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To the Legal Department of China¹ Banking and Insurance Regulatory Commission ("CBIRC")

致: 中国银行保险监督管理委员会法规部 (“银保监会”)

Consultation Draft of the Interim Measures for the Implementation of Recovery and Resolution Plans for Banking and Insurance Institutions

关于《银行保险机构恢复和处置计划实施暂行办法（征求意见稿）》

On behalf of its members, the Asia Securities Industry & Financial Markets Association ("ASIFMA")² is pleased to submit to the CBIRC Legal Department our comments and suggestions on the *Consultation Draft of the Interim Measures for the Implementation of Recovery and Resolution Plans for Banking and Insurance Institutions* ("**Draft Measures**", and after the formal promulgation, "**Measures**") published on CBIRC's website³.

¹ The "PRC" or "China", for the sole purpose of this letter, excluding Hong Kong, Macau and Taiwan.

仅为本函件之目的，“中国”一词不包括香港特别行政区、澳门特别行政区和台湾地区。

² ASIFMA is an independent, regional trade association with over 140 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.

ASIFMA是一个独立的区域性行业协会，会员基础广泛，由银行、资产管理公司、律师事务所和市场基建服务供应商等140多家来自买方和卖方市场的领先机构组成。我们与各家会员携手发掘金融行业的共同利益，提升亚洲各大资本市场的深度、广度和流动性。我们致力于促进亚洲资本市场的稳定、创新和竞争力，为区域经济增长提供必要支持。我们针对关键问题群策群力、统一立场，以努力形成共识、寻求解决方案并促成变革。我们的工作包括与监管部门和交易所开展磋商、制定统一的行业标准、发表政策性文件呼吁深化市场发展，并降低在亚太地区经营的成本。ASIFMA通过全球金融市场协会（[GFMA](#)）与美国的证券业与金融市场协会（[SIFMA](#)）及欧洲的金融市场协会（[AFME](#)）形成联盟，共同提供全球最佳行业实践及标准，为区域发展作贡献。

³ Available at: <https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=968428&itemId=925&generalType=0>.

可于以下网址查阅: <https://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=968428&itemId=925&generalType=0>.

亚洲证券业与金融市场协会（"ASIFMA"）¹ 谨代表其全体成员表示，很荣幸有机会就贵会网站上发布的《银行保险机构恢复和处置计划实施暂行办法（征求意见稿）》（简称“《征求意见稿》”，其正式版本则称为“《暂行办法》”）向贵会法规部提出意见和建议。

Based on feedback from our members, this letter sets out (a) our views on the Draft Measures, (b) an explanation of the practical difficulties that certain financial institutions may face in complying with the Measures, (c) our request for clarification on certain provisions of the Draft Measures and (d) our recommendations on the Draft Measures.

根据来自协会会员的反馈，本函载列了(1) 我们对《征求意见稿》的意见，(2) 针对某些金融机构在遵守《暂行办法》时可能面临的实际困难的解释，(3) 我们对于《征求意见稿》某些条款的澄清请求，以及(4) 我们对于《征求意见稿》的一些建议。

1. Article 4: Scope of Application

第四条：适用范围

Article 4.1 of the Draft Measures provides that:

《征求意见稿》第四条第一款规定：

"Banking and insurance institutions meeting the following conditions shall formulate recovery and resolution plans according to the Measures:

“符合以下条件的银行保险机构，应按本办法要求制定恢复和处置计划：

(a) commercial banks, rural credit cooperatives and other financial institutions that take public deposits, as well as financial asset management companies and financial leasing companies, whose consolidated and adjusted on- and off-balance-sheet (onshore and offshore) assets (i.e., denominator for leverage ratio) reach RMB300 billion (including the equivalent in foreign currency) by the end of the previous year;

（一）按照并表口径上一年末（境内外）调整后表内外资产（杠杆率分母）达到 3000 亿元人民币（含等值外币）及以上的商业银行、农村信用合作社等吸收公众存款的金融机构以及金融资产管理公司、金融租赁公司；

(b) insurance group/holding companies and insurance companies with consolidated on-balance-sheet (onshore and offshore) assets of RMB200 billion (including the equivalent in foreign currency) by the end of the previous year; and

（二）按照并表口径上一年末（境内外）表内总资产达到 2000 亿元人民币（含等值外币）及以上的保险（控股）集团和保险公司；以及

(c) other banking and insurance institutions designated by CBIRC and its local bureaus based upon the business characteristic, risk status, spill-over effects and other factors".

