FSB FINANCIAL STABILITY BOARD

Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution

Total Loss-absorbing Capacity (TLAC) Term Sheet

9 November 2015

Foreword

At the St. Petersburg Summit in 2013, the G20 Leaders called on the Financial Stability Board (FSB), "in consultation with standard setting bodies, to assess and develop proposals by end-2014 on the adequacy of global systemically important financial institutions' loss-absorbing capacity when they fail."[1]

The FSB's agenda for addressing the risks arising from global systemically important financial institutions (G-SIFIs) was set out in 2010, with the goal of reducing both the probability and impact of failure of such firms. It consisted of requirements for assessing the systemic importance of institutions, for additional going-concern loss absorbency, for increased supervisory intensity, for more effective resolution, and for stronger financial market infrastructure. Substantial progress has been made in the implementation of these requirements. However, for home and host authorities and markets to have confidence that systemically important banks are truly no longer "too–big-to-fail" and are resolvable without exposing public funds to loss, they must have confidence that these firms have sufficient capacity to absorb losses, both before and during resolution.

The FSB has developed, in consultation with the Basel Committee on Banking Supervision (BCBS)

(i) a set of principles that elaborate on the premise set out in the September 2013 report on *Progress and Next Steps Towards Ending "Too-Big-To-Fail" (TBTF)*[2] that there must be sufficient loss-absorbing and recapitalisation capacity available in resolution to implement an orderly resolution that minimises impacts on financial stability, ensures the continuity of critical functions, and avoids exposing public funds to loss; and

(ii) a term sheet that implements these principles in the form of an internationally agreed standard on the adequacy of total loss absorbing capacity for global systemically important banks (G-SIBs). The term sheet should be read in conjunction with the principles. It defines a requirement for instruments and liabilities that should be readily available for bail-in within resolution at G-SIBs, but does not limit authorities' powers under the applicable resolution law to expose any liability to loss through bail-in or the application of other resolution tools.

The Principles and Term Sheet form a new international standard for G-SIBs. The FSB will monitor implementation of the standard. It will undertake a review of the technical implementation by the end of 2019.

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[1] See G20 Leaders' Declaration 2013 https://www.g20.org/sites/default/files/g20_resources/library/Saint_Petersburg_Declaration_ENG_0.pdf

[2] http://www.financialstabilityboard.org/publications/r_130902.htm

Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution

(i) There must be sufficient loss-absorbing and recapitalisation capacity available in resolution to implement an orderly resolution that minimises any impact on financial stability, ensures the continuity of critical functions, and avoids exposing taxpayers (that is, public funds) to loss with a high degree of confidence.

This is the main guiding principle from which the other principles flow. Instruments or liabilities that are not eligible as TLAC will still be subject to potential exposure to loss in resolution, in accordance with the applicable resolution law.

Calibration of the amount of TLAC required

(ii) Authorities should determine a firm-specific Minimum Total Loss-absorbing Capacity (TLAC) requirement for each G-SIB which respects principles (iii), (iv), and (v).

In calibrating the individual requirement for specific firms, authorities will take into account the recovery and resolution plans of individual G-SIBs, their systemic footprint, business model, risk profile and organisational structure.

(iii) Each G-SIB should be required to meet a firm-specific Minimum TLAC requirement that is at least equal to the common minimum agreed by the FSB.

A common minimum is necessary to help achieve a level playing field internationally and to ensure that there is market confidence that each G-SIB has a minimum amount of loss-absorbing capacity that would be available to absorb losses and recapitalise it in resolution.

(iv) In setting firm-specific Minimum TLAC requirements, authorities should make appropriately prudent assumptions about losses incurred prior to resolution, as well as losses realised in the prudent valuation necessary to inform resolution actions.

The *FSB Key Attributes of Effective Resolution Regimes for Financial Institutions*[3] require that resolution action is taken at a sufficiently early point, if there is no reasonable prospect of recovery outside of resolution, with the aim of preserving value. Furthermore, the early intervention of supervisory authorities should moderate those losses. There could therefore be some positive net asset value at entry into resolution. But, balanced against this, experience shows that the valuation in resolution reveals losses that had not previously been realised, that the resolution may be followed by additional losses, and that overly-optimistic risk weightings may need to be revised upward.

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[3] http://www.financialstabilityboard.org/wp-content/uploads/r_141015.pdf

(v) After the resolution transaction, to ensure continuity of critical functions, the entity or group of entities emerging from resolution must meet the conditions for authorisation, including any consolidated capital requirements, and be sufficiently well capitalised to command market confidence.

