

Review of the Technical Implementation of the Total Loss-Absorbing Capacity (TLAC) Standard

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Executive Summary

The FSB has completed a review of the status of implementation of the FSB principles and term sheet (TS) on the adequacy of total loss-absorbing and recapitalisation capacity for Global Systemically Important Banks (G-SIBs) in resolution (hereinafter “TLAC Standard”).¹ The review covers the G-SIBs and the home and material host jurisdictions of those G-SIBs to which the TLAC Standard applies as of 1 January 2019.² The review is informed by surveys of the home and host authorities of G-SIBs, responses to a call for public feedback and discussions with stakeholders at a roundtable organised by the FSB in September 2018.

Implementation is progressing well

The review concludes that progress in implementation has been steady and significant in both the setting of external TLAC requirements by authorities and the issuance of external TLAC by G-SIBs. This has been instrumental in enhancing the resolvability of G-SIBs, strengthening cooperation between home and host authorities and boosting market confidence in authorities’ capabilities to address “too-big-to-fail” (TBTF) risks.

Further efforts are needed to address home/host challenges and risks of market fragmentation

FSB members see no need to modify the TLAC Standard, however they agree that further efforts are needed to implement the TLAC Standard fully and effectively. Important challenges remain to determine the appropriate group-internal distribution of TLAC resources across home and host jurisdictions and reduce potential risks of unnecessary fragmentation of capital resources.

External TLAC requirements and eligibility criteria conform to the FSB Standard

External TLAC requirements that meet or exceed 16% risk weighted assets (RWA) and 6% of the Basel III leverage ratio denominator (LRD) are in force in the Banking Union (BU),³ Canada, Hong Kong, Japan, Switzerland, the United Kingdom (UK) and the United States (US).

All G-SIB home jurisdictions in the scope of this review and Hong Kong have adopted TLAC Standard-consistent eligibility criteria and exclusions, including a requirement that TLAC be subordinated to operational liabilities. While the TLAC Standard contains an expectation of a debt component, most jurisdictions do not have a firm requirement. Most jurisdictions allow for TLAC-eligible instruments to be issued under third-country law, but insist on the inclusion

¹ FSB (2015), [Total Loss-Absorbing Capacity \(TLAC\) Principles and Term Sheet](#), November.

² Bank of America, Bank of New York Mellon, Barclays, BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, Groupe Crédit Agricole, HSBC, ING Bank, JP Morgan Chase, Mitsubishi UFJ FG, Mizuho FG, Morgan Stanley, Santander, Société Générale, Standard Chartered, State Street, Sumitomo Mitsui FG, UBS, Unicredit Group, Wells Fargo (in alphabetical order). The review also covers (on a voluntary basis) Groupe BPCE (re-designated as a G-SIB in November 2018) and Royal Bank of Canada (RBC) (designated as a G-SIB in November 2017), which are both expected to meet the TLAC Standard by 1 January 2022 if they continue to be designated.

³ The TLAC requirements are in force in the European Union (EU) which also includes the Banking Union and the UK. The creation of the Banking Union in 2013 as a key post-crisis regulatory reform strengthened the institutional set-up of the 19 Eurozone countries by creating a single supervisory mechanism (SSM) and a single resolution mechanism (SRM) with European-level authorities overseeing the supervision and resolution of large banks; see the European Commission’s Factsheet [What is the Banking Union](#).

of contractual recognition clauses and assurances that a bail-in of those instruments is enforceable.

Further work to implement the TLAC Holdings Standard of the Basel Committee on Banking Supervision (BCBS)

There is further work to do to fully implement the BCBS Standard on TLAC Holdings⁴ to reduce the risk of contagion between banks in the event of resolution. To date, only a few jurisdictions have implemented the standard which went into effect in January 2019.

Some jurisdictions restrict distribution of TLAC to retail investors

The TLAC Standard states that authorities should be confident that holders of TLAC are able to absorb losses in times of stress, but does not provide for specific restrictions of the sale of TLAC to retail investors. Some jurisdictions (EU, Hong Kong, Japan, Switzerland) have adopted measures discouraging or restricting the sale of TLAC-eligible debt instruments to retail investors.

Much remains to be done to ensure appropriate group-internal distribution of TLAC

Much remains to be done to ensure the appropriate group-internal distribution of TLAC across home and host jurisdictions and to ensure balance between TLAC resources that are pre-positioned at material subsidiaries or subgroups (MSGs) as internal TLAC and those that would be readily available to be deployed flexibly where needed in times of stress.

Authorities have calibrated internal TLAC requirements within the range provided in the TLAC Standard of 75-90% of the external TLAC amount that would apply to the MSG if it were a stand-alone resolution group. Whereas in some jurisdictions the pre-positioning percentage can be determined within crisis management groups (CMGs) on the basis of the credibility of resolution planning and resolvability assessments, other jurisdictions have fixed the percentage by regulation thus limiting authorities' flexibility to calibrate internal TLAC on an institution-specific basis and on the basis of discussions within CMGs.

Important remaining work includes completing the identification of MSGs to which a requirement for pre-positioned internal TLAC should apply and the process of calibrating the requirement; and developing arrangements to ensure that TLAC resources that are not pre-positioned are readily available to recapitalise any direct or indirect subsidiary in support of the resolution strategy.

For host authorities to calibrate internal TLAC nearer to the low end of the range, they will need to have confidence that non-pre-positioned TLAC would be readily available in times of stress and have the ability to adjust their internal TLAC requirement on the basis of this confidence. Active engagement between home and host authorities can enhance trust and create incentives for lower pre-positioning.

⁴ BCBS (2016), [Standard on TLAC Holdings](#), October.

Pending the full implementation of the BCBS Pillar 3 disclosure requirements the availability of consistent and comparable data remains limited

The BCBS Pillar 3 disclosure requirements came into effect on 1 January 2019 and are in the process of being adopted by most jurisdictions. Few jurisdictions have enacted them to date. As a consequence, the availability of data on external and internal TLAC is limited largely to voluntary disclosures by G-SIBs.

The FSB is exploring ways to improve transparency with respect to resolution planning and resolvability through its discussion paper on resolution disclosures recently published for public consultation.⁵

TLAC issuance and market conditions

All G-SIBs within the scope of the FSB January 2019 compliance date meet or exceed the TLAC ratios of at least 16% RWA/6% of the Basel III LRD. Estimates of G-SIB issuances of TLAC range between USD 350-400 bn per year for the past three years.

About two thirds of G-SIBs issue TLAC out of a non-operating holding company and rely on structural subordination, whereas other G-SIBs rely on statutory and contractual subordination of TLAC instruments, and on the ability to count as TLAC a certain proportion of senior unsecured instruments that rank *pari passu* with excluded liabilities, when permitted by resolution authorities. Recently, non-preferred senior debt has made up a more significant part of overall issuance as European G-SIBs have ramped up issuances of this statutorily subordinated TLAC debt.

G-SIBs appear to have planned and managed their issuances to take account of market conditions. As of 2018, most TLAC has been issued in USD (about 67%) and EUR (about 19%). Most buyers are asset managers, pension funds and insurers. Market appetite is yet to be tested through the full range of market cycles, although evidence indicates that issuance by G-SIBs has remained possible in periods of increased market stress, albeit at higher spreads.

Factors impacting effective implementation

If implemented effectively, the TLAC Standard should help promote financial stability by providing home and host authorities and markets with confidence that G-SIBs have appropriate capacity to absorb losses, both before and during resolution, to implement the preferred resolution strategy and to maintain the continuity of critical functions. Such confidence should help mitigate the risks that could arise, should host authorities fully ring-fence resources in their own jurisdictions, either *ex ante* or during a crisis.

As implementation is ongoing, authorities and firms have identified a range of issues and challenges that might affect the smooth implementation of the TLAC Standard. These include:

- the absence of enforceable and effective arrangements or mechanisms to ensure that non-pre-positioned TLAC resources can be deployed with reasonable certainty to recapitalise MSGs in times of stress;

⁵ FSB (2019), [Public Disclosures on Resolution Planning and Resolvability](#), June.

- internal TLAC requirements that are fixed by regulation in host jurisdictions, potentially limiting both the capacity and incentives for authorities and firms to improve the management of non-pre-positioned TLAC resources;
- contractual design, call features and triggers of TLAC instruments that could potentially introduce complexity and reduce legal certainty and predictability in resolution;
- limitations to the cross-border issuance of TLAC-eligible instruments (e.g. requirements to issue TLAC under local law, or restrictions on trading of foreign-law governed instruments) that potentially reduce access to a larger investor base;
- technical issues relating to bail-in execution arising from the format of the issuance or the laws of the jurisdiction governing that issuance; and
- the interaction between Tier 2 capital instruments and TLAC instruments potentially giving rise to level playing field issues between G-SIBs and domestic systemically important banks (D-SIBs).

Forward approach to ensuring continued effective implementation

The review demonstrates that continued efforts are needed to support the effective implementation of the TLAC Standard and address any remaining technical issues. **The FSB, through its Resolution Steering Group (ReSG) and its bank Cross-Border Crisis Management Group (CBCM) will therefore:**

- 1. continue monitoring the implementation of the TLAC Standard and issuance of TLAC instruments** and will report at least annually on progress;
- 2. review the Resolvability Assessment Process (RAP) template** to ensure that CMGs consider as part of their resolvability assessments for each G-SIB the quantity, quality and group-wide distribution of TLAC resources;
- 3. take stock of the range of practices of authorities and CMGs in implementing the TLAC Standard** and address identified technical issues (considering, as appropriate, if any further guidance is needed) with particular focus on:
 - pre-positioning of internal TLAC at MSGs within G-SIB groups and the process of home and host authorities' coordination in calibrating internal TLAC;
 - management of non-pre-positioned TLAC resources and effective arrangements or mechanisms that ensure that these resources can be readily available to support MSGs when they reach the point of non-viability;
 - design features of TLAC instruments, their ranking in the creditor hierarchy and authorities' approaches as regards the review of the TLAC-eligibility of instruments;
 - monitoring how resolution authorities examine that the conditions set out in the TLAC Standard for applying the exceptions to subordination and eligibility requirements are met;

4. consider, as part of ongoing work (see FSB discussion paper on *Public Disclosures on Resolution Planning and Resolvability*⁶ published in June 2019), how **resolution-related disclosures** could be further strengthened;
5. consider, as part of ongoing **work on bail-in execution**, any technical issues relating to the bail-inability of TLAC, including TLAC issued under third-country law and securities law issues; and
6. work closely with the BCBS to consider any **interactions between going and gone-concern perspectives**.

⁶ FSB (2019), [Public Disclosures on Resolution Planning and Resolvability](#), June.

1. Introduction

Adoption of the TLAC Standard as a core element of FSB policies to address “too-big-to-fail”

In November 2015, the FSB adopted a set of principles and a term sheet (TS) on the adequacy of total loss-absorbing and recapitalisation capacity for Global Systemically Important Banks (G-SIBs) in resolution as a new international standard (hereinafter “TLAC Standard”)⁷ and additional core element of the FSB’s overall policy framework for addressing the systemic and moral hazard risks associated with global systemically important financial institutions.⁸

The TLAC Standard seeks to ensure the availability of sufficient amounts of loss-absorbing capacity at the right locations within a G-SIB’s group structure so as to provide home and host authorities and the market with confidence that G-SIBs can be resolved in an orderly manner that maintains the continuity of critical economic functions and diminishes any incentives to ring-fence additional assets domestically ex ante or during resolution.

Loss-absorbing capacity: a necessary but not sufficient condition for resolution

As stated in the TLAC Standard and in the September 2013 *Report on progress and next steps towards ending too-big-to-fail (TBTF)*,⁹ adequate loss-absorbing and recapitalisation capacity is a necessary (albeit not a sufficient) condition for achieving an orderly resolution that minimises any impact on financial stability, ensures the continuity of critical functions, and avoids exposing taxpayers to loss with a high degree of confidence.

Effective resolution requires ex ante resolution planning and the development of a resolution strategy, with close cooperation between home and key host authorities within the firm-specific crisis management group (CMG), underpinned by a firm-specific cooperation agreement. In addition to adequate planning and cooperation, other important elements of an effective resolution strategy include, for example, an effective and enforceable mechanism for bail-in execution, access to liquidity funding in resolution, and operational continuity (including continuity of access to financial market infrastructures).

The *Key Attributes of Effective Resolution Regimes for Financial Institutions* (“Key Attributes”)¹⁰ set out the essential features that should be part of effective resolution regimes of all jurisdictions. Authorities globally have been working to implement the Key Attributes through legislative changes and the preparation of firm-specific resolution strategies and plans, cooperation agreements and resolvability assessments.¹¹

⁷ FSB (2015), [Total Loss-Absorbing Capacity \(TLAC\) Principles and Term Sheet](#), November.

⁸ FSB (2010), [Reducing the Moral Hazard Posed by Systemically Important Financial Institutions](#), November.

⁹ FSB (2013), [Progress and Next Steps Towards Ending Too-Big-To-Fail \(TBTF\). Report of the Financial Stability Board to the G-20](#), September.

¹⁰ FSB (2014), revised [Key Attributes of Effective Resolution Regimes for Financial Institutions](#), October.

¹¹ FSB (2018), [FSB 2018 Resolution Report “Keeping the Pressure Up”](#), November.

Resolution strategies that are being developed for G-SIBs¹² provide for a recapitalisation¹³ by way of a bail-in (with or without the use of a bridge institution¹⁴) to support the orderly resolution or wind-down of a G-SIB in a manner that maintains, at a minimum, the continuity of critical functions. A crucial consideration in the development of such resolution strategies is the availability in resolution of resources in adequate amounts and at the right location(s) within a group that can be bailed-in to absorb losses and recapitalise the firm so as to achieve an orderly resolution that maintains the continuity of critical economic functions.

The availability of adequate amounts of loss-absorbing resources that are appropriately positioned within G-SIB groups should provide home and host authorities and markets with confidence that the risks of “too-big-to-fail” have been mitigated and that G-SIBs are resolvable without exposing public funds to loss.

TLAC – a requirement to be met alongside minimum regulatory capital requirements

The TLAC Standard expects authorities to set a requirement of loss-absorbing resources that is consistent with the TLAC Standard and at least equal to the common minimum agreed by the FSB (“Minimum TLAC”), that G-SIBs should meet alongside the minimum regulatory capital requirements set out in the Basel III framework.

The presence of an appropriate amount of pre-positioned resources as “internal TLAC” should provide authorities hosting G-SIB subsidiaries for which a “single point of entry strategy” (SPE) is planned with comfort that resources will be available through the write-down or conversion of the pre-positioned internal TLAC. This mechanism would facilitate the absorption of losses and the recapitalisation of such subsidiaries without applying resolution measures to them, enabling host authorities to support the implementation of the group-wide resolution strategy and support the continued provision of essential financial services and maintenance of financial stability in their jurisdictions.

Mandate to review the technical implementation of the TLAC Standard in 2019

The TLAC Standard mandated the FSB to undertake, by the end of 2019, a review of its technical implementation, and to:

- (i) examine whether implementation is proceeding in a manner consistent with the agreed timelines and objectives as set out in the TLAC Standard; and
- (ii) identify any technical issues or operational challenges that authorities or firms encounter in the implementation of the standard.

The review was carried out by the FSB Resolution Steering Group with the support of the FSB Secretariat.

¹² FSB (2013), [Guidance on Developing Effective Resolution Strategies](#), July.

¹³ Depending on the resolution strategy, recapitalisation of the holding company and/or operating entities or of a new entity, such as a bridge institution, to which critical functions are transferred.

¹⁴ The bridge bank tool is also a mechanism to allocate losses by transferring all or substantially all assets of the parent holding company of the group, and only parts of the liabilities to a newly established bridge bank.

Scope of the review

The review covers G-SIBs that are expected to meet the minimum external TLAC Standard (“Minimum TLAC”) as from 1 January 2019. These are all G-SIBs designated before the end of 2015 and that continue to be designated as of November 2018.¹⁵ The review also covers (on a voluntary basis) Groupe BPCE (re-designated as a G-SIB in November 2018) and Royal Bank of Canada (RBC) (designated as a G-SIB in November 2017), which are both expected to meet the TLAC Standard by 1 January 2022 if they continue to be designated.