（三）虽不符合上述条件，但基于业务特性、风险状况、外溢影响等因素，经银保监会及其派出机构指定应制定恢复和处置计划的其他银行保险机构。”

Our members suggest that CBIRC could further clarify the wording "consolidated" in the Measures and specify that the scope of consolidation of a banking or insurance institution should include only the relevant PRC entity and other entities controlled by it (if any). Our reasons for this recommendation are below.

我们协会会员建议贵会可以在《暂行办法》中进一步澄清“并表”的含义，并且明确银行保险机构的并表范围应仅包括相关的中国实体以及由其控制的其他实体（如有）。我们提出该项建议的原因如下。

According to this provision, we understand that a banking and insurance institution which exceeds a certain amount of relevant assets on a consolidated basis would need to formulate recovery and resolution plans. It is important for foreign financial institutions who have established a local presence in China (e.g., foreign-invested banks or insurance companies) – to understand whether "consolidated basis" should be (a) limited to PRC entities established by such foreign-invested institution (if any) or (b) extended to cover all entities owned or controlled at the parent company level.

根据该条款，我们理解银行保险机构按照并表口径的相关资产超过一定金额，则需要制定恢复和处置计划。由此引申出一个市场关切的重要问题，即对于在华设立实体的境外金融机构（如外资银行或外资保险公司）而言，该“并表口径”是否仅包含其在中国境内设立的实体（如有），还是需要向上追溯至其境外母公司层面持有或控制的全部实体。

We note from Article 4.2 of the Draft Measures ("*where both a banking or insurance institution and its holding group meet the above conditions, they should, respectively, formulate their recovery and resolution plans under the overall management of the holding group*") that CBIRC will treat a banking or insurance institution and its holding group separately. Our members generally consider that interpretation (a) above of Article 4.1 of the Draft Measures (i.e., the "consolidated basis" should be limited to PRC entities controlled by a foreign-invested institution) makes more sense since it would not require a significant foreign financial institution with very limited presence in China to incur costs relating to the preparation of recovery and resolution plans which are disproportionate to its potential impact on the PRC markets. Furthermore, this interpretation would benefit cross-border coordination since most foreign financial institutions with a presence in China will already have prepared resolution and recovery plans in compliance with their home jurisdiction's requirements.

从《征求意见稿》第四条第二款（“银行保险机构与其控股集团均符合上述条件的，一般应在其控股集团统筹下分别制定恢复和处置计划”）的表述来看，我们理解贵会将银行保险机构及其控股集团作分别处理。我们协会会员也普遍认为上文所述的前一种解释方式更为合理（即“并表口径”应当仅包含境外金融机构控制的中国实体），

这样不会导致其中国业务规模有限的大型境外金融机构需要承担过多费用来制定恢复和处置计划，而这将与其对中国市场的潜在影响不相称。此外，这样的解释更有利于跨境协调，因为大多数在中国开展业务的境外金融机构已经按照其所在司法管辖区的要求制定了相关恢复和处置计划。

On a related note, our members have also raised the query of whether onshore branches of foreign banks in China would be captured by the Measures. We would highlight that onshore branches of foreign banks are usually relatively small in size. However, because they are consolidated into the balance sheet of their head office, the amount of consolidated assets can be significant (though most of these assets will "belong" to their head office or other non-PRC branches). Therefore, we suggest that CBIRC should specify that the calculation shall be restricted to assets of the PRC branch.

我们协会会员关心的另外一个问题是外资银行的在华分支机构是否会受《暂行办法》约束。需注意的是，外国银行在华分行通常业务规模较小，但由于其与总行并表，并表口径的资产规模可能较大（但大部分资产可能“属于”其总行或者境外分行）。我们因此建议贵会明确相关计算口径仅限于外资银行在华分行的资产。

In addition to the above, our members noted that the third limb of Article 4.1 appeared to empower CBIRC and its local bureaus to specifically require a designated banking or insurance institution to formulate recovery and resolution plans. It would be helpful if CBIRC could further clarify whether this will be done on a firm-by-firm basis or by adjusting the overall criterion from time to time.

