STATUTORY INSTRUMENTS

2020 No. 1188

BANK LEVY

The Bank Levy (Loss Absorbing Instruments) Regulations 2020

Made - - - -	*29th October 2020*
Laid before the House of Commons	*30th October 2020*
Coming into force - -	*22nd November 2020*

The Treasury make the following Regulations in exercise of the powers conferred by paragraphs 15V(3)(b), 15V(4)(b), 15W(4)(b), 15W(7) and 15Y(2) of Schedule 19 to the Finance Act 2011(**a**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Bank Levy (Loss Absorbing Instruments) Regulations 2020 and come into force on 22nd November 2020.

(2) These Regulations have effect in relation to chargeable periods ending on or after 1st January 2021.

Interpretation

2. In these Regulations—

"Capital Requirements Regulation"(**b**) has the meaning given in paragraph 30(4) of Schedule 19,

"relevant requirement" means—

(a) a requirement imposed by the Bank of England—

(i) by a direction given under section 3A of the Banking Act 2009(**c**), and

(ii) for the purpose of complying with the duties set out in Part 9 of the Bank Recovery and Resolution (No. 2) Order 2014(**d**),

(b) a requirement imposed under article 92 or article 92a(**e**) of the Capital Requirements Regulation,

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(**a**) 2011 c. 11. Paragraphs 15V to 15Y were inserted into Schedule 19 by paragraph 2 of Schedule 9 to the Finance Act 2018 (c. 3) with effect for chargeable periods ending on or after 1st January 2021 so do not yet have effect. Paragraph 30(2) of Schedule 19 was amended by paragraph 9 of Schedule 9 to the Finance Act 2018.

(**b**) OJ No. L 176, 27.6.2013, p 1. This Regulation has been amended by S.I. 2018/1401 and 2019/1232 with effect from immediately before IP completion day so do not yet have effect. IP completion day is defined in section 39 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

(**c**) 2009 c. 1. Section 3A was inserted by article 6 of S.I. 2014/3329 and amended by article 5 of S.I. 2016/1239.

(**d**) S.I. 2014/3348. Part 9 was amended by regulation 41 of S.I. 2016/1239. Part 9 has been amended by regulations 66 to 82 of S.I. 2018/1394 with effect from immediately before IP completion day so do not yet have effect.

(**e**) Article 92a was amended by regulation 32 of S.I. 2019/1232 with effect from immediately before IP completion day so the amendment does not yet have effect.

(c) in relation to requirements imposed by an authority in exercise of its regulatory functions under the law of a country or territory outside of the United Kingdom, a requirement imposed under a comparable scheme for a comparable purpose to paragraph (a) or (b) within that country or territory, and

"Schedule 19" means Schedule 19 to the Finance Act 2011.

Loss absorbing instruments issued by overseas subsidiaries

3.—(1) Equities and liabilities that meet the description set out in paragraph (2) are specified for the purposes of paragraph 15V(3)(b) of Schedule 19.

(2) So much of the equities and liabilities that—

(a) would have fallen within the definition of Tier one capital equities and liabilities within the meaning of paragraph 30 of Schedule 19, but

(b) do not fall within that definition because an amount in respect of those equities and liabilities was deducted—

(i) under Article 36(1)(i) or Article 56(d) of the Capital Requirements Regulation, and

(ii) in respect of a loss absorbing instrument(**a**) issued by a non-UK resident entity which is a subsidiary of a UK resident entity within paragraph 15W(5) of Schedule 19.

4.—(1) A loss absorbing capacity or recapitalisation requirement that meets the condition set out in paragraph (2) is specified for the purposes of paragraph 15V(4)(b) of Schedule 19.

(2) The requirement must be a relevant requirement.

5.—(1) The condition in paragraph (2) is specified for the purposes of paragraph 15W(4)(b) of Schedule 19.

(2) The instrument, or an asset representing the instrument, must be held by a UK resident entity for the purpose of satisfying a relevant requirement imposed on a member of the relevant group(**b**).

6.—(1) The condition in paragraph (2) is specified for the purposes of paragraph 15W(7)(b) of Schedule 19.

(2) The liabilities are in issuance for the purpose of satisfying a relevant requirement imposed on a member of the relevant group.

Rebecca Harris
Maggie Throup

29th October 2020 — Two of the Lords Commissioners for Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the circumstances in which loss absorbing instruments issued by overseas subsidiaries of UK resident entities can be deducted from equities and liabilities otherwise chargeable to the bank levy.

Regulation 1 provides for citation, commencement and effect. These Regulations have effect in relation to chargeable periods ending on or after 1st January 2021. Regulation 2 provides for interpretation and defines the relevant requirements.

(**a**) "Loss absorbing instrument" is defined in paragraph 15V(2) of Schedule 19.
(**b**) "Relevant group" is defined in paragraph 4(1) of Schedule 19.

Regulation 3 provides that, in respect of financial entities, if equities and liabilities would have been "Tier one capital equity and liabilities" (i.e. the amount falling within paragraph 15V(3)(a) of Schedule 19) but for deductions made under Articles 36(1)(i) or Article 56(d) of the Capital Requirements Regulation then those equities and liabilities are specified for the purposes of 15V(3)(b) of Schedule 19.

Regulation 4 provides that a loss absorbing instrument issued by an overseas subsidiary must meet the relevant requirements in order to be specified.

Regulation 5 provides that the UK resident entity must hold the loss absorbing instrument, or an asset representing the instrument, for the purpose of satisfying a relevant requirement.

Regulation 6 provides that the liabilities issued by a UK resident entity in respect of that instrument must be in issuance for the purpose of satisfying a relevant requirement.

A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

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