The four Chinese G-SIBs¹⁶ are not covered given that they fall under the emerging market economy (EME) exception. The EME exception extends the conformance period to 1 January 2025 (for the 16% risk weighted assets (RWA)/6% of the Basel III leverage ratio denominator (LRD) Minimum TLAC) and 1 January 2028 (for the 18% RWA/6.75% of the Basel III LRD Minimum TLAC), respectively. The conformance date would accelerate if the aggregate amount of the EME’s financial and nonfinancial corporate debt securities or bonds exceeds 55% of the EME’s GDP. However, this threshold was not reached at the time of the last measurement (November 2018).¹⁷

The jurisdictions covered in this report are accordingly the G-SIB home jurisdictions (BU, Canada, Japan, Switzerland, the UK, and the US) and some jurisdictions that host a material subgroup¹⁸ as defined by Section 17 of the TLAC TS or a subsidiary of a G-SIB that could be a resolution entity under a multiple point of entry (MPE) resolution strategy (Brazil, Hong Kong, Mexico, Singapore). See **Annex I** for a detailed overview.

Review process and consultation with stakeholders

The review is informed by:

- surveys amongst the home and host authorities of the G-SIBs covered in this report of the applicable rules and regulations (see **Annex II**);
- responses to a call for public feedback¹⁹ and discussions with representatives of G-SIBs and other market participants at a roundtable organised by the FSB in September 2018 (see **Annex III** for a summary of comments in response to the call for public feedback);
- monitoring by the BCBS of the implementation of the Basel regulatory framework and its standard on the prudential treatment of TLAC holdings and the disclosure

¹⁵ Bank of America, Bank of New York Mellon, Barclays, BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, Groupe Crédit Agricole, HSBC, ING Bank, JP Morgan Chase, Mitsubishi UFJ FG, Mizuho FG, Morgan Stanley, Santander, Société Générale, Standard Chartered, State Street, Sumitomo Mitsui FG, UBS, Unicredit Group, Wells Fargo.

¹⁶ Agricultural Bank of China, Bank of China, China Construction Bank, Industrial and Commercial Bank of China Limited.

¹⁷ The TLAC Standard called for a review in 2019 of the appropriateness of the 55% metric. It was concluded that a review of the threshold was not necessary given that preparations were underway for the Chinese G-SIBs to comply with the TLAC Standard ahead of 2025.

¹⁸ Jurisdictions hosting material sub-groups which are not FSB members or did not respond to the FSB’s surveys are not covered by this report.

¹⁹ FSB (2018), [Monitoring the Technical Implementation of the FSB Total Loss-Absorbing Capacity \(TLAC\) Standard – Call for Public Feedback](#), June. The FSB also held a roundtable in September 2018 with G-SIBs, buy-side and rating agency participants.

requirements for G-SIBs and other banks of TLAC holdings,²⁰ and its work on the effects of these reforms; and

- publicly disclosed information on G-SIBs' issuances of TLAC (e.g. Bloomberg data, G-SIB voluntary disclosures).

Structure of the report

The report reviews the timeliness and consistency of adoption of the TLAC Standard (Sections 2 to 6) as well as the status of TLAC issuance and distribution in the market (Section 7). It identifies factors impacting effective implementation (Section 8) and the steps that the FSB plans to take to promote continued effective implementation (Section 9).

The report is not intended to be a comprehensive account of the implementation of the TLAC Standard in G-SIB home jurisdictions. It seeks to focus on areas where implementation approaches differ across jurisdictions or still remain incomplete.

Relationship with the work on market fragmentation and the evaluation of effects of the “too-big-to-fail” reforms

The report does not consider the effects or effectiveness of the TLAC Standard. These issues are being addressed as part of the FSB's evaluation of TBTF reforms in the banking sector.²¹ In addition, the FSB *Report on Market Fragmentation*²² identified the risk of potential fragmentary effects arising from the implementation of resolution policies. The review of the technical implementation of the TLAC Standard considers the extent to which, going forward, effective implementation of the standard, including further work on internal TLAC, supported by close cooperation between home and host authorities, can help address risks of market fragmentation that could arise from domestic resolution policies or resolution planning.

Implementation ongoing and continued monitoring

This report provides an overview of the progress in implementing the FSB's TLAC Standard at a time when implementation is still ongoing. The first conformance milestone was January 2019, and the FSB will continue to monitor progress in the implementation of the TLAC Standard.

²⁰ BCBS (2019), [Sixteenth progress report on adoption of the Basel regulatory framework](#), May.

²¹ FSB (2019), [Evaluation of Too-big-to-fail reforms Summary of terms of reference](#), May.

²² FSB (2019), [Report on Market Fragmentation](#), June.

2. Timely transposition of the TLAC Standard in regulatory frameworks

The implementation of the TLAC Standard in domestic regulation has progressed well. All G-SIB home jurisdictions, and Hong Kong as host to an MPE resolution entity, have transposed the TLAC Standard into domestic rules and regulations and have set Minimum TLAC requirements for G-SIBs in their jurisdictions. In Brazil and Mexico, which also host MPE resolution entities, rules on transposing the TLAC Standard are under consideration.

The BU, Hong Kong, Japan, Singapore, the UK and the US have also enacted rules governing internal TLAC. Rules on internal TLAC are under consideration in Mexico.

The colour-coded Implementation Summary for External TLAC and Implementation Summary for Internal TLAC below provide an overview of the overall status of implementation.

See **Annex II** for an overview of rules and regulations on TLAC.

Colour-coded Implementation Summary - External TLAC

----- External TLAC -----							
	Regulatory	Quantitative	Regulatory	Regulatory	Regulatory	Regulatory	Regulatory
Jurisdiction	Rules in force for external TLAC	G-SIBs' January 2019 external TLAC quantitative minimum met	TLAC eligibility criteria in line with TS	Restrictions on holdings of TLAC by G-SIBs/D-SIBs	Disclosure requirements (Basel Pillar 3) external TLAC	Minimum debt requirement	Home country governing law required
Banking Union						No	No
Brazil**						No	No
Canada						No	No
Hong Kong**						Yes	No
Japan						No	No
Mexico**						No	No
Singapore***						No	No
Switzerland						No	Yes*
UK						No	No
US						Yes	Yes

* exemptions apply

** host to G-SIB MPE resolution entities

*** neither G-SIB home nor host to G-SIB MPE resolution entities

Legend: Quantitative

- Quantitative threshold met or exceeded
- Quantitative threshold not met
- Not applicable

Legend: Regulatory

- Final rules in force and effective; comply with TLAC Standard
- Proposed rules published but not yet in force, or in force but do not comply with TLAC Standard
- No proposed rules
- Not applicable

Colour-coded Implementation Summary - Internal TLAC

|-----Internal TLAC-----|

MSG Host Jurisdictions	MSG identification in coordination with home jurisdictions	Requirements communicated to MSGs	Disclosure requirements (Basel Pillar 3) internal TLAC
Banking Union			
Brazil			
Canada			
Hong Kong			
Japan			
Mexico			
Singapore			
Switzerland			
UK			
US			

Legend:

	Operational implementation / regulatory requirements complete
	Operational implementation / regulatory requirements in process
	Operational implementation / regulatory requirements not yet in place
	No MSGs identified

3. External TLAC

3.1 Identification of resolution entities subject to Minimum TLAC

In determining the firm-specific external TLAC requirements for G-SIBs, authorities identify the entity or entities within a group to which resolution tools would be applied under their preferred resolution strategy.²³ The TLAC Standard recognises both the SPE resolution strategy as well as the MPE resolution strategy.

A clear identification of the resolution entities and resolution groups²⁴ is important to determine Minimum TLAC adequately. According to the TLAC Standard, Minimum TLAC should apply to resolution entities and be determined on the basis of the consolidated loss absorption and recapitalisation needs of each resolution group. For both SPE and MPE resolution strategies, the resolution entity may be a non-operating parent or financial holding company (as in the case for example of all US G-SIBs), or an operating parent company (as in the case of certain BU G-SIBs).

For the majority of G-SIBs, home authorities have adopted an SPE strategy as their preferred resolution strategy (“SPE G-SIBs”), whereas two G-SIBs currently fall under an MPE strategy (“MPE G-SIBs”) (HSBC, Santander).

²³ FSB (2013), *Guidance on Developing Effective Resolution Strategies*, July.

²⁴ A resolution group consists of a resolution entity and any entities that are owned or controlled by the resolution entity either directly or indirectly through subsidiaries of the resolution entity, and that are not themselves resolution entities.

3.2 External TLAC calibration and phase-in

Timely adoption

External TLAC requirements are in force and implemented in the BU, Canada, Hong Kong, Japan, Switzerland, the UK and the US.

In the EU, the Bank Recovery and Resolution Directive (BRRD)²⁵ and the Single Resolution Mechanism Regulation (SRMR)²⁶ in force since 2014 already provide for an institution-specific minimum requirement for own funds and eligible liabilities (MREL) applicable to all EU banks. Whereas the SRMR applies in the BU for large banks under the Single Resolution Board (SRB) remit (including G-SIBs), the BRRD and the Capital Requirements Regulation (CRR) apply in the entire EU.²⁷ The BRRD and CRR apply also in the UK. A minimum TLAC requirement for BU G-SIBs has been introduced through further legislative amendments to the Capital Requirements Regulation (CRR2) and a revision of MREL as an institution-specific add-on in addition to the Minimum TLAC has been introduced through amendments to the Bank Recovery and Resolution Directive (BRRD2) and the Single Resolution Mechanism Regulation (SRMR2)²⁸. As TLAC and MREL pursue the same objective of ensuring that banks have adequate loss-absorbing and recapitalisation capacity, the BU G-SIBs are subject to both a TLAC requirement and an institution-specific MREL add-on.

Calibration and phase-in

The TLAC requirements adopted meet or exceed the FSB TLAC TS expectation of Minimum TLAC of at least 16% RWA and 6% of the Basel III LRD. All jurisdictions express the Minimum TLAC in both RWA and LRD and expect institutions to meet the levels resulting from both measurements. See **Table 1**.

The FSB TLAC TS expectation of Minimum TLAC of at least 18% RWA and 6.75% LRD is already in force in Switzerland and the US and will be force in the BU, Canada, Hong Kong, Japan and the UK by 1 January 2022, consistent with the timeline set out in the TLAC TS.

Requirements going beyond the Minimum TLAC

Four jurisdictions covering 21 G-SIBs (BU, Switzerland, UK, US) have imposed or plan to impose requirements above the Minimum TLAC:

- In **Switzerland**, the TLAC requirements for G-SIBs are 18-22.3% RWA (6.75-8% LRD), not including any buffer components and depending on a potential rebate.²⁹ Swiss G-SIBs are eligible for a rebate on the gone-concern TLAC requirement if they implement measures that improve resolvability beyond minimum resolvability requirements. Due to this rebate, gone-concern requirements may be reduced by up to 4.3% for the RWA-based requirement and up to 1.25% for the LRD-based

²⁵ Official Journal of the EU (2014), [Bank Recovery and Resolution Directive 2014/59/EU](#), May.

²⁶ Official Journal of the EU (2014), [Single Resolution Mechanism Regulation \(EU\) No 806/2014](#), July.

²⁷ The BRRD applies in the entire EU including in the BU for banks under the SRB remit for aspects not covered by SRMR and for smaller banks outside of the SRB remit.

²⁸ Official Journal of the EU (2019), [“Banking legislative package”](#), June.

²⁹ These numbers reflect the fully phased-in requirements pursuant to the Swiss Capital Ordinance.

requirement. Currently, 64% of this potential rebate has been granted. Even with the maximum rebate, the resulting minimum TLAC requirement could not fall below the TLAC Standard. The Minimum TLAC will be met in any circumstance.

- In the **US**, fully phased-in LRD TLAC is currently set to 7.5% (rather than 6.75%) plus 2% leverage-based buffer.
- In the **BU, Canada** and the **UK**, authorities may apply additional firm-specific requirements that can lead to overall firm-specific requirements that exceed the minimums set out in the TLAC Standard.
- In the **EU**, the MREL requirement is set at an institution-specific level. It consists of loss absorption and recapitalisation components (including TLAC for G-SIBs) and is aligned with the TS in that it is also expressed based on both RWA and LRD. For determining the non-risk based MREL LRD requirement, resolution authorities must take into account that a bail-in of at a minimum 8% of total liabilities and own funds is required in the EU framework to access resolution financing arrangements. Some authorities (e.g. Bank of England) disclose indicative firm-specific MREL requirements.³⁰

Table 1: External TLAC calibration (excluding buffers) and phase-in

Jurisdictions	Effective	RWA	LRD
Banking Union ³¹	2019	16% RWA plus MREL add-on, giving in total: loss absorption (Pillar 1 plus Pillar 2 requirement) and recapitalisation (post resolution Pillar 1 plus Pillar 2 requirement plus market confidence buffer)	6% LRD plus MREL add-on giving in total: loss absorption (leverage ratio requirement) plus recapitalisation amount subject to a consideration of reaching 8% of total liabilities and own funds (specific transitional arrangements)
	2022	18% RWA plus MREL add-on, giving in total: loss absorption Pillar 1 plus Pillar 2 requirement) and recapitalisation (post resolution Pillar 1 plus Pillar 2 requirement plus market confidence buffer)	6.75% LRD plus MREL add-on giving in total: loss absorption (leverage ratio requirement) plus recapitalisation amount, subject to a consideration of reaching 8% of total liabilities and own funds (specific transitional arrangements)
Canada	2021	18% RWA plus Pillar 2 requirement	6.75% LRD

³⁰ Bank of England (2018), [MREL disclosures](#).

³¹ The combined capital buffer is stacked on top of MREL (including TLAC) when the latter is expressed in terms of RWA; this is not the case for MREL (including TLAC) based on LRD.

Hong Kong	2019 ³²	16% RWA	6% LRD
	2022 ³³	2x (Pillar 1 plus Pillar 2 requirement), ³⁴ subject to 18% RWA floor	2x applicable leverage ratio requirement ³⁵ , subject to 6.75% LRD floor
Japan	2019	16% RWA	6% LRD
	2022	18% RWA	6.75% LRD
Switzerland ³⁶	2020 (full implementation 1 January)	18-22.3% RWA (going concern 8% RWA (excl. a 6.3% buffer and counter-cyclical buffer) plus gone concern 14.3% RWA less potential rebate up to 4.3% RWA)	6.75-8% LRD (going concern 3% LRD (excl. a 2% buffer) plus gone concern 5% LRD less potential rebate up to 1.25% LRD)
UK	2019	16% RWA	6% LRD
	2020	(2x Pillar 1) plus Pillar 2 requirement	Higher of 2x applicable leverage ratio requirement or 6% LRD floor
	2022	2x (Pillar 1 plus Pillar 2 requirement), subject to 18% RWA floor	Higher of 2x applicable leverage ratio requirement or 6.75% LRD floor
US ³⁷	2019	18% RWA	7.5% LRD (excluding a 2% leverage based buffer) MPE resolution entities are subject to 6.75% supplementary leverage ratio (if applicable) and 9% leverage (total assets basis)

3.3 Adjustments for multiple point of entry resolution

The TLAC Standard is neutral with respect to the choice of the preferred resolution strategy. It provides that for MPE G-SIBs, the consolidated balance sheet of each resolution group should be calculated inclusive of any exposures of the resolution group to entities in other resolution groups of the same G-SIB. Where such exposures correspond to items eligible for TLAC

³² For the Hong Kong incorporated resolution entity of an MPE G-SIB. Initial requirement within three months of classification as a resolution entity.

³³ For the Hong Kong incorporated resolution entity of an MPE G-SIB. Final requirement within 24 months (or longer period agreed by resolution authority) of classification as a resolution entity.

³⁴ Unless varied pursuant to the Hong Kong LAC Rules.

³⁵ Unless varied pursuant to the Hong Kong LAC Rules.

³⁶ FINMA (2015), Factsheet [New "too big to fail" capital requirements for global systemically important banks in Switzerland](#), October.

³⁷ No phase-in.

recognition they should be deducted from the G-SIB's TLAC resources. The deduction also applies to exposures to external TLAC issued from a resolution entity to a parent that is also a resolution entity.