除上述内容外，我们的协会成员还注意到，第四条第一款第三项似乎赋予了贵会及各派出机构权限，从而可以指定某一银行保险机构制定恢复和处置计划。我们恳请贵会能够进一步澄清这样的措施将根据具体情况个别适用，还是意味着贵会将不时调整普遍适用的标准。

2. Article 29: Onshore and Offshore Coordination

第二十九条：境内外协调

Further to the above, we note that Article 29 of the Draft Measures provides that "*..... [f]oreign-invested banks and insurance companies should formulate its **local recovery and resolution proposals** according to the plan at its parent/group's level and shall coordinate with its parent/group under the guidance on cross-border cooperation of CBIRC and its local bureaus or crisis management team and other cross-border regulation and cooperation mechanism*".

此外，我们注意到《征求意见稿》第二十九条规定：“.....在华外资银行、外资保险公司应在符合境内法律法规和监管要求的前提下，根据母公司或集团的恢复和处置计划制定本地恢复计划和处置计划建议，并在银保监会及其派出机构或危机管理小组等跨境监管合作机制指导下，做好与母公司或集团的协同工作，以使恢复和处置计划在境内外得以合法有效实施。”

Our members would like to confirm that for foreign-invested banks and insurance companies whose onshore subsidiaries do not meet the conditions set out in Article 4 above, they would not be required to formulate and implement local recovery and resolution proposals in China regardless of whether recovery and resolution plans have been developed at the parent/group level. It would be helpful if CBIRC could further clarify this point in the Measures.

我们的协会会员希望确认对于在华外资银行或外资保险机构而言，如果其境内实体不满足上述第四条的条件，无论其母公司或集团是否制定了相关恢复和处置计划，其将无需制定与实施本地恢复计划和处置计划建议。我们恳请贵会在《暂行办法》中对此予以澄清。

We would also be very grateful if CBIRC could provide more details on the onshore and offshore coordination mechanism for foreign financial institutions, in particular where there are challenges and/or inconsistencies in terms of such coordination mechanism.

此外，我们也希望贵会能够就境内外协调机制给予外资金融机构更多指导，特别是当协调机制面临挑战或出现不一致时。

3. Article 25: Crisis Management Team

第二十五条：危机管理小组

Article 25 of the Draft Measures provides that "*[f]or banking and insurance institutions that may cause regional and systemic risks, a crisis management team may be established with the participation of relevant authorities and local governments to jointly deliberate and decide on resolution matters*".

《征求意见稿》第二十五条规定：“对于银行保险机构可能引发区域性与系统性风险的，可成立各相关部门和地方政府参加的危机管理小组，共同研究决定处置事宜。”

We suggest that CBIRC should, to the extent possible, clarify the scope of duties of such crisis management team in practice, as well as the specific functions performed by such crisis management team in the resolution process of banking and insurance institutions.

我们建议贵会能适当澄清危机管理小组在实践中的职权范围，以及危机管理小组在银行保险机构的处置过程中的具体职能。

4. Article 28: Special Application

第二十八条：特殊适用

Article 28 of the Draft Measures states "*[p]rovided that there are specific rules regarding regulatory requirements on the recovery and resolution plans of global systemically important financial institutions and domestic systemically important financial institutions on recovery and resolution plans, such rules shall prevail*".

《征求意见稿》第二十八条规定：“对于全球系统重要性金融机构、国内系统重要性金融机构等关于恢复和处置计划的监管要求另有规定的，从其规定。”

We recognise the peculiarities of global systemically important financial institutions and domestic systemically important financial institutions and thus separate regulations are required to be formulated. We would encourage these rules to be issued soon so that our members can assess such requirements against their home resolution and resolution plan requirements.

我们认可全球系统重要性金融机构、国内系统重要性金融机构的特殊性，因此需要单独制定规定。我们恳请贵会能够尽快出台相关规定，以便我们协会会员能够与其母国有关恢复和处置计划的要求进行比较并加以评估相关要求。

We would be pleased to engage in further discussions with CBIRC in relation to our comments and provide further industry input where necessary. If you have any questions, please do not hesitate to contact Matthew Chan, Head of Policy and Regulatory Affairs at ASIFMA, at mchan@asifma.org or +852 2531 6560.

我们很乐意与贵会进一步探讨我们的意见，并在有需要时进一步提供业界意见。如果贵会有任何疑问，请联系 ASIFMA 政策和法规事务主管 Matthew Chan（邮箱：mchan@asifma.org；电话：+852 2531 6560）。

Yours faithfully,

此致，



Matthew Chan
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