

BANK OF ENGLAND'S CONSULTATION ON AMENDMENTS TO MREL

1. Key takeaways

- On 15 October 2024, the Bank of England (the Bank) published a consultation (the Consultation) on proposed amendments to the Bank's approach to setting a minimum requirement for own funds and eligible liabilities (MREL).
- The Consultation proposes amendments to the Bank's Statement of Policy on MREL (the MREL SoP) which would:
 - simplify the UK MREL regime and consolidate it into a single framework under the MREL SoP;
 - increase the indicative threshold at which a bail-in resolution strategy would typically apply from £15 billion - £25 billion to £20 billion - £30 billion total assets;
 - reduce the MREL requirement for firms subject to a transfer preferred resolution strategy to applicable minimum capital requirements (MCR), from 2x MCR;
 - clarify the Bank's power to set transitional MREL requirements, or make other adjustments, in an M&A context;
 - extend the deductions regime for eligible liabilities instruments (ELIs) from G-SIBs to all MREL firms;
 - extend the mandatory write-down and conversion contractual triggers which must currently be included in internal ELIs to internal AT1 and T2 instruments;
 - require ELIs to be recognised on the basis of their accounting, not nominal, value; and
 - confirm that firms are expected to obtain external legal opinions on both the eligibility of ELIs and,

where governed by non-UK law, the effectiveness of the Bank's decision to write down or convert the ELIs.

- The Bank invites feedback to the Consultation by 15 January 2024 and proposes to implement the bulk of the amendments on 1 January 2026.

2. Background

- The MREL SoP was last amended in 2021, but has sat uncomfortably alongside the G-SIB TLAC requirements (as set out in the UK CRR) since 2019. On 12 September 2024, HMT announced its intention to revoke the provisions of the UK CRR implementing the TLAC regime along with the related technical standards under the powers granted to it by the Financial Services and Markets Act 2023. This will allow TLAC rules to be included in the MREL SoP, providing the Bank with flexibility to make future changes to the MREL policy as it deems appropriate.
- In step with HMT's announcement, the Consultation proposes to restate the provisions of the MREL SoP relating to the UK CRR TLAC standard. The Bank has also taken this opportunity to propose several minor changes to the MREL framework to reflect recent regulatory and market developments, including the failure of Credit Suisse in early 2023 and the results of the Bank's second resolvability assessment.

3. Proposed changes

- Currently, the UK CRR TLAC provisions only apply to UK G-SIBs. UK G-SIBs are therefore subject to two overlapping but inconsistent MREL regimes: the requirements of the UK CRR and the Bank's expectations as set out under the MREL SoP.
- The Bank proposes to update the MREL SoP to introduce a single consolidated MREL regime which would apply to all firms subject to MREL. The MREL

SoP would include a new "Annex 1" with a modified version of the ELI eligibility requirements currently set out in the UK CRR. The modifications include simplifying the prohibition on ELIs being subject to set-off, extending the prohibition on investor acceleration rights to all ELIs, and clarifying that T2 instruments with a residual maturity of less than one year continue to be eligible as MREL resources (subject to the daily amortisation of its T2 capital value).

- The Bank also proposes to extend to all MREL firms the MREL deduction regime that, under the UK CRR, currently only applies to UK G-SIBs. The regime would be migrated to the MREL SoP. As a result, all MREL firms would have to deduct from their own MREL resources the value of their material holdings of ELIs of G-SIBs and any instruments ranking pari passu with ELIs. The deduction regime would be subject to limited exemptions, including for holdings of internal ELIs issued by a subsidiary. The materiality thresholds and the trading book exemption that apply under the current deduction regime would be maintained, as would the possibility for a partial redistribution of the deduction in the case of cross-holdings within MPE resolution groups.
- The MREL SoP would not restate the general requirement in the UK CRR to always seek the Bank's permission to call, redeem, repay or repurchase ELIs. As a result, UK G-SIBs would no longer require specific permission to reduce their ELIs, except where the relevant firm is in breach of its MREL or if the proposed reduction would cause the firm to be in breach of its MREL or start to deplete its capital buffers.
- The Bank also proposes to extend the requirement to include certain contractual write-down and conversion triggers in internal ELIs to all internal non-CET1 own funds instruments. This would mean all internal AT1 and T2 instruments would need to contain the same triggers as internal ELIs, in addition to any triggers these instruments have to include to meet other requirements. This would be subject to an "impracticability" exception in the case of non-UK material subsidiaries of UK firms where the subsidiary's host regulatory authority does not permit the inclusion of the trigger in the form required by the Bank. In practice, this means firms would need to bring internal AT1 and T2 instruments within the ambit of their MREL umbrella agreements, if they have not already done so.
- The Bank would clarify in the MREL SoP that if the internal non-CET1 own funds instruments could not be

written down and/or converted at times of stress using the Bank's statutory powers, the Bank could direct the relevant firm to exclude those instruments from its MREL resources (rather than merely direct the firm to remove the perceived impediments to resolution).