- In the **BU**, MPE G-SIBs must carry out a full consolidation of all subsidiaries in their resolution groups. The SRB calculates the loss absorption and recapitalisation requirements for each resolution entity and for the BU parent entity as if it were the only resolution entity of that G-SIB (hypothetical SPE). Where the amount calculated when assuming the application of a hypothetical SPE differs from the sum of the requirements of all resolution entities belonging to that MPE G-SIB, the SRB and the national resolution authorities shall discuss and, where appropriate and consistent with the G-SIB's resolution strategy, agree on any adjustment to minimise or eliminate the differences. Holdings of own funds instruments or TLAC/MREL eligible liabilities instruments issued by one or more subsidiaries that do not belong to the same resolution group as the parent institution, have to be deducted.
- In the **UK**, the Bank of England reserves the right in the case of an MPE G-SIB to expect all resolution groups of that G-SIB to have sufficient TLAC to be self-sufficient in resolution. External TLAC for a UK MPE resolution entity will be increased by the amount of any TLAC or equivalent investments its resolution group has made in its other resolution groups (or entities or sub-groups) located outside these resolution groups, where the investments are not covered by arrangements that ensure sufficient TLAC (such as a capital deductions regime for investments in own funds instruments in subsidiaries).
- In the **US**, a top-tier US intermediate holding company (IHC) of a foreign MPE G-SIB that is treated as a resolution entity is required to issue the higher of 18% RWA plus buffers, or 6.75% supplementary leverage ratio and 9% leverage (total assets basis).

3.4 Eligibility and composition

Instruments counted toward a G-SIB's external TLAC ratio are expected to conform to the eligibility criteria and exclusions set out in the TLAC Standard which are aimed at ensuring that the TLAC instruments can be subject to an effective bail-in. For example, TLAC eligible instruments must be: paid in; unsecured; not subject to set off or netting; have a minimum remaining contractual maturity of at least one year or be perpetual; and not be redeemable by the holder prior to maturity. The TLAC Standard excludes from TLAC eligibility: insured deposits; sight deposits and short term deposits (deposits with original maturity of less than one year); liabilities arising from derivatives; debt instruments with derivative-linked features, such as structured notes; liabilities arising other than through a contract, such as tax liabilities; liabilities which are preferred to senior unsecured creditors under the relevant insolvency law; or any liabilities that, under the laws governing the issuing entity, are excluded from bail-in or cannot be written down or converted into equity by the relevant resolution authority without giving rise to material risk of successful legal challenge or valid compensation claims.

Jurisdiction-specific variations

All G-SIB home resolution authorities and Hong Kong have implemented TLAC Standard-consistent eligibility criteria and exclusions with the following specific provisions or variations:

- In the **EU** and **Hong Kong**, there is an explicit prohibition of rights to acceleration.³⁸ In the EU, eligibility criteria for TLAC have been substantially aligned with those for Tier 2 instruments and they also restrict indication of incentives to redeem, and prohibit signalling of exercising a call and credit sensitive features. The Hong Kong LAC Rules also prohibit the creation of an expectation that a call option will be exercised.
- **EU rules** require disclosing the risk of bail-in, in the contractual documentation or prospectus, of eligible liabilities instruments issued after two years from the date of the rules' entry into force. Issuances of own funds and liabilities preceding the entry into force of this requirement that do not comply with the new requirements will be grandfathered.
- In the **EU**, structured notes are excluded from TLAC eligibility, however, they may be permitted for the MREL Pillar 2 add-on (on a case-by-case basis subject to conditions).
- In **Hong Kong**, instruments with derivative-linked features are excluded from TLAC-eligibility.
- The **US**³⁹ prohibits credit sensitive features. TLAC generally excludes structured notes and instruments that are contractually convertible into equity or have provisions giving holders a contractual right to accelerate payments at an unspecified date.
- **Japan** prohibits instruments with incentives to redeem (e.g. step-up interest rate) and clauses which could undermine loss-absorbing or recapitalisation capacity in resolution (including acceleration under certain conditions related to financial deterioration of the issuer).

Application of exceptions provided for in the TLAC Standard

Certain jurisdictions make use of exceptions provided for in the TLAC Standard:

- **Japan** relies on the provision of the TLAC TS which allows for pre-funded ex ante commitments to count as TLAC up to a prescribed percentage (2.5% RWA when the TLAC Minimum is 16% and up to 3.5% RWA when the TLAC Minimum requirement is 18%). Under the Deposit Insurance Act (DIA), the Deposit Insurance Corporation of Japan (DICJ) may supply resolution funding costs (both loss covering and recapitalisation) and funding for liquidity enhancement for the bridge holding company, which are pre-funded by industry contributions. Therefore, based on the agreement of CMGs, such ex ante commitments can be counted towards meeting the Minimum TLAC.⁴⁰

³⁸ A prohibition of acceleration clauses is not explicitly provided for in the TS. However, it could be subsumed under the TS prohibition which excludes from eligibility any instrument with a clause that would enable a holder to unilaterally redeem the instrument.

³⁹ Federal Reserve System (2016), [Final TLAC rules](#), December.

⁴⁰ When the resolution entity in the home jurisdiction (Japan) is allowed to apply the pre-funded ex ante commitments provision, its domestic MSGs may also consider such commitments for their internal TLAC requirements; i.e. 75% to 90% of the external Minimum TLAC requirement that would apply to the MSG if it were a resolution group, which deducts the portion for the prescribed percentage. (On a fully loaded basis and the premise that the scaling is 75% for a MSG, its minimum internal TLAC requirement is the greater of (a) 75% * (MSG's RWA) * (18% - 3.5%) or (b) 75% * ((MSG's LRD) * 6.75% - (MSG's RWA) * 3.5%).)

- In **Mexico**, one resolution entity of an MPE G-SIB implemented a TLAC issuance strategy where the resolution group issues external TLAC intragroup to the ultimate parent entity that will be the sole issuer of external TLAC for the group to the market. The TLAC Standard states that TLAC-eligible instruments must not be funded directly or indirectly by the resolution entity or a related party of the resolution entity, except in the case of MPE G-SIBs where the relevant home and host authorities in the CMG agree that it is consistent with the resolution strategy.
- In **Switzerland**, issuance out of special purpose vehicles (SPV) for external TLAC due to income tax law for Holding Companies was allowed with explicit approval by the Swiss Financial Market Supervisory Authority (FINMA), after consultation with, and agreement by, CMG members.⁴¹ The SPV structure has been removed following a change in the Swiss income tax law which entered into force in 2019 and is applicable retroactively as of 1 January 2019.
- Under **EU rules**, cooperative banks or affiliated financial institutions that have in place appropriate mutual solidarity mechanisms, including G-SIBs, may, subject to approval by the resolution authority and in compliance with the resolution strategy, issue regulatory capital instruments and eligible liabilities to comply with their external loss-absorbing and recapitalisation requirement, provided that these instruments meet all other eligibility criteria.

3.5 Governing law

TLAC should be subject to the law of the jurisdiction in which the relevant resolution entity is incorporated. It may be issued under or be otherwise subject to the laws of another jurisdiction if, under those laws, the application of resolution tools by the relevant resolution authority is effective and enforceable on the basis of binding statutory provisions or legally enforceable contractual provisions for the recognition of resolution actions. The inclusion of contractual recognition of bail-in powers in TLAC issuances governed by the laws of foreign countries should facilitate and improve the process of bailing-in those instruments in the event of resolution. Consistent with the FSB *Principles on Cross-border Effectiveness of Resolution Actions*,⁴² even with statutory recognition frameworks in place, contractual recognition can help to reinforce certainty and predictability of bail-in actions.

Most jurisdictions allow for TLAC-eligible instruments to be issued under the laws of a jurisdiction other than the jurisdiction where the issuing resolution entity is incorporated provided that there are adequate assurances that the bail-in of such instruments is effective and enforceable. The general approach is to rely on contractual recognition and require that TLAC instruments contain contractual recognition clauses.

- In the **EU**, G-SIBs may issue TLAC-eligible instruments governed by the laws of EU Member States or by third country laws (i.e. non-EU). They are required to include contractual clauses in issuances of liabilities subject to bail-in and governed by the laws of third countries by which holders recognise the write-down and conversion powers of EU resolution authorities and are prepared to demonstrate that such a

⁴¹ TS Sect 8. (d).

⁴² FSB (2015), [Principles for Cross-border Effectiveness of Resolution Actions](#), November.

decision of an EU resolution authority would be enforceable and effective (e.g. by means of a legal opinion). The requirement to include a contractual clause does not apply where the resolution authority determines that the instruments can be subject to write down and conversion powers by the resolution authority of an EU Member State pursuant to the law of the third country or to a binding agreement concluded with that third country. Own funds instruments may only be governed by the laws of a third country if the write-down and conversion power under BRRD is effective and enforceable on those instruments.

- In **Canada**, TLAC-eligible instruments may be governed by either Canadian or foreign laws. All TLAC instruments must include provisions whereby investors explicitly submit to Canadian law for purposes of the exercise of the bail-in power to ensure cross-border effect of the Canadian statutory bail-in powers. Canada also requires legal opinions to confirm the bail-in is enforceable.
- **Hong Kong** requires independent legal advice on the enforceability of a write-down and/or conversion in resolution for all TLAC-eligible liabilities governed by non-Hong Kong law.
- In **Japan**, issuers of TLAC instruments have to include contractual provisions according to which the holder agrees to any transfer of the issuer's assets or liabilities with permission of a Japanese court and agrees not to initiate any action to attach any of the issuer's assets.⁴³
- In **Switzerland**, TLAC-eligible liabilities issued by Swiss G-SIBs must be governed by Swiss law. FINMA may grant exemptions to this requirement if it is evidenced that a bail-in is enforceable in the concerned jurisdictions. In addition, TLAC-eligible debt instruments must contain in the terms and conditions an explicit bail-in acknowledgment and consent clause to the exercise of any Swiss resolution power by the relevant Swiss resolution authority. Such a clause supports the enforceability of a bail-in.
- In the **UK**, G-SIBs that issue TLAC-eligible liabilities governed by non-European Economic Area (EEA) law must obtain independent legal opinions on a liability's eligibility and bail-in enforceability.
- In the **US**, TLAC-eligible instruments must be governed by US law, except for grandfathered debt governed by foreign law issued prior to 31 December 2016.

3.6 Subordination of TLAC to operational liabilities

TLAC-eligible liabilities should not include operational liabilities on which the performance of critical functions depends, and should in principle be subordinated in some way to such

⁴³ At present, under the Deposit Insurance Act (DIA) and the Bankruptcy Act of Japan, it will be achieved by the following contractual provision: the holder of the TLAC eligible instrument agrees (i) to any transfer of the issuer's assets or liabilities with permission of a Japanese court in accordance with Article 126-13 of the DIA (including any such transfer made pursuant to the DICJ to represent and manage and dispose of issuer's assets under Article 126-5 of the DIA) and (ii) not to initiate any action to attach any of issuer's assets, the attachment of which has been prohibited by designation of the Prime Minister of Japan pursuant to Article 126-16 of the DIA.

operational (or “excluded”) liabilities.⁴⁴ Subordination should help to ensure that there is increased certainty over the order in which liabilities absorb losses in resolution and avoid material risks of “no creditor worse off than in liquidation” (NCWOL) claims which could arise in the case of a bail-in of TLAC liabilities that were *pari passu* or senior to any excluded liabilities.

Subordination may be contractual, statutory or structural, i.e. issued by a resolution entity which does not have any excluded liabilities (for example, a holding company) on its own balance sheet that rank *pari passu* or junior to TLAC-eligible instruments.⁴⁵ In this case, excluded liabilities may be issued by one or more subsidiaries of that resolution entity which are not themselves resolution entities (“structural subordination”). All jurisdictions have adopted a subordination requirement consistent with the TLAC Standard.

Several jurisdictions have **amended the insolvency creditor hierarchy** to help achieve effective subordination of TLAC-eligible instruments to operational liabilities as required by the TLAC Standard.

- In **Canada**, TLAC is statutorily subordinated to all excluded liabilities in a resolution. Liabilities excluded from TLAC are statutorily excluded from the scope of the bail-in tool and therefore cannot be legally written down or converted into equity in a bail-in resolution. In liquidation, however, TLAC-eligible instruments would rank equally with such excluded liabilities. Based on substantive scenario analysis, the Canadian authorities are comfortable that this approach would not give rise to material risk of successful legal challenge. Canadian D-SIBs are required to include contractual terms providing holders are bound by the conversion power set out in the Canada Deposit Insurance Corporation (CDIC) Act. Statutory bail-in powers apply only to TLAC issued after 23 September 2018 (no grandfathered debt).
- The **EU** has introduced a class of non-preferred senior (NPS) debt in the hierarchy of creditors in insolvency, which ranks above own funds instruments and subordinated liabilities that do not qualify as own funds, but below other senior unsecured claims. NPS must have an original contractual maturity of at least one year; not contain embedded derivatives and not be derivatives themselves; and relevant contractual documentation related to their issuance (and prospectus, where applicable) must explicitly refer to their lower ranking in insolvency.⁴⁶ To be TLAC/MREL eligible they must also comply with all other eligibility criteria.
- In the **EU**, the minimum mandatory level of subordination requirement for G-SIBs is the higher of the TLAC requirement (both RWA and LRD based) and 8% of total liabilities and own funds (which could be reduced by resolution authorities by a factor proportionate with 3.5% RWA). In addition, resolution authorities have discretion to request, where applicable, for a subset of banks and subject to conditions, an additional layer of subordination up to a cap which is the higher of 8% of total liabilities and own

⁴⁴ TS Section 10 (Liabilities excluded from TLAC (or “excluded liabilities”).

⁴⁵ TS Section 11.

⁴⁶ Official Journal of the EU (2017), [*Directive \(EU\) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy*](#), December.

funds and a prudential formula (2x Pillar 1 plus 2x Pillar 2 requirement plus the combined capital buffer).

Exceptions from the subordination requirement

Several jurisdictions have adopted the **limited exceptions from strict subordination** as set out in the TS:

- In the **EU**, the resolution authority may permit that senior unsecured instruments that rank *pari passu* with excluded liabilities count as TLAC up to 3.5% of RWA starting 2022 (up to 2.5% RWA as from 2019), when the inclusion of these liabilities does not have a material adverse impact on the resolvability of the institution. As a transitional provision, such an exception will be applied by G-SIBs until such time as the resolution authority makes an initial assessment for granting this allowance and decides otherwise.
- In **Canada**, TLAC-eligible instruments may rank alongside excluded liabilities to the extent that these excluded liabilities are statutorily excluded from bail-in.
- The **EU, Hong Kong, Japan, the UK and the US** transposed the 5% De Minimis exception⁴⁷ according to which the sum of a resolution entity's liabilities that do not qualify as TLAC and that rank *pari passu* or junior to TLAC-eligible liabilities should not exceed 5% of the resolution entity's eligible external TLAC resources. In line with the TS, in the **EU** the exceptions from subordination (up to 3.5% RWA starting 2022/ 2.5% RWA as from 2019 and the 5% De Minimis exception) cannot be cumulative. In addition, in the **UK**, the sum of those liabilities that do not qualify as TLAC in each creditor class should not exceed 10% of the resolution entity's TLAC resources in that same creditor class.⁴⁸ In **Hong Kong**, there are additional conditions for an entity that applies such an exception – it must be a holding company, and its activities must be strictly limited.

3.7 Long term debt expectation

The TLAC Standard states an expectation that a proportion of 33% of TLAC be issued in the form of debt.⁴⁹ Implementation of a long term debt requirement is thus left to the discretion of jurisdictions. Only few jurisdictions require a specific portion of TLAC to be issued in the form of debt:

- The **EU** rules do not require the holding of eligible long-term debt, however it could be required as part of the procedure to remove impediments to resolvability.
- **Hong Kong** requires one third of TLAC requirements to be met with resources in the form of debt (subject to downward variation by the HKMA).

⁴⁷ TS Section 11 (i).

⁴⁸ Bank of England (2018), [Statement of Policy on MREL](#), June.

⁴⁹ FSB *TLAC TS 6*: "... there is an expectation that the sum of a G-SIB's resolution entity or entities i) tier 1 and tier 2 regulatory capital instruments in the form of debt liabilities plus ii) other TLAC-eligible instruments that are not also eligible as regulatory capital, is equal to or greater than 33% of their Minimum TLAC requirements".