Resolution is not resurrection. But nor is it insolvency: the institution or successor institution (e.g., bridge institution) has to meet at least the minimum conditions for authorisation in order that supervisors may allow it to continue performing authorised activities, in particular critical functions. Moreover, the reorganisation or solvent wind-down that will be necessary following resolution may require a level of capitalisation above that required by supervisors so that counterparties continue to trade with the resolved firm and provide funding to it. Consideration of potential losses arising from post-resolution reorganisation should also be made.

Ensuring the availability of TLAC for loss absorption and recapitalisation in the resolution of cross-border groups

(vi) Host authorities must have confidence that there is sufficient loss-absorbing and recapitalisation capacity available to subsidiaries in their jurisdictions with legal certainty at the point of entry into resolution.

Without such confidence, host authorities could demand extra resources to be ring-fenced in their own jurisdictions either ex ante or ex post in a resolution. The adverse consequences of such actions, including global fragmentation of the financial system, and disorderly resolutions of failed cross-border firms, should be avoided. To implement an orderly resolution, there must be sufficient flexibility to use loss-absorbing capacity within a G-SIB where needed. This means that there will need to be a credible mechanism by which losses and recapitalisation needs may be passed with legal certainty to the resolution entity or entities.

Determination of instruments eligible to meet minimum TLAC requirements

(vii) Exposing instruments eligible for Minimum TLAC to loss should be legally enforceable, and should not give rise to systemic risk or disruption to the provision of critical functions.

Given that TLAC-eligible instruments will need to absorb losses and contribute to recapitalisation needs in order for an orderly resolution to take place, there is a particular need to ensure that authorities possess the necessary legal powers to expose the TLAC-eligible instruments to loss and that they can exercise their powers without material risk of successful legal challenge or giving rise to compensation costs under the "no creditor worse off than in liquidation" (NCWOL) principle. Similarly, authorities must be confident that the holders of these instruments 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. TLAC should not therefore include operational liabilities on which the performance of critical functions depends, and TLAC should be subordinated in some way to those operational

liabilities. Any instruments or liabilities that cannot be written down or converted into equity by the relevant resolution authority without giving rise to material risk of NCWOL claims should not be eligible as TLAC.

(viii) Instruments that are eligible to meet Minimum TLAC requirements should be stable, long-term claims that are not repayable on demand or at short notice.

The term "TLAC-eligible instrument" refers to any capital instrument, debt instrument, liability or other item that is eligible as TLAC under the term sheet. Maturity restrictions on TLAC-eligible instruments are necessary to ensure that, if a firm's financial situation deteriorates, the loss-absorbing capacity available in any subsequent resolution is not diminished through a withdrawal of funds. The risk of a sudden and unexpected breach of TLAC is therefore much reduced.

Interaction with regulatory capital requirements and consequence of breaches of TLAC

(ix) Regulatory capital buffers must be usable without entry into resolution.

Firms must be allowed to utilise Basel III buffers without entering resolution. The setting of Minimum TLAC requirements should not interfere with that.

(x) A breach or likely breach of Minimum TLAC should be treated as severely as a breach or likely breach of minimum capital requirements and addressed swiftly, to ensure that sufficient loss-absorbing capacity is available in resolution.

If a firm exhausts its regulatory capital buffers and has breached or is likely to breach its Minimum TLAC requirement, authorities should require the firm to take prompt action to address the breach or likely breach. Authorities must ensure that they intervene and place a firm into resolution sufficiently early if it is deemed to be failing or likely to fail and there is no reasonable prospect of recovery.

Transparency

(xi) Investors, creditors, counterparties, customers and depositors should have clarity about the order in which they will absorb losses in resolution.

This requires disclosure of information on the hierarchy of liabilities on a legal entity basis for, at a minimum, all resolution entities and each legal entity that forms part of a material sub-group and issues internal TLAC to a resolution entity, so that there is as much clarity as possible ex ante about how losses are absorbed and recapitalisation is effected in the resolution of cross-border groups. The subordination of TLAC-eligible instruments to operational liabilities (Principle vii) helps to ensure that there is increased certainty over the order in which liabilities absorb losses in resolution.

Limitation of contagion

(xii) Authorities should place appropriate prudential restrictions on G-SIBs' and other internationally active banks' holdings of instruments issued by G-SIBs that are eligible to meet the Minimum TLAC requirement.

To reduce the potential for a G-SIB resolution to spread contagion into the global banking system, it will be important to strongly disincentivise internationally active banks from holding TLAC issued by G-SIBs.

Review

(xiii) The calibration and composition of firm-specific TLAC requirements should be subject to review in the FSB Resolvability Assessment Process (RAP).

