

11 October 2019

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## Re: Comments on Revised draft of SPM Module RE-1 on “Recovery Planning”

Dear Mr. Leung,

The Asia Securities Industry and Financial Markets Association (ASIFMA)<sup>1</sup> and its members values this opportunity to comment on the HKMA’s revised draft of the Supervisory Policy Manual (SPM) module RE-1 on “Recovery Planning.” ASIFMA appreciates HKMA’s ongoing efforts to seek and consider industry feedback, including issues we raised on behalf of our members during previous meetings and submissions, our Q&As on Recovery Planning (submitted on 27 April 2018) and our paper, “Potential Enhancement Opportunities to Recovery Planning Guidance” (submitted on 30 May 2018).

In relation to the latest consultation draft, ASIFMA offers the following comments on behalf of its members:

1. Overall, the revised draft module acknowledges the existence of both group and local plan elements in various parts of the Manual, but lacks clarity throughout in explaining whether individual sections refer to local or group recovery plans (e.g. Sections 2.1.3 and 2.1.4). ASIFMA recommends clearer reference be made to local or group recovery plans in each individual section, and also requests the HKMA to give due consideration to the applicability and proportionality of each requirement in relation to locally incorporated AIs and foreign bank branches.
2. Under Section 1.4.12, we refer to the third sub-point: *“the regulatory and supervisory requirements (include those of the home and host supervisors of the AI as appropriate) relating to recovery planning applicable to the AI”* — this should be clearly focused on the regulatory regimes in place and/or if there is a significant firm-specific requirement from a home regulator which would need to be disclosed. This should not be expected to touch on or assess the cooperation between

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<sup>1</sup> ASIFMA is an independent, regional trade association with over 125 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region’s economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

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home/host as it is not feasible or realistic for AIs to anticipate how regulators would act and factor that into planning. Therefore, ASIFMA requests the HKMA to provide further clarity on this point.

3. Under Section 1.4.15, while we agree with the proposed amendment, we would like to suggest switching the order of the MA's follow-up actions – i.e. to ask the home regulator first, and subsequently require a local recovery plan if this can't be dealt with accordingly. ASIFMA suggests the following change as below:
  - *“Where considered warranted, the HKMA would notify an AI of its request for access to the relevant parts in the AI's group recovery plan as mentioned above, and expect to receive the information requested within a reasonable period of time thereafter. In case this is not practicable (e.g. there are legal impediments preventing the parent bank from disclosing certain information to the HKMA), the HKMA would consider the issue and the options available to it. **This would include approaching the relevant stakeholders (e.g. the home regulator or the head office of the AI) to explore possible alternatives, and where these cannot be identified, the HKMA may require the AI to develop a local recovery plan that is specific and adequate for the AI's local operations.**”*
4. Under Section 1.5, we would appreciate further clarity regarding the exact timescale in which the revised module is expected to take effect, especially since the current wording seems to suggest that interim submissions would be expected if there are changes to be made as a result of this updated module. ASIFMA would appreciate if the HKMA could make a clear statement about when the changes are expected to be reflected in plans submitted to them.
5. Under Section 2.1.2, the third sub-point, when taken together with footnote 11, does not appear to envisage that there may be no capital-relevant recovery options for a branch. We would appreciate clarity on this point.
6. Under Section 2.2.3 – Footnote 13, it is unclear how sub-points (1) and (3) would work together, for instance, under certain cases where an AI could conceivably be covered under both scenarios. We would appreciate further clarity on this point.
7. Under Section 2.3, it is unclear as to whether the MA intends to set out an exhaustive list of these requirements, given that some are placed under Section 2.2.13 and some are under Footnote 14. We would appreciate having the list of requirements set out clearly under a single section so as to avoid confusion.
8. Under Section 2.3.2, the MA states in the third sub-point that the menu of recovery options of an AI should include *“measures to secure additional liquidity from existing or new sources while ensuring sufficient diversification of funding sources.”* Since it may not be possible for a firm that is in a stage of utilising recovery triggers to ensure *“sufficient diversification”*, we would suggest rewording this point as *“restoring diversification of funding sources.”* The intention here would be to restore diversification as soon as possible if there is an imbalance, depending on what is going on during that time.
9. Under Section 2.3.4, we note the MA's intention of requiring AIs to give proper consideration to whether there are appropriate recovery options which may be effectively deployed independently, whilst the MA recognises that the range of credible recovery options at the local level could be

legitimately limited. To convey this point, ASIFMA would like to suggest the following changes to the text:

- *“The menu of options would vary among AIs. For smaller AIs or foreign bank branches, the range of credible recovery options at the local level could be limited. Still, such an AI should **give consideration to an adequate range of appropriate recovery options that it may effectively deploy.** Also, as noted in paragraph 2.3.1 above, an AI should always include options for addressing capital and liquidity shortfalls **in recovery planning at the group level.**”*

10. Under Section 2.4, the HKMA’s definition of and requirements for AIs to pre-define thresholds for quantitative recovery triggers is overly prescriptive as a whole. In essence, such process and approach in setting trigger frameworks differ in practice and vary from firm to firm. Some triggers might be defined at the global level, with selected escalation triggers set at the local level. Local triggers should be left for firms to manage as part of their integrated Risk Management Frameworks, in order to avoid the complication of having to conduct multiple calibrations at the group and local levels. In the case of overseas incorporated AIs, triggers may be calibrated in alignment with the Group’s framework. In addition, early warning indicators are in place in the existing risk management framework allowing AIs to take remediation actions before breaching the minimum regulatory requirements and to communicate to the HKMA. We, therefore, request that the MA acknowledge that such indicators may be tracked as part of their broader risk management framework, and provide flexibility for such triggers to be designed as part of the Group’s wider framework.
11. Under Section 2.4.4, we request clarification on whether all AIs are under scope for notification requirements to the MA, especially given that there may be confidentiality issues for those triggers set at a group level for foreign branches.
12. Under Section 2.4.5, we refer to the sub-point “major compliance incidents or operational issues” which, in this case, would be the second order effect giving rise to possible breach/trigger. We request that this point not be listed as a standalone item.
13. Under Section 3.2.4, requiring AIs to prepare and maintain recovery plans (even where not required by the MA) risks bringing a range of smaller firms into scope, whilst some such firms would already be covered by group recovery plans. This is disproportionate and risks undermining the benefits of centralised recovery planning. Moreover, there is a risk that this sets a precedent in the region by multiplying the number of plans that have to be maintained without an obvious benefit to recoverability. ASIFMA requests that the MA give due consideration to the proportionality of this requirement, and consider incorporating a lead time for the provision of such a document, provided that this requirement will be incorporated.
14. Under Section 3.4.1, we note the MA’s power under §68F(4) to direct an AI to implement one or more recovery measures in its recovery plan within a specified period in certain ‘*limited circumstances.*’ We would appreciate more clarity on the definition of such ‘*limited circumstances.*’ under which this power may be exercised, and also on the timeframe in which an AI would need to comply. The definition of ‘*circumstances.*’ should be aligned in reference to Article 6 of the European Banking Authority’s (EBA’s) Bank Recovery and Resolution Directive (BRRD), so as not to introduce difficulties in aligning for EU banks. Furthermore, as it applies to foreign branches, we strongly recommend that the MA consult with home supervisors before execution of this said power.

15. Under Section 4.2.7, the HKMA states that AIs should be prepared to submit the relevant sections of their group recovery plan, and in instances where the group recovery plan does not adequately cover its Hong Kong operations, the foreign bank branch will be required to supplement the group plan covering local specificities or develop a local recovery plan. While Banks can furnish limited excerpts of the group plan as part of the supplementary submission to the HKMA, with local operations at times unable to share a plan on behalf of the Group, ASIFMA requests that provisions be made by which the MA could access the recovery plan via the competent authority of the Group.

In conclusion, in considering each of the above item, we also reiterate a key recommendation from our paper “Potential Enhancement Opportunities to Recovery Planning Guidance” that the HKMA give due consideration to the applicability and proportionality of each requirement in the revised draft module in relation to locally incorporated AIs and foreign bank branches.

We look forward to continued engagement with the HKMA on this issue. If you have further questions or would otherwise like to follow up, please contact Matthew Chan, ASIFMA’s Executive Director and Head of Policy and Regulatory Affairs, at [mchan@asifma.org](mailto:mchan@asifma.org) or +852 2531 6560.

Sincerely,



Mark Austen  
Chief Executive Officer  
Asia Securities Industry & Financial Markets Association