- **Japan** stipulates the expectation that the total amount of Tier 2 capital instruments (in the form of debt) and TLAC instruments is more than 33% of the external TLAC minimum requirement.
- Though there is no formal requirement, **Switzerland** expects the gone-concern component (see **Table 1**) to be fulfilled completely in the form of long term debt.
- The **US** TLAC rule currently requires that long-term debt comprise the greater of 6% (plus binding G-SIB surcharge) of RWAs and 4.5% of total leverage exposure.

3.8 Breaches of the Minimum TLAC

The TLAC Standard⁵⁰ provides that the TLAC minimum should not interfere with the firms' ability to use Basel III capital buffers without entry into resolution. However, if a firm exhausts its regulatory capital buffers and has breached or is likely to breach its minimum TLAC, authorities should require the firm to take prompt action to address the breach or likely breach to ensure that adequate loss-absorbing capacity remains available in resolution.

In most G-SIB jurisdictions, breaches can trigger either financial restrictions or balance sheet restrictions and, in some cases, a combination of these sanctions. Financial restrictions could include dividend withholdings (**Canada, EU, Switzerland, UK, US**), remuneration and bonus withholdings (**Canada, EU, Switzerland, UK, US**) and share buyback restrictions (**Canada, Switzerland**). Balance sheet measures and measures aimed at restricting operations of banks are less frequently used. These include the forced reduction of RWA (**Canada, Switzerland**), as well as enforced sales and purchasing limits (**Canada, EU**).

In the **EU**, a breach of the loss absorption and recapitalisation requirement also activates a set of powers for the relevant authorities, such as powers to require the removal of impediments to resolvability, supervisory measures, early intervention measures, administrative penalties, and discretion to carry out an assessment of "failing or likely to fail". Supervisory measures can be quite intrusive and include: (i) requiring additional own funds in excess of the minimum requirements; (ii) restriction or limitation to the business operations or network of institutions or to request the divestment of activities that pose excessive risks; (iii) limitation of variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base; (iv) requirement to use net profits to strengthen own funds; (v) restriction or prohibition of distributions or interest payments by an institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution; (vi) additional or more frequent reporting requirements, including reporting on own funds, liquidity and leverage; and (vii) specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities.

Consequences for breaches of the TLAC minimum are applied through administrative sanctions in all jurisdictions with the exception of **Hong Kong**, where criminal sanctions may be applied in addition to administrative sanctions should banks fail to comply with requirements to notify certain matters to the HKMA, or fail to take remedial action as required by the HKMA in respect of a contravention. Four G-SIB homes (**EU, Japan, Switzerland, UK**) define breaches in terms of likely as well as actual breaches, with some other non-G-SIB home jurisdictions (e.g. **Hong Kong**) adopting a similar approach.

⁵⁰ FSB [TLAC TS](#) principles (ix) and (x) and TLAC TS (2015), p.7.

3.9 Restrictions on holdings

To reduce the potential for a G-SIB resolution to spread contagion into the global banking system, authorities should strongly disincentivise internationally active banks from holding TLAC issued by G-SIBs and place appropriate prudential restrictions on G-SIBs' and other internationally active banks' holdings of instruments issued by G-SIBs that are eligible to meet Minimum TLAC.⁵¹

In October 2016, the BCBS issued its TLAC Holdings Standard⁵² which applies to both G-SIBs and non-G-SIBs and provides that banks must deduct holdings of TLAC instruments that are not already included in regulatory capital from their own Tier 2 capital. The deduction is subject to the thresholds that apply to existing holdings of regulatory capital and an additional 5% threshold for non-regulatory-capital TLAC holdings only. Instruments ranking *pari passu* with subordinated forms of TLAC must also be deducted.

- **Brazil, Canada, Singapore and Switzerland** have transposed the BCBS TLAC Holdings Standard effective 1 January 2019.
- In **Japan**, the TLAC Holdings Standard is in force as from 31 March 2019.
- In **Hong Kong**, the TLAC Holdings Standard is in force as from 1 April 2019.
- The **EU** rules include obligations for G-SIBs to deduct holdings of TLAC instruments issued by other G-SIBs from their own TLAC eligible liabilities.
- In the **US**, deductions apply to all banks for investments in regulatory capital instruments of other banks, consistent with the Basel standard. The US has proposed a rule that would specifically address the BCBS TLAC Holdings Standard for G-SIBs and for certain other entities.⁵³

3.10 Restrictions for retail investors

Authorities should be confident that holders of TLAC are able to absorb losses in a time of stress in the financial markets, without spreading contagion and without necessitating the allocation of loss to liabilities where that would cause disruption to critical functions or significant financial instability.⁵⁴

If a significant part of TLAC is held by retail investors, this can in itself represent a potential impediment to resolvability. The TLAC Standard does not provide for specific restrictions of the sale or marketing of TLAC instruments to retail investors. However, three G-SIB home jurisdictions and Hong Kong have adopted specific measures to discourage or restrict the sale of G-SIB TLAC eligible debt to retail investors.

- In the **EU**, rules restricting the sale of subordinated TLAC/MREL instruments to retail clients have been introduced for all banks by reinforcing the provisions of the Markets

⁵¹ See principle (xii).

⁵² BCBS (2016), [TLAC Holdings Standard](#), October.

⁵³ OCC, Federal Reserve and FDIC (2019), [Notice of Proposed Rulemaking](#), April.

⁵⁴ TLAC TS, Principle vii.

in Financial Instruments Directive (MIFID).⁵⁵ Minimum restrictions apply to newly issued subordinated eligible liabilities (not own funds), however a national option is included which would allow for stricter rules. EU Member States have three options for implementing the minimum restrictions. They may implement a minimum denomination amount of at least EUR 50,000 for the sale of subordinated eligible liabilities. Smaller EU Member States may implement a minimum investment rule of at least EUR 10,000. Otherwise, the seller must ensure at the time of purchase that the percentage of the retail client's portfolio invested in subordinated instruments does not exceed 10% and the initial investment amounts to at least EUR 10,000.

- In **Hong Kong**, the issuance of TLAC is restricted to professional investors only; such instruments must be in minimum denominations of HKD 2 million, USD 250,000 or EUR 200,000 (or equivalent in a different currency); and any prospectus or offering document for such instruments must contain certain risk disclosures.
- **Japan** requires a minimum denomination amount of at least JPY 10 million to be eligible as TLAC instrument.
- In **Switzerland**, FINMA requires TLAC denominations to be large enough to prevent retail participants from investing.

4. Internal TLAC

4.1 Identification of material subgroups

A key objective of the TLAC Standard is to provide home and host authorities with confidence that G-SIBs can be resolved in an orderly manner and thereby encourage cross-border cooperation and diminish incentives to ring-fence assets. The pre-positioning in host jurisdictions of internal TLAC at subsidiaries or sub-groups that are determined to be material ("material subgroups" or MSGs) should help to ensure an appropriate distribution of loss-absorbing and recapitalisation capacity within resolution groups outside of their resolution entity's home jurisdiction.

The determination of MSGs should be a two-way collaborative process between host and home authorities.⁵⁶ Authorities generally rely on the TLAC TS criteria to determine materiality for identification of MSGs.⁵⁷ MSGs of G-SIBs have been identified in **Hong Kong** (three MSGs), **Mexico** (one MSG), **Singapore** (one MSG), the **UK** (six MSGs) and the **US** (ten MSGs). Identification and formal designation of MSGs is still ongoing in the **EU** and **Japan**. In **Hong**

⁵⁵ Official Journal of the EU (2014), [*Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments*](#), May.

⁵⁶ FSB TLAC TS, Section 16: "The host authority of subsidiaries that meet one or more criteria set out in Section 17 will determine the composition of the material sub-group and distribution of internal TLAC in its jurisdiction in a manner that supports the effective implementation of the agreed resolution strategy and achieves the objectives of internal TLAC. It should do so in consultation with the home authority of the resolution entity of the resolution group to which the material sub-group belongs and the CMG".

⁵⁷ FSB TLAC TS, Section 17.

Kong, in addition to the already designated MSGs, the designation of additional MSGs under jurisdictional legislation is expected to be completed in 2019. See **Annex I**.

- The **EU** adopts the concept of materiality as defined in the TLAC TS for subsidiaries of third country G-SIBs,⁵⁸ except for the criterion referring to the firms' critical functions. The identification of MSGs of third country G-SIBs within CMGs (where the SRB and national resolution authorities participate as "host" authorities) is in progress. The number of MSGs of third country G-SIBs within the EU is expected to change due to Brexit and other factors.⁵⁹
- In **Hong Kong**, the policy provides for coordination with the home authority and CMGs in the identification of "material subsidiaries".
- In the **US**, certain top-tier US IHCs of foreign G-SIBs above a certain asset threshold are subject to the US TLAC rule.⁶⁰ They all meet or exceed one or more of the three enumerated quantitative metrics identified in Section 17 of the TLAC TS (i.e. greater than 5% of the foreign G-SIB's consolidated risk-weighted assets, total operating income, or total leverage exposure measure). Under the US rule, a US MSG of a foreign SPE G-SIB is required to issue a minimum amount of internal TLAC instruments. A resolution entity of a foreign MPE G-SIB is subject to a TLAC requirement that can be satisfied by any mix of TLAC instruments issued internally or externally.

4.2 Internal TLAC calibration

The TLAC Standard expects internal TLAC generally to be distributed as necessary within resolution groups in proportion to the size and risk of exposures of its material sub-groups. The quantum of internal TLAC to be pre-positioned at MSGs should be equivalent to 75-90% of the TLAC requirement that would apply to the MSG if it were a resolution group on a stand-alone basis, as calculated by the host authority. However, host authorities can impose additional firm-specific internal TLAC requirements on local subsidiaries of a G-SIB, particularly where such an approach is aligned with requirements applicable to similar firms within that host jurisdiction.⁶¹

The specific internal TLAC requirement should be defined by the relevant host authority in consultation with the home authority of the resolution group and validated through the resolvability assessment process (RAP). The quantum of pre-positioned internal TLAC is intended to provide comfort to host authorities that adequate resources are available to absorb losses in local material subsidiaries while providing some flexibility to deploy non-pre-positioned TLAC (if any) as necessary across the group in resolution.

⁵⁸ The concept of material sub-groups as introduced by the TLAC TS and transposed into EU law for subsidiaries of third country G-SIBs does not apply to subsidiaries of EU institutions; all the latter being required to hold internal MREL instruments in a sufficient amount to sustain the resolution strategy.

⁵⁹ The EU requirement on some foreign operations to establish an Intermediate Parent Undertaking (IPU), when conditions are met, will come into force three years after the entry into force of the new rules (2Q 2019) and may also impact the number of MSGs in the EU.

⁶⁰ Under the US TLAC rule a "covered IHC" includes any US intermediate holding company that (a) has at least USD 50bn in US non-branch assets and (b) is controlled by a foreign G-SIB.

⁶¹ TS Section 16.

Several jurisdictions (**Hong Kong, Singapore, UK**) set the internal TLAC requirement on a firm-specific basis within the 75-90% range. Within this range the requirement is to be determined in consultation with other authorities in the CMG:

- In **Hong Kong**, the starting point for the internal TLAC requirement is 75%, but the HKMA has the ability to increase the requirement up to 90%. The volume and availability to MSGs in Hong Kong of surplus TLAC resources will be taken into account in the calibration of the internal TLAC requirement. If the HKMA is not satisfied that surplus TLAC is likely to be available to recapitalise a MSG when needed, it may exercise its powers to vary the internal TLAC requirement upward from 75%.
- In **Singapore**, calibration is discretionary in line with the TLAC TS.
- In the **UK**, the Bank of England is expected to set the internal TLAC ratio on a firm-specific basis depending upon the resolution strategy, its credibility, the availability of surplus resources to the MSG in the UK and the scaling applied to UK MSGs by foreign authorities. The Bank of England's approach will be judgement-based, and decided on a case-by-case basis, giving due consideration to the relationship between the risk profile of a material subsidiary and its wider group.

Other jurisdictions (**EU, US**) set a fixed internal TLAC requirement by regulation thus constraining authorities' flexibility to calibrate internal TLAC on the basis of CMG discussions and RAP findings:

- In the **EU**, MSGs of third country G-SIBs are subject to an internal TLAC requirement equal to 90% of the TLAC requirement that would apply to the MSG if it were a resolution group, supplemented by any internal additional firm-specific MREL requirement. Subsidiaries of EU G-SIBs within the EU are subject to internal MREL requirements (in line with MREL calibration rules) which are expected to be fully pre-positioned within each subsidiary. Where the subsidiary and the resolution entity or its parent undertaking are established in the same EU Member State, waivers for pre-positioned internal MREL or collateralised guarantees may be used.
- In the **US**, per the US TLAC rule, the RWA component of the internal TLAC requirement is 16% RWA issued to the foreign parent (16%/18% = 88.9% internal TLAC calibration).

4.3 Core features and triggers of internal TLAC

The core features of eligible internal TLAC are broadly the same as those of eligible external TLAC (except with regard to the issuing entity and permitted holders). Internal TLAC instruments must be statutorily or contractually subordinated to excluded liabilities of the issuing subsidiary, and subject to write-down or conversion by the relevant host authority at the point of non-viability without entry of the subsidiary into statutory resolution proceedings.

Any write-down or conversion to equity of internal TLAC should be subject to consent by the relevant authority in the jurisdiction of the relevant resolution entity, except where consistent with the circumstances in which Basel III provides that such consent is not required.

To the extent jurisdictions have implemented internal TLAC requirements, they have defined the core features and triggers in a manner that is broadly consistent with the TLAC Standard.

Trigger features: contractual vs. statutory trigger

- The **EU** rules provide for statutory write-down and conversion powers at the point of non-viability (PONV) of capital instruments (BRRD) and internal TLAC/MREL-eligible liabilities (BRRD2). The BRRD provides for a notification and joint decision-making process between EU home-host authorities when deciding to trigger PONV.
- **Hong Kong** and **Singapore** require internal TLAC-eligible non-capital instruments to include contractual trigger language and provide for a notification and joint home-host decision-making process to trigger a write-down or conversion of the internal TLAC instruments at the point of non-viability of the MSG. The contractual trigger language should enable the host authority to impose losses on the internal TLAC instrument when the MSG has ceased or is likely to cease to be viable and there is no reasonable prospect that private sector action would result in it again becoming viable within a reasonable period. In addition, it requires that the home authority consented or has not objected within 24 hours after receiving notice of the write-down or conversion of the instrument.
- In the **UK**, the Bank of England requires that internal TLAC eligible liabilities include a contractual trigger for the Bank of England to direct a write-down or conversion to Common Equity Tier 1 (CET1) (subject to home authority consent or non-objection) following the write-down or conversion of any own funds instruments of the material subsidiary into equity in application of any statutory or regulatory power linked to the financial condition or viability of the material subsidiary.
- The **US** TLAC rules specify that the internal TLAC instruments must contain a contractual trigger that provides for conversion or exchange into CET1, which would be triggered after the Federal Reserve determines that the entity is in default or danger of default. They also specify other conditions that may apply, such as the home authority has either consented or has not objected within 24 hours after receiving notice to the conversion of the instrument.

Capital instruments issued externally counting towards internal TLAC

Internal TLAC that comprises regulatory capital instruments must comply with the relevant provisions of Basel III, including those in relation to write down and conversion at the point of non-viability. Regulatory capital instruments other than CET1 that are issued externally out of a subsidiary belonging to a material sub-group and held by third parties may count toward that material sub-group's internal TLAC requirement only until 31 December 2021 and only to the extent that home and host authorities agree that their conversion into equity would not result in a change of control of those entities that would be inconsistent with the agreed resolution strategy.

- The **EU** rules provide that non-CET1 own funds and eligible liabilities counting as internal TLAC issued by subsidiaries of third country G-SIBs must be owned fully by the ultimate parent undertaking of that G-SIB. However, own funds and eligible liabilities used to comply with any additional firm-specific requirement (internal MREL add-on) may be issued to and bought by existing shareholders outside of the resolution group, as long as the write-down or conversion of those instruments does not affect the control of the subsidiary by the resolution entity. For subsidiaries of EU

G-SIBs within the EU, own funds and eligible liabilities used to comply with the overall loss absorption and recapitalisation requirement may be issued externally under the same condition.