The objective of the RAP is to promote adequate and consistent reporting on the resolvability of each G-SIFI, and help determine what should be done to address material recurring issues with respect to resolvability. As TLAC is a key element of ensuring resolvability for G-SIBs, it should be captured in the RAP. In particular, the RAP should assess the extent to which the calibration and composition of firm-specific TLAC requirements, including internal TLAC arrangements, transparency in the order of loss absorption, and the legal robustness of subordination of TLAC to operational liabilities in insolvency and resolution, promote confidence amongst home and host authorities, creditors and other stakeholders that effective resolution arrangements are in place for all G-SIBs.

Total Loss-absorbing Capacity (TLAC) term sheet

1. OBJECTIVE	The objective of this standard is to ensure that G-SIBs have the loss-absorbing and recapitalisation capacity necessary to help ensure that, in and immediately following a resolution, critical functions can be continued without taxpayers' funds (public funds) or financial stability being put at risk.
2. COVERED FIRMS	Global systemically important banks (G-SIBs), according to the phase-in set out in Section 21 (Conformance Period).
3. MINIMUM EXTERNAL TLAC REQUIREMENT	G-SIBs will be required to meet a new requirement for Minimum External Total Loss-absorbing Capacity ("Minimum TLAC") alongside minimum regulatory capital requirements set out in the Basel III framework ("minimum regulatory capital requirements"). The Minimum TLAC requirement will be set in accordance with this term sheet. The Minimum TLAC requirement will be applied to each resolution entity within each G-SIB. A resolution entity is an entity to which resolution tools will be applied in accordance with the resolution strategy for the G-SIB. Depending on the resolution strategy, a resolution entity may be a parent company, an intermediate or ultimate holding company, or an operating subsidiary. A G-SIB may have one or more resolution entities. A resolution entity and any entities that are owned or controlled by a resolution entity either directly ("direct subsidiaries") or indirectly through subsidiaries of the resolution entity ("indirect subsidiaries") 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. The Minimum TLAC requirement for each resolution entity will be set in relation to the consolidated balance sheet of each resolution group. For G-SIBs with more than one resolution entity and resolution group, 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 they should be deducted from 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. The G-SIB's home and relevant host authorities, meeting in the Crisis Management Group (CMG), shall discuss and, where appropriate and consistent with the resolution strategy, agree on the allocation of the deduction between the subsidiary resolution entity and the parent resolution entity. In all cases, the deduction at the parent must be no lower than the parent's exposure to the subsidiary's TLAC, less the amount of TLAC above the subsidiary's Minimum TLAC

	requirement ("surplus TLAC") that is attributable to the parent (that is, excluding surplus TLAC attributable to third party investors). The calculation of these surpluses should take into account any adjustment that has been agreed pursuant to the paragraph below. Any resulting change in the location of the deduction must respect all regulatory requirements applicable to the G-SIB and be consistent with the G-SIB's resolution strategy. For G-SIBs with more than one resolution entity and resolution group, if the sum of Minimum TLAC requirements of the resolution entities within the same G-SIB is above the Minimum TLAC requirement which would apply if the G-SIB were to have only one resolution entity, the G-SIB's home and relevant host authorities, meeting in the CMG, shall discuss, and where appropriate and consistent with the G-SIB's resolution strategy, agree an adjustment to minimise or eliminate that difference. Such an adjustment may be applied in respect of differences in the calculation of risk weighted assets between home and host jurisdictions. However, it cannot be applied to eliminate differences resulting from exposures between resolution groups. In any event, the sum of Minimum TLAC requirements of the resolution entities in relation to the consolidated balance sheet of the G-SIB shall not be lower than the Minimum set out in Section 4.
4. CALIBRATION OF MINIMUM TLAC	Minimum TLAC must be at least 16% of the resolution group's RWAs ("TLAC RWA Minimum") as from 1 January 2019 and at least 18% as from 1 January 2022. This requirement does not include any applicable regulatory capital (Basel III) buffers, which must be met in addition to the TLAC RWA Minimum. Minimum TLAC must be at least 6% of the Basel III leverage ratio denominator ("TLAC LRE Minimum") as from 1 January 2019. As from 1 January 2022, the TLAC LRE Minimum must be at least 6.75% of the Basel III leverage ratio denominator. This requirement does not limit authorities' powers to set a requirement above the common minimum or put in place buffers in addition to the TLAC LRE Minimum.
5. ADDITIONAL FIRM-SPECIFIC EXTERNAL TLAC REQUIREMENTS	Home authorities of resolution entities, in consultation with the CMG and subject to review in the Resolvability Assessment Process (RAP), should apply additional firm-specific requirements above the common Minimum TLAC if they determine that this is necessary and appropriate to implement an orderly resolution, minimise the impact on financial stability, ensure the continuity of critical functions, or avoid exposing public funds to loss with a high degree of confidence.

