

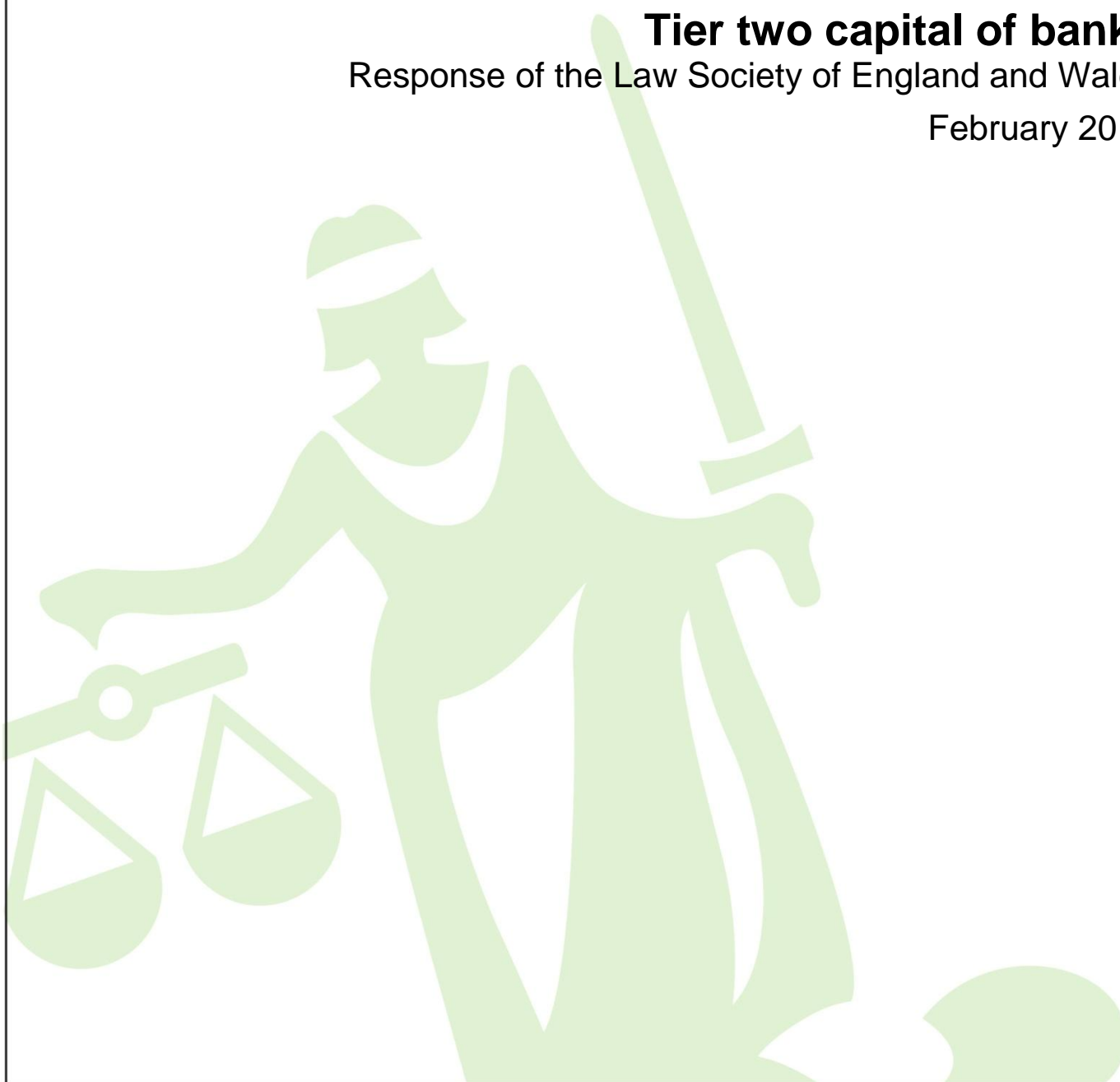


The Law Society

# **Tier two capital of banks**

Response of the Law Society of England and Wales

February 2013



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## **Comments of Tax Law Committee of the Law Society**

### **Introduction**

1. The Law Society is the representative body for over 166,000 solicitors in England and Wales. It negotiates on behalf of the profession, and lobbies regulators, Government and others.
2. This response has been prepared on behalf of the Society by members of its Tax Law Committee, which is made up of senior and specialist lawyers practising in this field.
3. The Law Society welcomes this opportunity to comment on the draft legislation relating to the corporation tax treatment of loans forming part of a bank's tier two capital.

### **FSA Handbook**

4. The draft legislation provides that references to a bank's tier two capital resources are to be read in accordance with the FSA Handbook. This concept is crucial to the proposed changes.
5. Given that our understanding is that there will not be an FSA Handbook after a date to be appointed in April 2013, we are concerned to ensure that appropriate changes are made in due course to this reference in the proposed new sections 164A(3)(d) and 1032A(3)(e).

### **Stamp duty and stamp duty reserve tax**

6. We note that no mention has yet been made of any changes being proposed to be made to sections 79 Finance Act 1986 (in particular to sub-sections (5) or (6) thereof) which effectively define instruments of loan capital which are exempt from stamp duty on transfer (and thus also exempt from SDRT).
7. The features which have been identified as causing uncertainty for corporation tax purposes (namely that the instruments could be written-down or converted into share capital) are equally problematic in this context. In order to ensure certainty, and to ensure that no stamp duty or SDRT is required to be paid on transfers of tier two notes, we would suggest that the Government consider amending section 79 in a similar manner to the rules relating to distributions and grouping.