- In the **UK**, the Bank of England’s Statement of Policy provides that institutions should consider whether the conversion to CET1 of externally issued non-CET1 own funds instruments counting towards MREL could lead to a change in control of a subsidiary. The Bank of England may consider any challenges to resolvability presented by such instruments as part of assessing institutions’ resolvability.

Collateralised guarantees as substitute for internal TLAC

The TLAC Standard provides that home and relevant host authorities in CMGs may jointly agree to substitute on-balance sheet internal TLAC with internal TLAC in the form of collateralised guarantees, subject to specific conditions. However, no jurisdiction has transposed this possibility of substitution of internal TLAC with collateralised guarantees into domestic rules. In the **EU** rules, the usage of collateralised guarantees as a substitute for pre-positioned internal TLAC and MREL add-on (as well as waiving the pre-positioning of internal TLAC and MREL add-on) is only possible (subject to conditions) when both the subsidiary and the resolution entity are established in the same EU Member State.

4.4 Intra-group issuance and distribution

The issuance of internal TLAC by a MSG should credibly support the resolution strategy and the passing of losses and recapitalisation needs to the resolution entity. Internal TLAC may be issued directly from the relevant entity within the MSG to the resolution entity or indirectly through multiple legal entities within the group, which can include IHCs/IPUs (“daisy chain”). Jurisdictions generally accept both approaches:

- In the **EU**, the rules allow for both direct and indirect issuance of internal TLAC by the subsidiary to the ultimate parent entity. For indirect issuance through other entities within the same group, all such entities must be established in the same third country as the ultimate parent or in the EU. Where a non-EU G-SIB is required to establish an IPU, internal TLAC must be issued by that IPU to the resolution entity and cover the consolidated needs of that sub-group.
- In **Hong Kong** and **Japan**, both direct and daisy chain issuances are allowed for entities with parent-subsidiary relationships involving direct or multiple layers of holding companies.
- In **Singapore**, internal TLAC is expected to be issued both directly or indirectly in line with the ownership structure.
- In the **UK**, the Bank of England generally expects to accept issuance indirectly to the resolution entity along the chain of ownership, as long as there are no technical obstacles to the resolution entity becoming exposed to losses through this chain. Direct issuance, or indirect issuance to the resolution entity that is not along the chain of ownership could also be acceptable unless this poses a technical obstacle.
- In the **US**, per the TLAC rule, internal TLAC may be issued directly to a foreign parent (e.g. resolution entity) or indirectly through another wholly owned foreign subsidiary of the top-tier foreign parent. For example, the IHCs of Swiss G-SIBs issue internal

TLAC to an intermediate parent bank, which in turn issues internal TLAC to the top holding company.

5. Non-pre-positioned TLAC resources

Non-pre-positioned TLAC that is in excess of TLAC required to cover risks on the resolution entity's solo balance sheet and TLAC that is distributed to MSGs as internal TLAC is sometimes referred to as "surplus TLAC".⁶² Yet, such resources are not "surplus" in the sense of "in excess of Minimum TLAC", but rather they are group distributable resources that count towards the Minimum TLAC. The TLAC Standard states that non-pre-positioned TLAC resources should be "readily available" to recapitalise any direct or indirect subsidiary as necessary to support the execution of the resolution strategy without any legal or operational barriers.⁶³

There may be differences in the ways authorities approach the concept of "surplus" TLAC as referred to in the TLAC TS (Sections 3 and 18) and the FSB's *Guiding Principles on Internal TLAC of G-SIBs*. As authorities implement the TLAC Standard, it will be important that home and host authorities reach a common understanding of the concept.

Some authorities (e.g. HKMA) consider the presence of adequate arrangements or frameworks that ensure that non-pre-positioned TLAC resources are readily available in resolution to recapitalise material subsidiaries a pre-condition or key consideration in setting host internal TLAC scalars towards the lower end of the 75-90% range. However, they have not yet set out in detail what arrangements or frameworks would be satisfactory and meet their expectations in a resolution context.

Whereas most jurisdictions do not address non-pre-positioned TLAC resources or "surplus TLAC" in their rules, some have indicated plans to do so:

- In **Hong Kong**, the HKMA has begun work to develop a surplus policy for MSGs/resolution entities of foreign G-SIBs. The MSGs/resolution entities of foreign G-SIBs will be required to submit, in due course, plans for the management of surplus TLAC within their respective resolution groups that demonstrate that the surplus is "readily available" in a resolution. HKMA plans to develop a policy framework for the management of surplus TLAC resources in close cooperation with banks and relevant foreign authorities, taking into account the relevant developments internationally. If a satisfactory surplus TLAC management framework has not been established and agreed by relevant home and host resolution authorities by 2022, and if the HKMA is not satisfied that surplus TLAC is likely to be available to recapitalise a MSG when needed, the HKMA would have the power to vary the internal TLAC scalar upward from the 75% starting point under Hong Kong LAC Rules.
- **Switzerland** plans to introduce gone-concern requirements at the level of the parent bank, which would include a requirement to cover the third party risks out of the parent

⁶² FSB (2017), [Guiding Principles on Internal Loss-Absorbing Capacity of G-SIBs \("Internal TLAC"\)](#), Principle 7, July.

⁶³ TS Section 18.

bank's operating activities and increase the holding of surplus TLAC. Proposed rulemaking will be issued for consultation in 2019.

- In the **UK**, the Bank of England plans to consider in more detail the issues relating to surplus TLAC in CMGs, and may review its approach as part of assessing institutions' resolvability.
- **US** resolution planning guidance provides that firms should consider the effectiveness of contractually binding mechanisms in managing distributable resources. US resolution planning guidance expects US G-SIBs to consider and appropriately position loss-absorbing capacity among the top-tier US holding company and its material subsidiaries. More specifically, the US resolution planning guidance expects that a firm will (i) balance the certainty associated with pre-positioning internal TLAC directly at subsidiaries with the flexibility provided by holding recapitalisation resources (i.e. including some surplus TLAC) at the top-tier US holding company (or other non-operating support provider) to meet unanticipated losses at its subsidiaries; (ii) generally not rely exclusively on either full internal TLAC pre-positioning or contributable resources to execute its resolution strategy; and (iii) provide analysis supporting its approach to positioning TLAC resources and take account of the obstacles associated with both pre-positioned and non-pre-positioned resources. As a result, US G-SIBs and MSGs (with respect to their US subsidiaries) have considered, or are developing, allocation methodologies and contractually binding mechanisms to facilitate the allocation of pre-positioned loss-absorbing resources and the subsequent deployment of contributable resources during resolution.

6. Disclosures

6.1 Implementation of Basel Pillar 3 disclosure requirements

To enhance the credibility and feasibility of resolution and strengthen market discipline, the TLAC Standard expects G-SIBs to disclose the amount, maturity, and composition of external and internal TLAC. Market participants (investors, creditors, counterparties, customers and depositors) should have clarity about the order in which they would absorb losses in the event of a G-SIB's resolution.⁶⁴ Resolution entities should disclose, at a minimum, the amount, nature, and maturity of any liabilities that, in the relevant insolvency creditor hierarchy, rank *pari passu* or junior to TLAC eligible liabilities. Entities that are part of a MSG and issue internal TLAC to a resolution entity should disclose any liabilities that rank *pari passu* with or junior to internal TLAC issued to the resolution entity.

The TLAC disclosures are specified through the BCBS Pillar 3 disclosure requirements which include disclosure templates for both external TLAC and internal TLAC (template TLAC2).⁶⁵ The Pillar 3 disclosure requirements agreed by the BCBS went into force on 1 January 2019 and their implementation is being monitored by the BCBS. As of May 2019, six BCBS member

⁶⁴ TLAC TS, principle (xi).

⁶⁵ BCBS (2017), [Pillar 3 disclosure requirements – consolidated and enhanced framework](#), March.

jurisdictions within the scope of this review had final or published draft rules; four jurisdictions had rules in force.⁶⁶

- The TLAC disclosure obligations applicable in the EU, which came into force in June 2019, include at least a semi-annual disclosure of the composition of own funds and eligible liabilities, maturity, main features, ranking, total amount of each issuance, amounts exempted from subordination, amount of excluded liabilities and, on a quarterly basis, TLAC ratios at the level of each resolution group. The same applies for disclosures of external and internal TLAC requirements.⁶⁷
- **Switzerland** and **Canada** are in line with BCBS Pillar 3 disclosure requirements for external TLAC in force since 1 January 2019.
- **Hong Kong's** disclosure requirements (effective 1 January 2019) are in force and in line with the BCBS Pillar 3 disclosure requirements; they cover both resolution entities (external TLAC) and material subsidiaries (internal TLAC).
- In **Japan**, TLAC disclosure requirements are in force and in line with BCBS Pillar 3 disclosure requirements for external and internal TLAC.
- No G-SIB home jurisdiction has yet adopted a requirement consistent with the TLAC Standard for G-SIBs to disclose, with respect to every material subgroup entity which has issued internal TLAC, information on liabilities ranking *pari passu* with or junior to internal TLAC issued to a resolution entity.

6.2 Availability of public data on external and internal TLAC to date

Disclosures of TLAC should help provide confidence that adequate loss-absorbing and recapitalisation resources are available to resolve a G-SIB in an orderly manner. Disclosures of the amounts and order of loss-absorption help to promote certainty and predictability, enabling market participants to manage their exposures. To date, pending the full implementation of the BCBS TLAC disclosure requirements, the amount, maturity and composition of external and internal TLAC have not been disclosed in a consistent manner by G-SIBs.

The process of compiling this data from 24 G-SIBs⁶⁸ revealed a wide disparity in public disclosures to date. Most of these disclosures were made on a voluntary basis given that the BCBS's TLAC disclosure requirements came into effect on 1 January 2019 and are not yet fully implemented:

- Some G-SIBs (e.g. Barclays, BPCE, Citigroup, Credit Suisse, MUFG, Société Générale and UBS) provide an estimate of TLAC and of TLAC composition (regulatory capital and non-regulatory eligible instruments, allowances and buffers as applicable) on a regular basis in quarterly reports or investor presentations;

⁶⁶ BCBS (2019), [Sixteenth progress report on adoption of the Basel regulatory framework](#), May. Final rules in force and implemented: four jurisdictions (Canada, Hong Kong, Japan and Switzerland); final rules in force but not yet implemented: one jurisdiction (EU); published draft rules: one jurisdiction (US).

⁶⁷ Similar rules will come into effect for the MREL requirement for all banks once the final rules published in 2Q 2019 will be transposed into national laws across the EU.

⁶⁸ RBC is expected to come into compliance by January 2022.

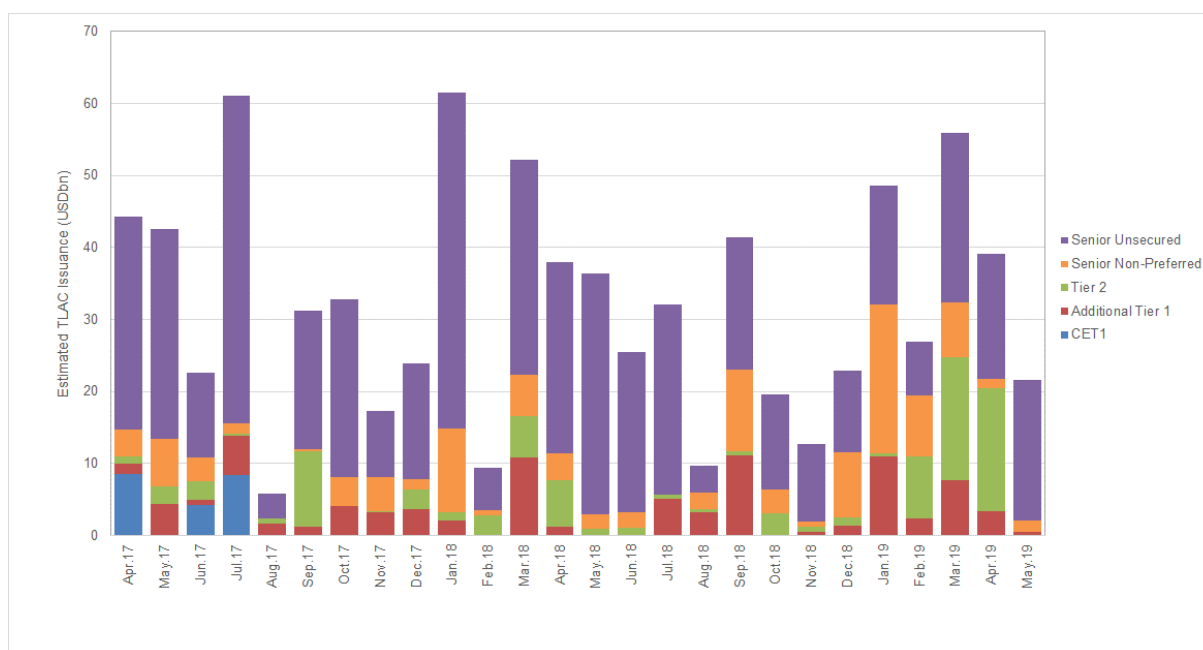
- Other G-SIBs provide only year-end or semi-annual updates;
- Some US G-SIBs (Bank of America, Bank of New York Mellon, Goldman Sachs, Morgan Stanley, State Street) have not yet provided TLAC estimates in their public filings, though analysts have estimated TLAC ratios and made them available to their subscriber bases in ad hoc analyses;
- The BCBS has published estimated TLAC shortfalls on an anonymised basis in its **Basel III Monitoring Report**;⁶⁹
- No information is currently available on the nature and composition of internal TLAC, including on any liabilities ranking *pari passu* with or junior to internal TLAC issued to a resolution entity.

7. TLAC issuance and distribution in the market

7.1 G-SIB issuance of external TLAC

A substantial amount of external TLAC has been issued during the past two years, across a wide range of different instruments and liabilities (see **Chart 1** below). Based on Bloomberg data and FSB Secretariat estimates, year to date TLAC issuance in 2019 through May was about USD 144bn. Total TLAC issuance in 2018 was about USD 360bn, of which USD 36bn was AT1; USD 24bn Tier 2; USD 52bn non-preferred senior; and USD 248bn senior debt. In 2017, total issuance was about USD 433bn, and in 2016, about USD 400bn.

Chart 1: TLAC Issuances: April 2017 - May 2019

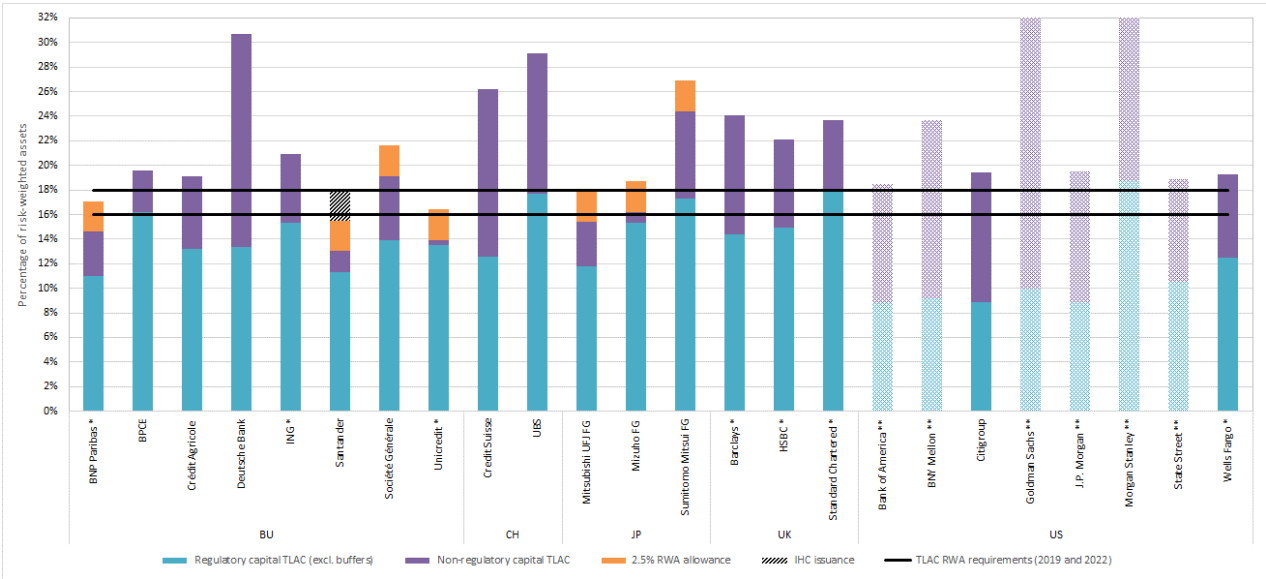


Source: Bloomberg and FSB Secretariat estimates

⁶⁹ BCBS (2018), [Basel III Monitoring Report](#), pp. 38-39, October. BCBS estimated shortfalls based on end 2017 data, showing three of 25 G-SIBs with a shortfall against the 2019 requirement and eight of 25 G-SIBs with a shortfall against the 2022 requirement.