6. RELATIONSHIP WITH CAPITAL REQUIREMENTS	Minimum TLAC is an additional requirement to minimum regulatory capital requirements. Capital that counts towards satisfying minimum regulatory capital requirements[4] may also count towards satisfying the Minimum TLAC requirement subject to the following conditions: a. Common Equity Tier 1 (CET1) regulatory capital used to meet Minimum TLAC must not be used to also meet regulatory capital buffers; b. non-CET1 regulatory capital instruments may only be issued under, or be otherwise subject to the laws of a jurisdiction other than that of the resolution entity if, under those laws, the application by the resolution entity's resolution authority of resolution tools or other statutory write-down or conversion powers is effective and enforceable on the basis of binding statutory provisions or legally enforceable contractual provisions for the recognition of resolution or other write-down or conversion actions; c. non-CET1 regulatory capital instruments issued by subsidiaries of the resolution entity that are located in a jurisdiction other than that of the resolution entity must, with the agreement of the relevant home and host authorities, be capable of being written down or converted to equity at the point of non-viability of the subsidiary, without entry of the subsidiary into statutory resolution proceedings; d. regulatory capital instruments used to meet Minimum TLAC must not be funded directly or indirectly by a party related to the resolution entity (for example, another resolution entity in the same group), except where the relevant home and host authorities in the CMG agree that it is consistent with the resolution strategy to do so[5]; e. regulatory capital instruments issued from entities forming part of a material sub-group (as defined in Section 17) may count towards Minimum TLAC 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;

[4] Only to the extent that it is recognised as Tier 1 or Tier 2 capital under the rules set out in paragraphs 52 to 65 of the Basel III framework. (Basel III: A global regulatory framework for more resilient banks and banking systems (www.bis.org/publ/bcbs189.pdf) and point of non-viability (PON) press release of 13 January 2011 (http://www.bis.org/press/p110113.htm)).

[5] This exception is only applicable for G-SIBs for which there is a multiple point of entry (MPE) resolution strategy and therefore more than one resolution entity.

f. as from 1 January 2022 any regulatory capital instruments used to meet Minimum TLAC must meet the requirements set out in Sections 7 to 14 and must be directly issued from the resolution entity, subject to the following exceptions:

(i) CET1 regulatory capital issued from subsidiaries forming part of the resolution entity's resolution group to the extent that this is recognised as CET1 for the consolidated resolution entity under the rules set out in paragraph 62 of the Basel III framework[6]; and

(ii) regulatory capital instruments that are issued by cooperative banks or financial institutions affiliated to them that have in place an institutional protection scheme or other cooperative mutual solidarity system that protects the solvency and liquidity of the affiliated cooperative banks and institutions; provided that the regulatory capital instruments issued by them continue to meet conditions a. to e. of this Section.

If debt liabilities that reach the one year minimum residual maturity threshold set out in Section 9(d), mature or otherwise no longer qualify as TLAC, are not replaced, a G-SIB may breach its buffer requirements in the same way that it may breach its buffer requirements if maturing Tier 2 instruments that count towards the Basel III Total Capital requirement are not replaced. For the duration of the breach of the buffer requirement, the automatic restrictions specified in Basel III would apply. The G-SIB may choose to issue additional regulatory capital instruments or other TLAC-eligible instruments to address this breach. This exactly mirrors the treatment of a breach of buffer requirements due to Tier 2 instruments maturing and not being replaced.

In addition, to help ensure that a failed G-SIB has sufficient outstanding long-term debt for absorbing losses and/or effecting a recapitalisation in resolution, 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.

A breach, or likely breach, of Minimum TLAC should ordinarily be treated by supervisory and resolution authorities as seriously as a breach, or likely breach, of minimum regulatory capital requirements.