- The Consultation would maintain the current indicative threshold for a transfer preferred resolution strategy at 40,000-80,000 transactional accounts. However, in light of the [new resolution mechanisms introduced by the Bank Resolution \(Recapitalisation\) Bill](#), the MREL requirement for transfer preferred strategy firms would be set at MCR, rather than the current level of 2x MCR.
- The indicative threshold for a bail-in preferred resolution strategy would increase from £15 billion-£25 billion total assets to £20 billion-£30 billion to account for nominal UK economic growth. The requirement to notify the Bank that a firm is forecasting its total assets to exceed £15 billion in the next three years would be set at £20 billion.
- The Bank also proposes to clarify several areas of the MREL framework in light of the results of the second resolvability assessment. The Bank confirms that the amount of ELIs that can be recognised in firms' MREL resources should be measured at their accounting rather than nominal value. The Bank recognises that this may result in greater fluctuation in the amount of the firms' MREL resources, but notes that the same approach is already mandated for T2 instruments and should therefore not be unduly burdensome.
- The Bank also recognised that MREL requirements may complicate M&A activity, for example where an acquisition results in the ELIs of the target firm being issued from an intermediate holding company rather than the resolution entity of the combined group. The Bank proposes to update the MREL SoP to confirm that the Bank has an ability to set a "transitional MREL" or to make other temporary adjustments to address these situations, in each case at the Bank's discretion.
- Finally, the Bank also proposes to emphasise the importance of appropriate internal processes relating to instrument eligibility and regulatory reporting. The MREL SoP would also clarify that the firms are expected to obtain independent legal advice on the eligibility of each ELI included in the firms' MREL resources. The advice must be instrument-specific and issued by external counsel and, in the case of instruments governed by non-UK law, an additional legal opinion should be obtained confirming that the Bank's decision to convert or write down the ELI

would be effective under the principal governing law of the ELI.

4. Impact

- The Bank's proposals to consolidate and simplify the MREL regime are welcome and long overdue. For the large part, the proposed changes to the regime reflect the Bank's existing approach to eligibility, repurchases and redemptions, as does its proposed alignment of TLAC and MREL requirements.
- Smaller firms subject to transfer preferred resolution strategies will welcome the proposed reduction to MREL requirements and increased thresholds for transition to a bail-in strategy. Some may question, however, whether the relatively modest increase to those thresholds, their range and "indicative" nature means that the Bank will in practice diverge materially from its existing practices.
- At a more operational level, firms should review their stock of existing internal MREL instruments and obtain

assurance from external counsel on eligibility where required. Any non-CET1 own funds instruments will also need to be reviewed to ensure that they contain the required contractual triggers, if not already covered by existing umbrella agreements.

- Subject to the feedback to the Consultation, the proposed amendments relating to UK CRR TLAC provisions, the indicative thresholds for setting preferred resolution strategies and the basis for measuring ELIs are due to take effect from 1 January 2026.
- All other proposals, including the Bank's powers to set transitional MREL requirements in an M&A context, and the clarifications in relation to appropriate internal processes and independent legal advice, are due to take effect soon after the policy is finalised (not before July 2025).

CONTACT

Our regulatory capital practice is market leading and has been at the forefront of the design, structure and issuance of new capital instruments for many years. We act for a range of UK and international G-SIBs, challenger banks and neobanks on capital and resolution matters. For further details contact:



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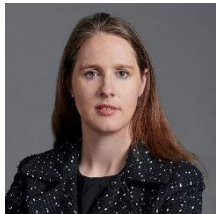
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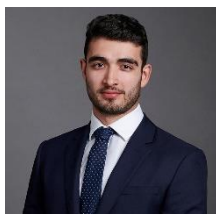
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