Based on estimates and publicly available information, as of January 2019 all G-SIBs that are subject to the 2019 Minimum TLAC meet the standard, and most of these are already estimated to meet the 2022 Minimum TLAC (see **Chart 2** below). These estimates of TLAC RWA ratios exclude CET 1 buffers, allowing direct comparison to the TLAC Standard RWA ratios for 2019 and 2022. These estimates take into account 2.5% RWA allowances where authorities/G-SIBs can apply them⁷⁰ (for some firms in the BU, 2.5% RWA of TLAC-eligible instruments that are *pari passu* with other ineligible senior unsecured instruments and, for Japan, the reliance up to the same amount of 2.5% RWA by the Japanese G-SIBs on ex ante commitments of the Japanese deposit insurance fund that are pre-funded by industry).

Chart 2: TLAC ratio based on RWAs by G-SIB



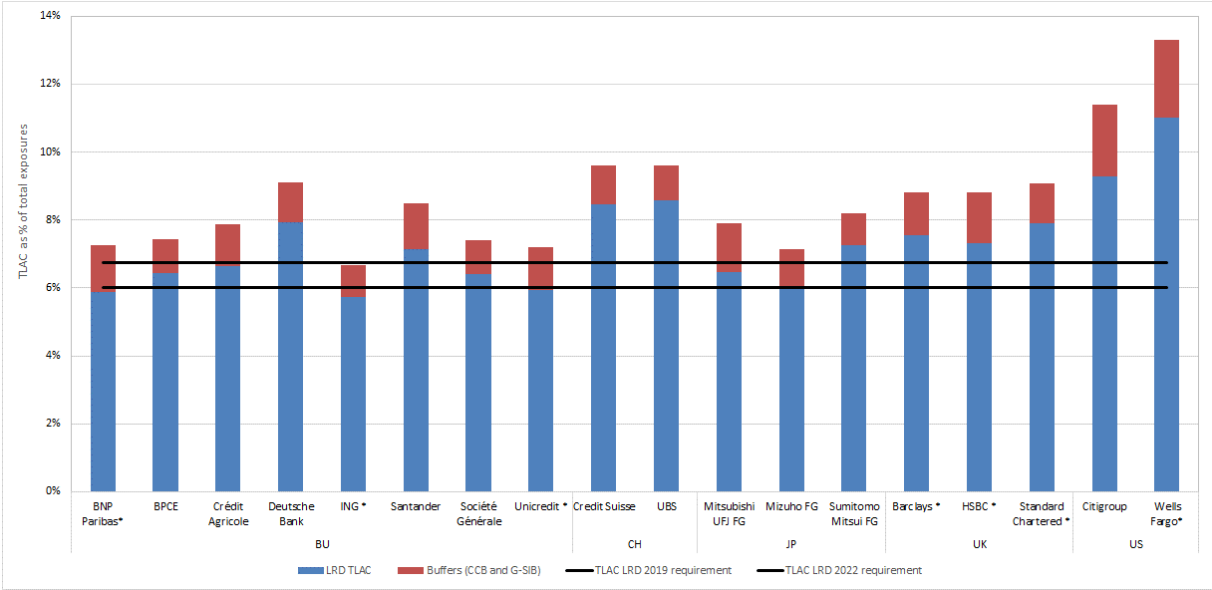
Source: Secretariat estimates based on G-SIB public disclosures⁷¹

⁷⁰ As per explanations in sections 3.4 and 3.6 of this report.

⁷¹ Estimates derived from annual reports, quarterly updates and/or investor presentations as of 31 March 2019 for: BPCE, Crédit Agricole, Deutsche Bank, Santander, Société Générale, Credit Suisse, UBS, Mitsubishi UFG, Mizuho FG, Sumitomo Mitsui FG and Citigroup. Estimates (*) derived from quarterly updates and/or investor presentations as of 31 December 2018 for: BNP Paribas, ING, Unicredit, Barclays, HSBC, Standard Chartered and Wells Fargo. Estimates (**) for Bank of America, Bank of New York Mellon, Goldman Sachs, JP Morgan, Morgan Stanley and State Street are based on analysis from CreditSights as of 2017. BPCE was designated as a G-SIB in 2018. RBC was designated as a G-SIB in 2017, and is subject to November 2021 conformance. Chinese G-SIBs are subject to the EME extended conformance period so are excluded from this analysis. Estimates for BNP Paribas, Santander, Société Générale and Unicredit represent total capital + issuance of non-preferred senior + 2.5% RWA allowance (TLAC TS section 11). Estimate for Santander includes structurally subordinated debt issued from the US and UK intermediate holding companies. Estimates for Mitsubishi UFG, Mizuho FG, and Sumitomo Mitsui FG include 2.5% RWA prefunded ex ante commitments (TLAC TS section 7).

Chart 3 below shows estimates of TLAC LRD ratios based upon available public data. The numerator is calculated starting with the total amount of TLAC eligible instruments (blue bar, consistent with Chart 2 total amounts), then adding the G-SIB and capital conservation buffers (red bar). These buffers are not exhibited in Chart 2, since the RWA measure reflects the FSB standard without buffers; Chart 3 shows both components of the LRD ratio numerator in order to allow comparison with Chart 2 and with TLAC TS section 6.a. The denominator of the LRD calculation is total exposure (i.e. leverage ratio denominator).

Chart 3: TLAC ratio based on LRD by G-SIB



Source: Secretariat estimates based on G-SIB public disclosures⁷²

7.2 TLAC debt instruments: features

Call features

Several G-SIBs have begun issuing TLAC debt instruments with call features. Such call features allow issuers to redeem bonds prior to maturity, before they lose TLAC eligibility by having less than one year remaining until maturity. Some G-SIBs have issued TLAC with call options tied to TLAC disqualification events or other *force majeure* events.

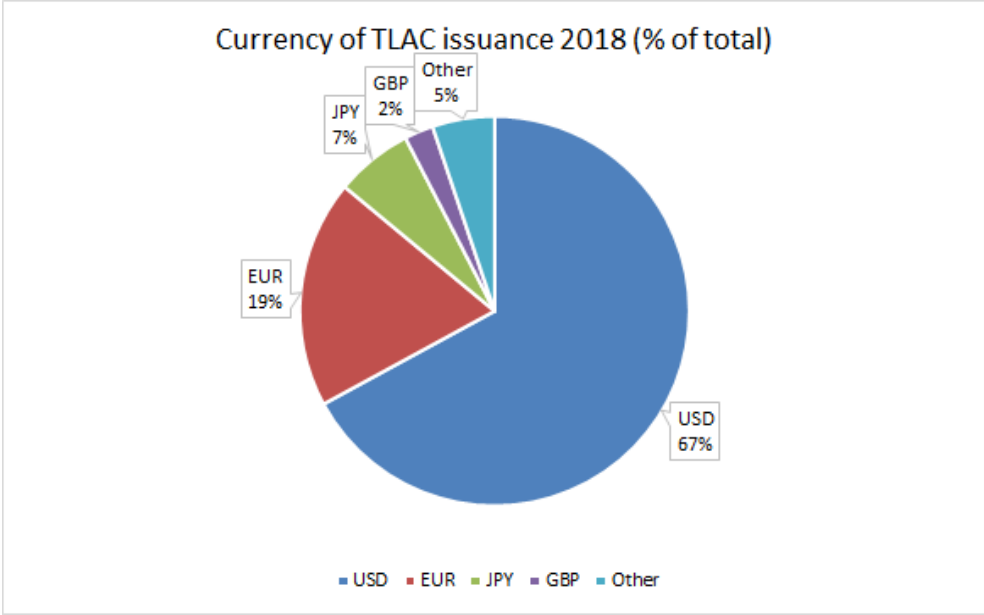
Currency

According to Bloomberg data and FSB Secretariat estimates, during 2018 67% of TLAC eligible debt instruments were issued in USD, 19% in EUR, and the remainder in GBP, JPY,

⁷² Estimates derived from annual reports, quarterly updates and/or investor presentations as of 31 March 2019 for: BPCE, Crédit Agricole, Deutsche Bank, Santander, Société Générale, Credit Suisse, UBS, Mitsubishi UFG, Mizuho FG, Sumitomo Mitsui FG and Citigroup. Estimates (*) derived from quarterly updates and/or investor presentations as of 31 December 2018 for: BNP Paribas, ING, Unicredit, Barclays, HSBC, Standard Chartered and Wells Fargo. BPCE was designated as a G-SIB in 2018. RBC was designated as a G-SIB in 2017, and is subject to November 2021 conformance. Chinese G-SIBs are subject to the EME extended conformance period so are excluded from this analysis. For other G-SIBs not included, data was not available to estimate the LRD TLAC ratio.

CAD and other currencies. To diversify their investor base, EU banks tend to issue a significant proportion of TLAC eligible bonds in USD. Japanese and Swiss G-SIBs also issue in USD.

Chart 4: Currencies of TLAC debt issuances 2018



Source: Bloomberg and FSB Secretariat estimates (AT1, Tier 2, non-preferred senior debt, and senior unsecured debt).

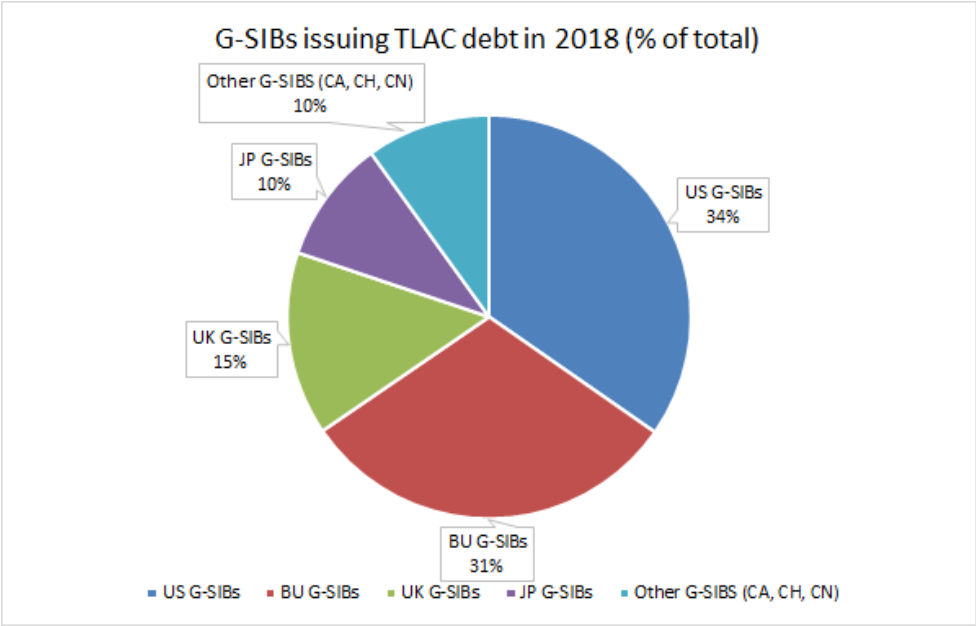
Maturity

According to Bloomberg data and FSB Secretariat estimates, issuance in 2016 was more active in 10-year maturities than 5-year; in 2017 this trend reversed, continuing through 2018.

Geography

In 2018, issuance volume and demand continued to be concentrated in jurisdictions with the largest G-SIBs.

Chart 5: G-SIBs issuing TLAC debt instruments in 2018



Source: Bloomberg and FSB Secretariat estimates (AT1, Tier 2, non-preferred senior debt and senior unsecured debt).⁷³

Green Bonds

Green bonds are “debt securities that are issued to raise capital specifically to support climate-related or environmental projects”.⁷⁴ Since 2017, the introduction by the Japanese government of its Green Bond Guidelines⁷⁵ encouraged the issuances of TLAC-eligible green bonds by Japanese G-SIBs. These bonds were issued in line with the green bond principles published in 2017 by the International Capital Market Association. In the EU, BNP Paribas issued its first green non-preferred senior bond in April 2018 that is eligible as TLAC.⁷⁶ The Swiss supervisory authority, FINMA, has so far not allowed recognition of these bonds as TLAC due to the concern that green investments potentially conflict with the requirement for full availability of funds for resolution purposes within the major entities of a financial group.

Ratings

Approximately 95% of TLAC eligible debt instruments issued in 2018 were rated by Moody’s and S&P; all of this debt was rated “investment grade”. About 55% of this rated debt was in the range of A3 or higher (Moody’s) or A- or higher (S&P). The lowest investment grade bracket accounted for less than 15% of rated TLAC debt issuances.⁷⁷

⁷³ CA stands for Canada, CH for Switzerland, CN for China, JP for Japan.
⁷⁴ World Bank (2015), [What are Green Bonds](#).
⁷⁵ Government of Japan (2017), [Green Bond Guidelines](#).
⁷⁶ BNP Paribas (2018), [Green Bond Issuance: Fixed Income Presentation](#), April.
⁷⁷ Source: Bloomberg and FSB Secretariat analysis.

7.3 Market absorption and investor base

Market appetite yet to be tested through the full cycle

TLAC issuances have been absorbed well by the markets. However, the market absorption is yet to be tested through the full range of market cycles, although evidence indicates that issuance by G-SIBs has remained possible in periods of increased market stress, albeit at higher spreads. While the market continues to absorb issuance of TLAC eligible instruments, changing credit market conditions may begin to test appetite for TLAC for the first time.

Market developments in the EU from early 2018 to early 2019, such as general concerns about the macroeconomic growth outlook and debt sustainability concerns in some Euro area jurisdictions, impacted some of the BU G-SIBs' external TLAC issuances, especially through increased costs. According to public data (*Markit/Iboxx*), spreads of TLAC eligible debt instruments for BU G-SIBs increased over this period on average by 100bp for non-preferred senior and debt issued from holding companies, by 116 bp for Tier 2 instruments and by 337bp for AT1 instruments. However, despite higher costs in 2018, data (*Dealogic*) shows that BU G-SIBs' gross issuances of TLAC and subordinated MREL eligible debt across the spectrum of currencies was similar in 2018 (EUR 59bn) to levels observed in 2017, but higher and with a different funding mix compared to the previous three-year average (2015 – 2017) (EUR 37bn), and volumes of Tier 2 and AT1 issuances declined. High funding volumes are expected due to refinancing of maturing bonds (c.a. 10% or EUR 44bn of all maturing bonds over the next three years are TLAC / subordinated MREL bonds) and due to the MREL funding needs of other non-G-SIB institutions across the EU.

Varying estimates of investor bases

Estimates of investor classes and of the size and purpose of their investments in TLAC debt vary. In the BU, institutional investors are reported to make up most of the investor base, with bail-in eligible debt being held to a much lesser extent by retail investors and corporates. A statistic from one authority for 110 banks at year-end 2016 was that less than 4% of bank debt holders were made up of natural persons, SMEs, and corporates. Some other authorities have no information to date or note that unlike with equity securities, it is difficult to compile information on ultimate holders of bank debt. Asset managers, pension funds, and insurers are generally important buyers of TLAC debt.

A large proportion of **Japanese** TLAC debt is absorbed overseas in the US or Europe. One G-SIB noted that asset managers made up over 60% of buyers of its TLAC eligible debt, with insurance, hedge funds, sovereigns and pension funds making up the bulk of the rest of the buyers.

8. Factors impacting effective implementation

If implemented effectively, the TLAC Standard should help promote financial stability by providing home and host authorities and markets with confidence that G-SIBs have sufficient capacity to absorb losses, both before and during resolution, to implement the preferred resolution strategy and support the continued provision of critical functions. Such confidence should help to mitigate the risks that could arise should host authorities demand extra resources to be fully ring-fenced in their own jurisdictions, either ex ante or during a crisis.