[6] Basel III: A global regulatory framework for more resilient banks and banking systems (www.bis.org/publ/bcbs189.pdf)

7. INSTRUMENTS ELIGIBLE FOR EXTERNAL TLAC	The core features set out in Sections 7 to 14 apply to all instruments that count towards satisfying Minimum TLAC subject to the exceptions set out in Sections 6 and 8. To the extent permitted in law, instruments and liabilities that are not eligible as TLAC pursuant to Section 9 or that are excluded from TLAC pursuant to Section 10 remain subject to potential exposure to loss in resolution, in accordance with the applicable resolution law and the resolution strategy for the G-SIB. The term sheet does not limit any powers authorities may have under applicable resolution law to expose any instrument or liability to loss in resolution through bail-in or the application of other resolution tools. Credible ex-ante commitments to recapitalise a G-SIB in resolution as necessary to facilitate an orderly resolution and, in particular, to provide continuity of the firm's critical functions, from those authorities which may be required to contribute both to resolution funding costs (to cover losses and meet recapitalisation needs) and temporary resolution funding may count towards a firm's Minimum TLAC, subject to the agreement of the relevant authorities, and so long as there are no legal impediments to so doing, including that there is no requirement that senior creditors are exposed to loss when such a contribution is made, and that there is no particular limit specified in law in respect of the amount which may be contributed. Such commitments must be pre-funded by industry contributions and may account for an amount equivalent to 2.5% RWA toward the resolution entity's Minimum TLAC when the TLAC RWA Minimum is 16% and for an amount equivalent to 3.5% RWA when the RWA Minimum is 18%.
8. ISSUER	External TLAC must be issued and maintained directly by resolution entities subject to the following exceptions: a. CET1 regulatory capital issued from subsidiaries forming part of a resolution entity's resolution group and held by third parties to the extent that this is recognised as CET1 for the consolidated resolution entity under the rules set out in paragraph 62 of the Basel III framework[7]; b. regulatory capital instruments issued by cooperative banks or financial institutions affiliated to them that have in place an institutional protection scheme or other cooperative mutual solidarity system that protects the solvency and liquidity of the affiliated cooperative banks and institutions; provided that the regulatory capital instruments issued by them continue to meet conditions a. to e. of Section 6. c. regulatory capital instruments, other than CET1 as set out in a. above, issued out of subsidiaries of a resolution group and held by third parties may only be used to meet Minimum TLAC until 31 December 2021;

[7] See footnote 6.

	d. debt liabilities issued indirectly by a wholly and directly owned funding entity of the resolution entity prior to 1 January 2022 may be used to meet Minimum TLAC provided that: (i) the issuance is consistent with the rules set out in paragraph 65 of the Basel III framework, including that the assets of the funding entity must meet or exceed eligibility criteria (Section 9) for TLAC instruments; (ii) there is substantial legal certainty that the issued TLAC will absorb losses at the resolution entity upon its entry into resolution; and (iii) home and host authorities agree in the CMG on the issuance through the wholly owned funding entity.
9. ELIGIBILITY CRITERIA	TLAC-eligible instruments must: a. be paid in; b. be unsecured; c. not be subject to set off or netting rights that would undermine their loss absorbing capacity in resolution; d. have a minimum remaining contractual maturity of at least one year or be perpetual (no maturity date); e. not be redeemable by the holder (i.e., not contain an exercisable put) prior to maturity[8]; and f. not be funded directly or indirectly by the resolution entity or a related party of the resolution entity, except where the relevant home and host authorities in the CMG agree that it is consistent with the resolution strategy to allow TLAC-eligible instruments or liabilities issued to a parent of a resolution entity to count towards external TLAC of the resolution entity.[9] In addition, the appropriate authority should ensure that the maturity profile of a G-SIB's TLAC is adequate to ensure that its TLAC position can be maintained should the G-SIB's access to capital markets be temporarily

[8] As an exception to this principle, an instrument that includes a holder redemption option allowing the holder to redeem the instrument prior to the original stated maturity may be TLAC-eligible if it meets the one year minimum residual maturity threshold. The maturity of the instrument would be defined for this purpose as the earliest possible date on which the holder can exercise the redemption option and request redemption or prepayment of the instrument. The date must be specified as a date certain in the instrument.

[9] This exception is only applicable for G-SIBs for which there is a multiple point of entry (MPE) resolution strategy and therefore more than one resolution entity.

	impaired.
10. LIABILITIES EXCLUDED FROM TLAC	TLAC-eligible instruments must not include: a. insured deposits; b. sight deposits and short term deposits (deposits with original maturity of less than one year); c. liabilities arising from derivatives; d. debt instruments with derivative-linked features, such as structured notes; e. liabilities arising other than through a contract, such as tax liabilities; f. liabilities which are preferred to senior unsecured creditors under the relevant insolvency law;[10] or g. 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.
11. PRIORITY	Eligible TLAC generally must absorb losses prior to liabilities excluded from TLAC in insolvency or in resolution and, in all cases, without giving rise to material risk of successful legal challenge or valid compensation claims; and authorities must ensure that this is transparent to creditors (see Section 20 for disclosure requirements). To ensure that eligible external TLAC absorbs losses prior to liabilities that are excluded from TLAC (see Section 10) and therefore to support the aim of ensuring that the G-SIB is credibly and feasibly resolvable, eligible instruments must be: a. contractually subordinated[11] to excluded liabilities on the balance sheet of the resolution entity ("contractual subordination"); b. junior in the statutory creditor hierarchy to excluded liabilities on the balance sheet of the resolution entity ("statutory subordination"); or c. issued by a resolution entity which does not have any excluded liabilities (for example, a holding company) on its balance sheet that rank pari passu or junior to TLAC-eligible instruments on its balance

[10] This could include, for example, secured liabilities (to the extent of the secured amount).

