution) (Loss-absorbing Capacity Requirements – Banking Sector) Rules and Inland Revenue (Amendment) (No. 6) Bill 2018 gazetted

The Government published in the Gazette today (October 19) the Financial Institutions (Resolution) (Loss-absorbing Capacity Requirements – Banking Sector) Rules (the Rules) and the Inland Revenue (Amendment) (No. 6) Bill 2018.

Following the commencement of the Financial Institutions (Resolution) Ordinance (Cap. 628) (the Ordinance) in July 2017, the Monetary Authority (MA), as the resolution authority for authorised institutions (AIs), has made the Rules pursuant to section 19(1) of the Ordinance to prescribe minimum loss-absorbing capacity (LAC) requirements for AIs and their group companies. The Rules are closely aligned to international standards on LAC requirements, as set out in the Financial Stability Board's Total Loss-absorbing Capacity Term Sheet.

"As banks provide important financial services to businesses and the general public, who depend on continuous access to those services, letting them become insolvent may not be an option in reality. The Rules will require banks to maintain sufficient financial resources so that they can be restored to viability by imposing losses on shareholders and creditors (instead of the public purse) should they run into difficulties. Making banks safer protects public funds and depositors, and disincentivises excessive risk-taking. Improved financial stability also facilitates economic growth from which everyone benefits," a Government spokesman said.

Owing to the loss-absorbing nature of the LAC debt instruments, their profits tax treatment under the Inland Revenue Ordinance (Cap. 112) is uncertain, in particular whether they are eligible for debt-like tax treatment. To facilitate the implementation of the Rules, the Amendment Bill will provide certainty of tax treatment for LAC debt instruments issued by AIs and relevant group companies.

The Hong Kong Monetary Authority conducted a public consultation at the beginning of 2018 on the approach to implementing LAC requirements in Hong Kong, and an industry consultation subsequently on the draft text of the Rules and the Amendment Bill. Respondents were broadly supportive of the proposals and their views have been suitably reflected in the Rules and the Amendment Bill.

The Rules and the Amendment Bill will be tabled before the Legislative

Council at its sitting on October 24 and October 31, 2018 respectively. The Rules will come into operation on December 14, 2018, upon negative vetting by the Legislative Council.