As the implementation of the TLAC Standard is ongoing, authorities and firms (see **Annex III**) have identified a range of technical issues and challenges that might affect the smooth implementation of the TLAC Standard:

- **Complex design features of TLAC instruments potentially reducing legal certainty and predictability.** Authorities are noticing proposals for innovatively designed TLAC instruments and call features. Whereas some jurisdictions require a pre-approval of issuances, this is not the case in other jurisdictions. Different design features potentially introduce complexity and reduce legal certainty and predictability in a bail-in resolution.
- **Lack of clarity as regards the ranking of certain TLAC instruments in the creditor hierarchy.** There is concern about lack of clarity with respect to the ranking of certain TLAC instruments, for example, whether these rank *pari passu* or not with certain non-eligible instruments and about cross-border differences in ranking of TLAC-eligible instruments. Such lack of clarity and cross-border differences could affect market participants' ability to manage and control their risk exposures and the assessment by the authorities of the NCWOL safeguard that is necessary to determine the extent to which a departure from *pari passu* treatment of liabilities is possibly "giving rise to material risk of successful legal challenge or valid compensation claims".
- **Requirements for local issuance and restrictions on trading foreign law-governed TLAC** affecting market access and limiting access to a large investor base. Requirements to issue TLAC under local law, or restrictions on trading foreign law-governed TLAC-eligible instruments, may affect access to a large investor base.
- **Technical challenges relating to bail-in execution** arising from the format of the issuance (i.e. direct by the subsidiary to the parent versus indirect issuance) or the laws of the jurisdiction governing the issuance. For banks issuing TLAC through foreign branches, challenges may arise where the laws of the host jurisdiction permit authorities to ring-fence the foreign bank's assets to satisfy the branch's creditors under circumstances other than the non-viability of the foreign bank, including circumstances where the foreign bank continues to be viable. This scenario may create a preference for certain creditors which could be at odds with the TLAC Standard's subordination requirement while bringing into question whether the instruments will be available to absorb losses when the foreign bank is put into resolution. Similar issues may arise with respect to direct issuances in some jurisdictions where local law permits local authorities to ring-fence a foreign bank's non-banking assets to satisfy claims to local creditors.
- **Domestic requirements affecting group structure.** Structural requirements for host country operations (e.g. the establishment of a subsidiary, intermediate holding company or parent undertaking) may entail, on the one hand, high one-off implementation costs and legal entity reorganisation efforts by G-SIB groups. On the other hand, internal TLAC may be applied to a MSG grouping together several operational subsidiaries in the form of either an IPU or IHC of a G-SIB, thus centralising and simplifying the application of PONV powers. Arrangements need to

be in place to ensure there are no operational or legal barriers to the ready availability of internal TLAC to recapitalise the subsidiaries in the material sub-group.

- **Internal TLAC calibration and “readily available” non-pre-positioned TLAC.** Whereas some host jurisdictions, in the absence of enforceable and effective arrangements to ensure a credible transfer of non-pre-positioned TLAC resources to the subsidiary in time of stress, fix internal TLAC by regulation for all MSGs in their jurisdictions, others adopt a flexible approach and seek to maintain internal TLAC at the low end of the range. Host jurisdictions’ internal TLAC policies affect the availability of non-pre-positioned resources during business-as-usual and the G-SIBs’ ability to deploy those resources flexibly within a G-SIB banking group to support subsidiaries as necessary in times of stress.
- **Interaction between going and gone-concern frameworks.** Both non-capital TLAC instruments and Tier 2 instruments can be seen to serve a similar purpose of providing further loss-absorbing capacity for banks beyond equity. However, there are differences between TLAC and Tier 2 in terms of eligibility and quantitative requirements which make the capital framework more complex. Unlike non-capital TLAC instruments which absorb losses only in resolution, Tier 2 capital absorbs losses at PONV, which could be with or without entry into resolution.
- **Host jurisdiction challenges.** Jurisdictions that are characterised by high concentrations of foreign bank ownership face challenges given the large presence of subsidiaries of G-SIBs, which are often also D-SIBs in their jurisdictions. The local frameworks must ensure a level playing field taking into account the interactions with differing regulation and resolution framework in the respective G-SIB home jurisdictions (e.g. European capital, MREL and TLAC requirements) including home country recognition of capital instruments issued by subsidiaries.

9. Forward approach to ensuring continued effective implementation

The FSB does not conclude at this time that any elements of the TLAC Standard should be reconsidered. However, the review demonstrates that continued efforts are needed to support the effective implementation of the TLAC Standard and address the identified technical issues and challenges. **The FSB (through its ReSG and CBCM) will therefore:**

- 1. continue monitoring the implementation of the TLAC Standard and issuance of TLAC instruments, and will report at least annually on progress.** The FSB will monitor the implementation of the TLAC Standard for all G-SIBs across home and host jurisdictions within scope on the basis of public disclosures of external and internal TLAC by G-SIBs and surveys of authorities’ regulatory reforms and policies. As part of this, the FSB will also consider the impact in jurisdictions with high concentrations of foreign bank ownership and large presence of G-SIB subsidiaries. It will report its findings annually in its Resolution Report.
- 2. review the RAP template to ensure that CMGs consider as part of their resolvability assessments for each G-SIB the TLAC requirement, quantity and quality and the group distribution of internal TLAC.** The TLAC Standard expects authorities to assess in the context of the RAP the calibration and composition of firm-

specific TLAC, including (i) internal TLAC arrangements, (ii) transparency on the order of loss absorption by TLAC instruments within the creditor hierarchy, (iii) the legal robustness of subordination of TLAC to operational liabilities in insolvency and resolution. In addition, as noted in the FSB *Report on Market Fragmentation*, FSB (through ReSG and its bankCBCM) intends to review the RAP template as necessary to evaluate whether and how authorities could consider any potential fragmentary effects as part of resolvability discussions within CMGs.

3. take stock of the range of practices of authorities and CMGs in implementing the TLAC Standard and address any identified technical issues (considering, as appropriate, if any further guidance is needed) with particular focus on:

- pre-positioning of internal TLAC at MSGs within G-SIB groups and the process of home and host authorities' coordination in calibrating internal TLAC;
- management of non-pre-positioned TLAC resources and effective arrangements or mechanisms that ensure that these resources can be available to support MSGs when they reach the point of non-viability;
- design features of TLAC instruments (triggers, call features) and ranking in the creditor hierarchy, and authorities' approaches as regards the review of TLAC-eligibility of instruments;
- monitoring how resolution authorities examine that the conditions set out in the TLAC Standard for applying the exceptions to subordination and eligibility requirements are met. These include:

(i) the TS Section 7 exception from eligibility criteria which allows ex ante commitments pre-funded by the industry to count towards Minimum TLAC (up to 2.5% RWA when the Minimum TLAC is 16% and up to 3.5% RWA when the Minimum TLAC is 18%) subject to the condition that there are no legal impediments in doing so and that there is no particular limit specified in law with respect to the amount which may be contributed; and

(ii) the TS Section 11 exceptions from the subordination requirements which allow senior unsecured liabilities that rank *pari passu* with excluded liabilities to count towards the Minimum TLAC (up to 3.5% RWA starting 2022 and up to 2.5% RWA as from 2019) and foresee that the sum of liabilities that do not qualify as TLAC and that rank *pari passu* or junior to TLAC should comply with the 5% De Minimis rule, subject to the condition that they would not give rise to material risk of successful legal challenge or valid compensation claims.

4. consider, as part of ongoing work, how resolution-related disclosures could be further strengthened. The FSB has published a discussion paper on resolution-related disclosures⁷⁸ in June 2019 and has requested comments on whether disclosure of both external and internal TLAC, if compliant with the Basel Committee's Pillar 3 disclosure requirements, will be appropriate and sufficient for market participants to evaluate their exposures and assess resolvability, and whether any additional public disclosures related

⁷⁸ FSB (2019), [Public Disclosures on Resolution Planning and Resolvability](#), June.

to TLAC issuance and distribution could help market participants in assessing resolvability;

5. **consider, as part of its ongoing work on bail-in execution, any technical issues relating to the bail-inability of TLAC instruments arising from the format of issuance (i.e. direct vs. indirect issuance), issuance under third country law and securities law issues.** The FSB has made a commitment to complete further work on bail-in execution in 2020 and will, as part of this work, also consider the different formats of issuance and trading in a jurisdiction other than the jurisdiction where the G-SIB in resolution is incorporated and listed; and
6. **work closely with the BCBS to consider any interactions between going and gone-concern perspectives.**

ANNEX I

G-SIB SPE and MPE Resolution Entities and MSGs

Jurisdiction	Home to G-SIB resolution entities under either SPE or MPE strategies	Hosting G-SIB MSGs agreed by home and host authorities as of June 2019 (and indicative marked with *)
Banking Union	7 SPE resolution entities (BNP Paribas, Deutsche Bank, Groupe BPCE, ⁷⁹ Groupe Crédit Agricole, ING Bank, Société Générale, Unicredit Group) 2 MPE resolution entities (2 Santander)	*6 (Bank of New York Mellon, Barclays, Citigroup, HSBC, Standard Chartered, State Street) ⁸⁰
Brazil	1 MPE resolution entity (Santander)	0
Canada	1 SPE resolution entity (Royal Bank of Canada (RBC)) ⁸¹ 1 MPE resolution entity (HSBC)	0
Hong Kong	1 MPE resolution entity (HSBC)	*3 ⁸² (Bank of China, ICBC, Standard Chartered)
Japan	3 SPE resolution entities (Mitsubishi UFJ FG (MUFG), Mizuho FG, Sumitomo Mitsui FG)	*0 (Designation is in progress)

⁷⁹ FSB (2018), [List of Global Systemically Important Banks \(G-SIBs\)](#), November. BPCE was re-designated as a G-SIB in November 2018 after being previously removed from the list. As per the FSB (2015), [Total Loss-Absorbing Capacity \(TLAC\) Term Sheet](#) § 21, November, BPCE is expected to comply with the TLAC TS by 1 January 2022 if it continues to be designated.

⁸⁰ Hosting MSGs only refers to MSGs of non-EU banks with operations in the EU. It does not include intra-EU subsidiaries of EU G-SIBs. Further identification and confirmation of hosting MSGs in the Banking Union will progress following the implementation of TLAC rules in the EU via the banking legislative package.

⁸¹ FSB (2017), [List of Global Systemically Important Banks \(G-SIBs\)](#), November. Royal Bank of Canada (RBC) was designated as a G-SIB in November 2017. As per the FSB (2015), [Total Loss-Absorbing Capacity \(TLAC\) Term Sheet](#) § 21, November, RBC is expected to meet the TLAC requirements by 1 January 2022 (expected by November 2021 by its regulatory authority) if it continues to be designated.

⁸² The formal designation under jurisdictional legislation for the rest of the MSGs is expected to be completed within 2019.

Mexico	2 MPE resolution entities (HSBC, Santander)	1 (Citigroup)
Singapore	0	1 (Standard Chartered)
Switzerland	2 SPE resolution entities (Crédit Suisse, UBS)	0
UK	2 SPE resolution entities (Barclays, Standard Chartered) 2 MPE resolution entities (HSBC, Santander)	6 (Bank of America, Citigroup, Credit Suisse, Goldman Sachs, JP Morgan Chase, Morgan Stanley)
US	8 SPE resolution entities (Bank of America, Bank of New York Mellon, Citigroup, Goldman Sachs, JP Morgan Chase, Morgan Stanley, State Street, Wells Fargo) 2 MPE resolution entities (HSBC, Santander)	10 (Barclays, BNP Paribas, Crédit Suisse, Deutsche Bank, Mizuho, MUFG, RBC, Société Générale, Sumitomo Mitsui, UBS) ⁸³

⁸³ The list of MSGs corresponds with the definition of a “covered IHC” under the US TLAC rule, which includes any US intermediate holding company that (a) has at least USD 50bn in US non-branch assets and (b) is controlled by a foreign G-SIB. Legal entities of US G-SIBs in foreign jurisdictions that are identified as “US material legal entities (MLEs) “ and that are not subject to internal TLAC requirements are not covered.

ANNEX II

Rules and regulations on TLAC in G-SIB home and material host jurisdictions

Jurisdiction	External TLAC	Internal TLAC	TLAC Rules, regulations and guidance	Effective
Brazil	x		TLAC rules under discussion (could apply to one MPE resolution entity). Regulation on TLAC holding deductions published in December 2018 .	Expected: 2019
Banking Union	x	x	MREL requirements in place via BRRD/SRMR published in May 2014 . Final TLAC rules (“Banking Package”) published in June 2019 . SRB MREL policy, January 2019 .	In force: June 2019
Canada	x		Final guideline on TLAC published in April 2018	In force: September 2018
Hong Kong	x	x	Final rules on external and internal TLAC in effect December 2018	In force: 14 December 2018
Japan	x	x	Policy proposal on external and internal TLAC published in April 2018 . Final rules on TLAC published in March 2019 .	In force: 31 March 2019
Mexico	x	x	TLAC rules under discussion.	Expected: undisclosed
Singapore		x	Internal TLAC requirements have been imposed and communicated to identified MSG.	In force: 1 January 2019
Switzerland	x		Final requirements published in May 2016 .	In force: 1 July 2016
UK	x	x	Policy statement on MREL published in June 2018 which considers the TLAC Standard.	In force: 1 January 2019
US	x	x	Final rules on external TLAC (for domestic G-SIBs) and internal TLAC (for covered US IHCs of foreign G-SIBs) published in December 2016 . Proposed rules on TLAC holding deductions published in April 2019 .	In force: 1 January 2019

ANNEX III

Stakeholder consultations – Summary of responses to the call for public feedback and industry roundtable

On 6 June 2018 the FSB issued a call for public feedback to inform the review of the technical implementation of the TLAC Standard that it was mandated to undertake.⁸⁴ Responses were published by the FSB.⁸⁵ In addition, the FSB’s Resolution Steering Group held a roundtable on 18 September 2018 with representatives from European, Japanese, Swiss, UK and US G-SIBs, rating agencies, pension fund investors, and industry associations.

Participants and respondents to the call for public feedback welcomed the opportunity to comment and submit views on the technical implementation of the TLAC Standard. They expressed support for a consistent implementation of the standard across all relevant jurisdictions in a manner that promotes a level playing field and expressed the view that implementation has resulted in positive outcomes in terms of strengthened resiliency. Respondents highlighted several issues, some general in nature and some technical, for the FSB to consider during its review of the implementation of the TLAC Standard.

The below summarises the principal themes emerging from written responses to the call for public feedback. It does not represent the views of FSB member authorities or reflect consensus views expressed by the external stakeholders.

Market characteristics, level playing field and consistent regulatory adoption

Respondents estimated that the global market for TLAC (and MREL) debt securities will reach between USD 2trn and 4trn in the next few years, and that it is important to encourage efficient markets and investor diversification to enhance loss-absorption globally.

While all respondents welcomed the flexibility provided for in the TS, they also expressed concern about the inconsistent implementation or the application of “super-equivalent requirements” across jurisdictions of certain elements of the TLAC Standard giving rise to an uneven playing field. The areas where respondents identified differing jurisdictional approaches included the adoption of minimum long-term debt requirements, specific home country governing law requirements, the designation of MSGs, the calibration of internal TLAC, and the legality of retail investors to hold TLAC instruments. One respondent recommended that the FSB confirmed the non-binding nature of the “expectation” that 33% of external TLAC be in the form of eligible long-term debt.

Respondents expressed concern about reduced resiliency in a crisis due to an ex ante distribution of internal TLAC that would not match the actual distribution of losses incurred, and the risk of outcomes counter to the goal of enhancing cooperation among host authorities, and between host and home authorities.

⁸⁴ FSB (2018), [FSB seeks feedback on the technical implementation of the TLAC Standard](#), June.

⁸⁵ FSB (2018), [Public responses to the call for public feedback on Monitoring the Technical Implementation of the FSB TLAC Standard](#), August.

Material subsidiaries/sub-groups

Respondents noted the downsides of flexibility when it comes to the designation of MSGs and the degree of discretion of some host authorities to unilaterally designate entities as MSG and asked the FSB to encourage jurisdictions to adhere to the standards of the TS. A technical suggestion was that the FSB clarify that material subgroups are under combined legal ownership rather than “virtual subgroups of sister companies”. It was also noted that some authorities referred to “material legal entities” for purposes of resolution planning and that the relationship between material sub-groups and material legal entities was not clear.