[11] TLAC-eligible instruments may, however, rank senior to capital instruments, including Tier 2 subordinated debt, in the insolvency creditor hierarchy if they meet all criteria.

	sheet ("structural subordination"). Subordination of eligible external TLAC to excluded liabilities is not required if: (i) the amount of excluded liabilities (Section 10) on the balance sheet of the resolution entity that rank pari passu or junior to the TLAC-eligible liabilities does not exceed 5% of the resolution entity's eligible external TLAC; (ii) the resolution authority of the G-SIB has the authority to differentiate among pari passu creditors in resolution; (iii) differentiation in resolution in favour of such excluded liabilities would not give rise to material risk of successful legal challenge or valid compensation claims; and (iv) this does not have a material adverse impact on resolvability. In all cases, the means of subordination of eligible external TLAC to excluded liabilities, the risk of successful legal challenge or valid compensation claims, and the transparency of the order in which creditors can expect to bear losses in insolvency or in resolution, is subject to discussion in the CMG and review through the RAP. To assess the risk of legal challenge, authorities should consider, among other things, (i) the amount of excluded liabilities, if any, that rank pari passu to TLAC in any given creditor class; (ii) the applicable resolution law for the resolution entity; and (iii) the agreed resolution strategy for the resolution entity. The subordination requirement specified in this Section 11 does not apply in those jurisdictions in which all liabilities excluded from TLAC specified in Section 10 are statutorily excluded from the scope of the bail-in tool and therefore cannot legally be written down or converted to equity in a bail-in resolution. In this case, liabilities that rank alongside them and are included in scope of the bail-in tool and meet the eligibility criteria for TLAC would in fact be able to absorb losses in resolution and qualify for TLAC. If this option is used, authorities must ensure that this would not give rise to material risk of successful legal challenge or valid compensation claims, and that the terms of the TLAC-eligible liabilities specify that they are subject to bail-in. In those jurisdictions where the resolution authority may, under exceptional circumstances specified in the applicable resolution law, exclude or partially exclude from bail-in all of the liabilities excluded from TLAC specified in Section 10, the relevant authorities may permit liabilities that would otherwise be eligible to count as external TLAC but which rank alongside those excluded liabilities in the insolvency creditor hierarchy to contribute a quantum equivalent of up to 2.5% RWA of the resolution entity's Minimum TLAC requirement when the TLAC RWA Minimum is 16%, and up to 3.5% RWA when the TLAC RWA Minimum is 18%. If this option is used, authorities must ensure that the capacity to exclude or partially exclude liabilities from bail-in would not

	give rise to material risk of successful legal challenge or valid compensation claims. A resolution entity that uses one exemption under this Section cannot use any other exemption set out in this Section.
12. REDEMPTION RESTRICTIONS	G-SIBs should be prohibited from redeeming eligible external TLAC prior to maturity without supervisory approval if the redemption would lead to a breach of the G-SIB's TLAC requirements.
13. GOVERNING LAW	Eligible external TLAC must 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.
14. TRIGGERS (FOR EXTERNALLY ISSUED TLAC)	Eligible external TLAC should contain a contractual trigger or be subject to a statutory mechanism which permits the relevant resolution authority to effectively write it down or convert it to equity in resolution.
15. REGULATION OF INVESTORS	In order to reduce the risk of contagion, G-SIBs must deduct from their own TLAC or regulatory capital exposures to eligible external TLAC instruments and liabilities issued by other G-SIBs in a manner generally parallel to the existing provisions in Basel III that require a bank to deduct from its own regulatory capital certain investments in the regulatory capital of other banks. The Basel Committee on Banking Supervision (BCBS) will further specify this provision, including a prudential treatment for non-G-SIBs.
16. INTERNAL TLAC	The primary objective of internal TLAC is to facilitate co-operation between home and host authorities and the implementation of effective cross-border resolution strategies by ensuring the appropriate distribution of loss-absorbing and recapitalisation capacity within resolution groups outside of their resolution entity's home jurisdiction. Internal TLAC refers to loss-absorbing capacity that resolution entities have committed to material sub-groups. A material sub-group consists of one or more direct or indirect subsidiaries of a resolution entity that: a. are not themselves resolution entities; b. do not form part of another material sub-group of the G-SIB; c. are incorporated in the same jurisdiction outside of their resolution entity's home jurisdiction unless the CMG agrees that including subsidiaries incorporated in multiple jurisdictions is necessary to

	support the agreed resolution strategy and ensure that internal TLAC is distributed appropriately within the material sub-group; and that d. either on a solo or a sub-consolidated basis meet at least one of the criteria set out in Section 17. A G-SIB may have more than one material sub-group within a single jurisdiction. 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. Material sub-groups will be required to meet a requirement of a minimum amount of liabilities and instruments that qualify as internal TLAC ("Minimum Internal TLAC") consistent with Sections 18 and 19. This principle does not limit a host authority's legal power to impose, consistent with Section 5, any additional firm-specific external or internal TLAC requirements or similar requirements on any local subsidiary of a G-SIB. In so doing, host authorities should take due account of TLAC requirements applied to similar firms within their jurisdictions. In particular, authorities in the resolution entity's jurisdiction may decide to apply internal TLAC requirements (or similar requirements) to subsidiaries or sub-groups within their jurisdictions. Branches are not subject to internal TLAC requirements separate from any external or internal TLAC requirement applied to the legal entity of which they are a part.
17. MATERIAL SUB-GROUPS	A sub-group of a resolution entity is considered "material" for purposes of applying the Internal TLAC requirement if the subsidiary alone or the subsidiaries forming the sub-group on a sub-consolidated basis at the level of the sub-group meet at least one of the following criteria: a. have more than 5% of the consolidated risk-weighted assets of the G-SIB group; or b. generate more than 5% of the total operating income of the G-SIB group; or 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 (irrespective of whether any other criteria of this Section are met).

	The list of material sub-groups and their composition should be reviewed by the home and host authorities within the CMG on an annual basis and, if necessary, revised by the relevant host authorities.
18. SIZE OF THE INTERNAL TLAC REQUIREMENT	TLAC generally should be distributed as necessary within resolution groups in proportion to the size and risk of exposures of its material sub-groups. Each material sub-group must maintain internal TLAC of 75% to 90% of the external Minimum TLAC requirement that would apply to the material sub-group if it were a resolution group, as calculated by the host authority. The actual Minimum Internal TLAC requirement within that range should be determined by the host authority of the material sub-group in consultation with the home authority of the resolution group. The host authority should calculate the sub-consolidated balance sheet of the material sub-group which will be the denominator of the internal TLAC calculation. Exposures between entities within the same material sub-group should not be included in the balance sheet of the sub-consolidation but exposures of entities within the material sub-group to other entities of the G-SIB outside of the material sub-group should be included in the balance sheet of the sub-consolidation. Unless otherwise agreed between home and relevant host authorities, internal TLAC must be pre-positioned on-balance sheet at the material sub-groups and should be sufficient at this level to facilitate effective cross-border resolution strategies for G-SIB resolution groups. TLAC that is not pre-positioned should be readily available to recapitalise any direct or indirect subsidiary as necessary to support the execution of the resolution strategy. Authorities should ensure that there are no legal or operational barriers to this. The resolution entity should issue and maintain at least as much external TLAC as the sum of internal TLAC, which it has provided or committed to provide, and any TLAC needed to cover material risks on the resolution entity's own balance sheet. However, external TLAC may be lower if and to the extent this is due to consolidation effects only.
19. CORE FEATURES OF ELIGIBLE INTERNAL TLAC	The core features of eligible internal TLAC are the same as those for eligible external TLAC (except with regard to the issuing entity and permitted holders). Liabilities that are excluded from eligible external TLAC in Section 10 are also excluded from eligible internal TLAC. Internal TLAC instruments of a subsidiary must be statutorily or contractually subordinated to liabilities of that subsidiary that would fall into the category of excluded liabilities as set out in Section 10. 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. Internal TLAC must be subject to write-down and/or conversion to equity by the relevant host authority at the point of non-viability, as determined by the host authority in line with the relevant legal framework, without entry of the subsidiary into statutory resolution proceedings. Any write-down or conversion to equity of internal TLAC is subject to consent from 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. This would not preclude the host authority from subjecting internal TLAC to its own resolution bail-in or other resolution powers should the consent of the home authority not be forthcoming. 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 the following conditions: a. the guarantee is provided for at least the equivalent amount as the internal TLAC for which it substitutes; b. the collateral backing the guarantee is, following appropriately conservative haircuts, sufficient fully to cover the amount guaranteed; c. the guarantee is drafted in such a way that it does not affect the subsidiaries' other capital instruments, such as minority interests, from absorbing losses as required by Basel III; d. the collateral backing the guarantee is unencumbered and in particular is not used as collateral to back any other guarantee; e. the collateral has an effective maturity that fulfils the same maturity condition as that for external TLAC; and f. there should be no legal, regulatory or operational barriers to the transfer of the collateral from the resolution entity to the relevant material sub-group.