Internal TLAC

Respondents expressed concern about a lack of consistency across jurisdictions in approaches to the calibration of internal TLAC requirements and the imposition by G-SIB host jurisdictions of internal TLAC requirements set at the high end of the range contemplated by the TLAC TS. They noted that a high calibration of internal TLAC requirements could increase the risk that, in an actual financial distress scenario, the distribution of internal TLAC give rise to a situation where the pre-positioned internal TLAC at material subsidiaries would not match the actual distribution of losses incurred (“misallocation risk”) and would likely to be ring-fenced by host authorities, rendering it unavailable to be readily deployed to recapitalise other subsidiaries during periods of material financial distress.

Respondents elaborated that internal capital flexibility can reduce misallocation risk and balance certainty for host jurisdictions with flexibility for home jurisdictions, and suggested that authorities adopt a presumptive 75% starting point for internal TLAC calibration and allow internal TLAC to be composed of a mixture of pre-positioning and contractual agreements (e.g. including agreements such as “secure support agreements” (SSAs) used by US G-SIBs) as substitute for pre-positioned on-balance sheet internal TLAC. Respondents suggested that the FSB explicitly recognise that SSAs may constitute valid collateralised guarantees and thus internal TLAC under the TS. Respondents also stressed the need for concerted global cooperation in setting appropriate levels of internal TLAC as jurisdictions move forward with implementation. They requested that the FSB consider issuing further guidance to encourage global cooperation and further harmonisation of internal TLAC requirements across jurisdictions and that FSB consider whether further guidance is needed to ensure that internal TLAC requirements imposed by non-material host jurisdictions do not exacerbate the problem of misallocation risk or unduly interfere with the resiliency of G-SIB groups. Respondents also suggested that the FSB focus on coordinated implementation of the information sharing protocols included in previously published FSB guidance on CMG coordination with non-CMG host authorities and monitor jurisdictional implementation of arrangements for triggering the conversion or write-down of internal TLAC debt to ensure consistency with applicable FSB guidance.

It was also suggested that the FSB monitor triggering and write-down provisions for consistency and that internal TLAC debt instruments should be treated as debt for tax purposes. It was noted that differences between regimes (e.g. the EU MREL standard vs. the US long-term debt requirement) complicate comparability and coordination.

Finally, it was observed that certain host jurisdictions expect internal TLAC to be entirely equity funded, creating the concern that this could lead to structural mismatches between

external and internal TLAC instruments (i.e. uncertain dividend payment on internal equity supporting fixed income interest payments on external debt) and double leverage challenges.

Surplus TLAC

Respondents expressed support for measures aimed at ensuring the availability of surplus TLAC that can be flexibly deployed in the event of stress. However, they also cautioned against any strict requirements in relation to the form and amount of such surplus TLAC that could have unintended consequences. For instance, requiring such recapitalisation resources to be held as high quality liquid assets (HQLA)—may have adverse implications for a firm’s ability to finance its external TLAC issuances. Moreover, respondents cautioned that “structural negative carry” (a situation in which the cost of holding a security exceeds the income earned) can be created if it is mandated, or in practice implemented, that surplus TLAC be held mainly in the form of HQLA.

One respondent also suggested that authorities consider further through which mechanisms surplus TLAC located at one entity could be used in resolution for the benefit of another nothing that impediments could arise from a company law and governance perspective.

SPE and MPE resolution strategies

Respondents expressed the view that SPE and MPE resolution strategies were not treated equally and suggested that the calibration of external TLAC requirements should result in similar outcomes independently of the resolution strategy (MPE or SPE). They suggested that calibration requirements should be discussed among hosts of MPE G-SIBs, otherwise over-calibration can lead to inconsistencies. In addition, one respondent stated that all host jurisdictions potentially involved in MPE resolution should be kept in mind, as subsidiaries in these countries will be subject to the power of the local authorities.

One respondent pointed out that requirements such as intermediate holding company in the US and intermediate parent undertaking in Europe could impede the effectiveness of an SPE approach.

Governing law and contractual bail-in recognition clauses

Respondents suggested that another level playing field issue could be addressed if the FSB were to affirm that instruments must not in all cases be governed by a G-SIB’s home country law, and that the availability of properly constructed contractual bail-in recognition clauses – which are contemplated in the TS – could be one way to go about this. Examples given were Swiss and US requirements for home country governing law, which can create “super-equivalence” and stated that the market for the large amount of TLAC debt to be issued globally would benefit from a clarification on contractual bail-in clauses. One respondent elaborated that enforceability should not be a concern at least for well-established jurisdictions such as New York, the UK, and major EU financial markets, and suggested the home country requirement be relaxed for issuance in those jurisdictions.

TLAC eligibility and creditor hierarchy

Clarification on TLAC eligibility, through explicit knowledge of which debt instruments are deemed TLAC eligible or rank *pari passu* with eligible instruments, was seen as important since eligibility requirements may differ across jurisdictions. For implementation it was suggested

that the FSB or BCBS could establish a framework to create and publish such a list for each bank to access (as with the BCBS countercyclical capital buffer ratio reporting). Another respondent suggested that local authorities should provide more clarity on the loss absorption hierarchy and that a greater harmonisation across jurisdictions would be desirable. It was also suggested that the stacking order of buffers should be comparable and proportionate. (For instance, that prudential RWA buffers should be “on top of” minimum RWA-related TLAC requirements.)

The classification of “green instruments” as TLAC-eligible liabilities or regulatory capital raises several questions which could be examined further: (a) the potential to create incentives to redeem where there is a maturity mismatch between the capital instrument and the financed green assets; (b) a lack of clarity around the measurement basis for the amount of eligible green assets; and (c) the potential risk of invoking the no creditor worse-off provisions if the resolution authority decides to bail-in the TLAC/MREL instrument while the underlying green projects are still performing.

BCBS Framework

Respondents commented on the BCBS Framework, including suggestions that the BCBS revise the TLAC holdings standard to adopt the like-for-like principle of the Basel III deduction approach, and replace the 5% threshold for market making with a market making exemption. Also supported was flexibility for TLAC issued by other G-SIBs and D-SIBs to be held for market making purposes above the 5% threshold.

Protection of retail investors

Respondents expressed the view that concerns around the protection of retail investors should be handled by market regulators rather than prudential regulators, noting that bail-in debt could be suitable for more sophisticated retail investors, while pointing out that secondary market transactions cannot be controlled.

Disclosure

Respondents suggested that the FSB encourage jurisdictions to apply clear and coherent standards of disclosure to ensure that firms are generally subject to equal and consistent levels of disclosure requirements. One respondent noted that costs of the disclosure requirement for creditor rankings of material sub-group entities are burdensome, and suggested a reconsideration of this requirement. One respondent also suggested that the FSB or BCBS establish a framework to create and publish a list of TLAC eligible instruments and those debt instruments which rank *pari passu* with such instruments.

Other issues

Industry respondents suggested that authorities reward higher resolvability with, for example, lower requirements rather than only penalising obstacles to resolvability and encouraged clarity of creditor hierarchies to support adequate risk disclosure.

Industry respondents suggested authorities review their TBTF regulations; eliminate unnecessary or non-practical requirements and unintended consequences; and articulate confidence that G-SIB resolution planning is credible and that TBTF has been solved.

Abbreviations

AT1	Additional Tier 1
BCBS	Basel Committee on Banking Supervision
BRRD	Bank Recovery and Resolution Directive
BRRD2	Amended Bank Recovery and Resolution Directive
BU	Banking Union
CBCM	Cross Border Crisis Management Group
CDIC	Canada Deposit Insurance Corporation
CET1	Common Equity Tier 1
CMG	Crisis Management Group
CRR	Capital Requirements Regulation
CRR2	Amended Capital Requirements Regulation
DIA	Deposit Insurance Act
DICJ	Deposit Insurance Corporation of Japan
D-SIB	Domestic Systemically Important Bank
EEA	European Economic Area
EME	Emerging Market Economy
EU	European Union
FINMA	Financial Market Supervisory Authority
GDP	Gross Domestic Product
G-SIB	Global Systemically Important Bank
G-SIFI	Global Systemically Important Financial Institution
HKMA	Hong Kong Monetary Authority
HQLA	High Quality Liquid Assets
IHC	Intermediate Holding Company
IPU	Intermediate Parent Undertaking
KA	Key Attributes
LAC	Loss Absorbing Capacity
LRD	Leverage Ratio Denominator
MPE	Multiple Point of Entry (resolution strategy)
MREL	Minimum Requirement for own funds and Eligible Liabilities
MSG	Material Sub-Group
NCWOL	No Creditor Worse Off than in Liquidation

NPS	Non-Preferred Senior debt
OCC	Office of the Comptroller of the Currency
PONV	Point of Non-Viability
RAP	Resolvability Assessment Process
ReSG	Resolution Steering Group
RWA	Risk Weighted Assets
SIFI	Systemically Important Financial Institution
SPE	Single Point of Entry (resolution strategy)
SPV	Special Purpose Vehicle
SRMR	Single Resolution Mechanism Regulation
SRMR2	Amended Single Resolution Mechanism Regulation
SSA	Secured Support Agreement
TBTF	Too-Big-To-Fail
TLAC	Total Loss-Absorbing Capacity
TS	Term Sheet

Definitions of Key Terms

Crisis Management Groups (CMGs): as called for in the Key Attributes, home and key host authorities form CMGs for each G-SIB with the objective of enhancing preparedness for, and facilitating the management and resolution of, a cross-border financial crisis affecting the firm (Key Attribute (KA) 8).

Minimum External TLAC (“Minimum TLAC”): the loss absorption and recapitalisation capacity set in relation to the consolidated balance sheet of each resolution group and applied to each resolution entity within a G-SIB group (TLAC TS⁸⁶ Section 3).

Internal TLAC: the loss-absorbing capacity that resolution entities have committed to material sub-groups and which can be used to absorb losses and recapitalise material sub-groups when the latter reach the point of non-viability (TLAC TS Section 16).

Key Attributes: the FSB issued the *Key Attributes of Effective Resolution Regimes for Financial Institutions*⁸⁷ (“Key Attributes” or “KAs”) in November 2011 which it subsequently revised in 2014, as part of the package of policy measures to address the moral hazard risks posed by systemically important financial institutions (SIFIs).⁸⁸ The Key Attributes, which were endorsed by the G20 Leaders at the Cannes Summit, set out the core elements of effective resolution regimes that apply to any financial institution that could be systemically significant or critical in the event of failure. Since 2011 the FSB has developed further guidance on the implementation of the Key Attributes.⁸⁹

Material sub-group (MSG): consists of one or more direct or indirect subsidiaries of a resolution entity that: (i) are not themselves resolution entities; (ii) do not form part of another material sub-group of the G-SIB; (iii) are incorporated in the same jurisdiction outside of their resolution entity’s home jurisdiction (unless otherwise agreed by the CMG); and that (iv) either on a solo or a sub-consolidated basis meet at least one of the materiality criteria: (a) have more than 5% of the consolidated RWA of the G-SIB group; (b) generate more than 5% of the total operating income of the G-SIB group; (c) have a total leverage exposure measure larger than 5% of the G-SIB group’s consolidated leverage exposure measure; or (d) have been identified by the firm’s CMG as material to the exercise of the firm’s critical functions (TLAC TS Sections 16 and 17).

Material host jurisdiction: a jurisdiction hosting a MSG of an SPE G-SIB or a resolution entity of an MPE G-SIB.

Operational liabilities: liabilities on which the performance of critical functions depends and which are excluded from TLAC eligibility (TLAC TS Principle (vii)).

Pre-positioned internal TLAC: the amount of internal TLAC issued by a MSG to the resolution entity, either directly or indirectly through other legal entities in the ownership chain

⁸⁶ FSB (2015), *Total Loss-Absorbing Capacity (TLAC) Principles and Term Sheet*, November.

⁸⁷ FSB (2014), revised *Key Attributes of Effective Resolution Regimes for Financial Institutions*, October.

⁸⁸ FSB (2014), *Guidance on Resolution of Non-Bank Financial Institutions*, October. The FSB published sector-specific implementation guidance (covering financial market infrastructures, insurers and the protection of client assets in resolution), which has been incorporated as annexes to the Key Attributes.

⁸⁹ FSB (2011-2017), *Understanding the Key Attributes*.

which can be triggered to absorb losses and recapitalise material subgroups (TLAC TS Section 18 and 19).

Resolution entity: an entity of a resolution group (parent company, an intermediate or ultimate holding company, or an operating subsidiary in the case of multiple point of entry strategies) which is identified by the resolution authority as an entity with respect to which resolution tools will be applied in accordance with the resolution strategy for the G-SIB (TLAC TS Section 3).

Resolution group: a resolution entity, and any entities that are owned or controlled by a resolution entity either directly or indirectly through subsidiaries of the resolution entity and that are not themselves resolution entities or subsidiaries of another resolution entity, form a resolution group. Each resolution entity and each direct or indirect subsidiary of a resolution entity is part of exactly one resolution group (FSB *Principles on Bail-in Execution*⁹⁰ and TLAC TS Section 3).

Resolution strategy: the Key Attributes (KA 11.6) require the development of a resolution strategy that establishes an approach for resolving the failing firm in a way that protects its critical functions, government funds and systemic stability, and achieves other relevant resolution objectives. The resolution strategy is a key component of the overall resolution plan required under the Key Attributes.

- **Single point of entry (SPE):** resolution strategy involving the application of resolution powers, for example, bail-in and/or transfer tools, at the top parent or holding company level by a single resolution authority – probably in the jurisdiction responsible for the global consolidated supervision of a group. An SPE strategy operates through the absorption of losses incurred within the group by the top parent or holding company through, for example, the write-down and/or mandatory conversion of unsecured debt issued by that top parent or holding company into equity (“bail-in”). Provided that sufficient loss-absorbing capacity is available at the top parent or holding level, operating subsidiaries should be able to continue as a going concern without entering resolution (FSB *Guidance on Developing Effective Resolution Strategies*, July 2013⁹¹).
- **Multiple point of entry (MPE):** resolution strategy involving the application of resolution powers by two or more resolution authorities to different parts of the group, and is likely to result in a break-up of the group into two or more separate parts. The group could be split on a national or regional basis, along business lines, or some combination of each. The resolution powers applied to the separate parts need not be the same and could include resolution options, such as bail-in within resolution, use of a bridge entity, transfer of business or wind-down. MPE strategies nevertheless require actions to be coordinated across jurisdictions so as to avoid conflicts or inconsistencies that undermine the effectiveness of the separate resolution actions, a disorderly run on assets and contagion across the firm (FSB *Guidance on Developing Effective Resolution Strategies*, July 2013).

⁹⁰ FSB (2018), [Principles on Bail-in Execution](#), June.

⁹¹ FSB (2013), [Guidance on Developing Effective Resolution Strategies](#), July

Resolvability Assessment Process (RAP): the process which should be conducted by senior policy makers from CMG member authorities, facilitating adequate and consistent reporting on the resolvability of each G-SIB and overall status of the resolution planning process (Key Attribute 9 footnote 6, TLAC TS Principle (xiii)).

Subordination: where the claims on the principal amount of the liabilities under the provisions governing the instruments are wholly subordinated in the hierarchy of creditors to claims arising from liabilities excluded from bail-in, with the objective of ensuring absorption of losses prior to liabilities excluded from TLAC in insolvency or in resolution and without giving rise to material risk of successful legal challenge or valid compensation claims (TLAC TS Section 11).

- **Contractual subordination:** the contractual provisions governing the liabilities specify that, in the event of normal insolvency proceedings, the claim on the principal amount of the instruments ranks below claims arising from any of the liabilities excluded from TLAC (TLAC TS Section 11).
- **Statutory subordination:** the applicable law specifies that in the event of normal insolvency proceedings, the claim on the principal amount of the instruments ranks below claims arising from any of the liabilities excluded from TLAC (TLAC TS Section 11).
- **Structural subordination:** the instruments are issued by a resolution entity which does not have on its balance sheet any excluded liabilities that rank *pari passu* or junior to liabilities eligible for TLAC (TLAC TS Section 11).