20. PUBLIC DISCLOSURE BY G-SIBS OF THEIR ELIGIBLE TLAC	G-SIBs must disclose the amount, maturity, and composition of external and internal TLAC that is maintained, respectively, by each resolution entity and at each legal entity that forms part of a material sub-group and issues internal TLAC to a resolution entity. Resolution entities must disclose, at a minimum, the amount, nature, and maturity of any liabilities which in the relevant insolvency creditor hierarchy rank pari passu or junior to liabilities which are eligible as TLAC. Entities that are part of a material sub-group and issue internal TLAC to a resolution entity must disclose any liabilities which rank pari passu with or junior to internal TLAC issued to a resolution entity. The BCBS will further specify this provision.
21. CONFORMANCE PERIOD	Firms that have been designated by the FSB as G-SIBs before the end of 2015[12] and continue to be designated thereafter, with the exception of such firms headquartered in an emerging market economy (EME), must comply with the TLAC standard and meet from 1 January 2019 Minimum TLAC requirements, as set out in Section 4, of at least 16% RWA and 6% of the Basel III leverage ratio denominator with the allowances in Sections 7 and 11 of the term sheet set at 2.5% RWA. From 1 January 2022, such firms must meet Minimum TLAC requirements of at least 18% RWA and 6.75% of the Basel III leverage ratio denominator, with the allowances in Sections 7 and 11 of the term sheet rising to 3.5% RWA. Firms that are currently headquartered in an EME and designated by the FSB as G-SIBs by the end of 2015 and continue to be designated thereafter will comply with the Minimum TLAC requirement: (i) by 1 January 2025 for the 16% RWA / 6% of the Basel III leverage ratio denominator Minimum TLAC requirement; and (ii) by 1 January 2028 for the 18% RWA / 6.75% of the Basel III leverage ratio denominator Minimum TLAC requirement. The conformance date will accelerate if, in the five years after the publication of the term sheet, the aggregate amount of the EME's financial and non-financial corporate debt securities or bonds outstanding (as measured using BIS statistics, excluding issuance by policy banks) exceeds 55% of the EME's GDP (as reported by the relevant national authorities). This metric will be measured each November until November 2020 and the appropriateness of the threshold will be subject to review in 2019. If the 55% threshold is hit, the relevant authorities in the EME would have three years from the start of the following year to require their G-SIBs to comply with the

[12] http://www.fsb.org/wp-content/uploads/2015-update-of-list-of-global-systemically-important-banks-G-SIBs.pdf

	16% RWA / 6% of the Basel III leverage ratio denominator Minimum TLAC requirement, and a further three years to require them to comply with the 18% RWA / 6.75% of the Basel III leverage ratio denominator Minimum TLAC requirement.[13] Firms not headquartered in an EME that are newly designated as G-SIBs between 2016 and before the end of 2018 and continue to be designated thereafter must meet Minimum TLAC requirements of at least 18% RWA and 6.75% of the Basel III leverage ratio denominator by 1 January 2022. Firms that are designated as G-SIBs thereafter must meet Minimum TLAC requirements of at least that amount within 36 months from their date of designation. Any G-SIB that fails and enters resolution, or its successor bridge entity, should be allowed up to 24 months to come back into compliance with the FSB TLAC standard following the date on which it exits resolution and provided that it continues to be designated as a G-SIB. A G-SIB which as a recovery measure comes to a voluntary agreement with its creditors to convert liabilities to equity and so recapitalise the firm outside of resolution has 24 months to come back to compliance with the FSB TLAC standard following the date it reached the agreement provided that it continues to be designated as a G-SIB. G-SIBs' TLAC positions should be disclosed and monitored as from 1 January 2019. For EME headquartered G-SIBs disclosure and monitoring should begin at the start of the conformance period for such G-SIBs. The FSB will undertake a review of the technical implementation of this standard by the end of 2019.

[13] Newly designated EME G-SIBs would be required to comply on the same timeline as other G-SIBs in their jurisdiction, subject to the constraint that newly designated G-SIBs will, in all cases, have at least three years to comply with the generally applicable requirements.