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CORONAVIRUS: INTERNATIONAL REGULATORY UPDATE 27 APRIL – 1 MAY 2020

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European Union

The EU Commission has adopted a banking package intended to facilitate bank lending to support the economy and help mitigate the economic impact of COVID-19. The package includes a proposal for targeted amendments to the Capital Requirements Regulation (CRR) and an Interpretative Communication on the application of the EU's accounting and prudential frameworks which encourages banks and supervisory bodies to apply the rules more flexibly.

The proposed amendments to the CRR seek to maximise the ability of banks to lend and absorb losses related to coronavirus. In particular, the Commission proposes exceptional temporary measures to alleviate the immediate impact of the pandemic by:

- adapting the timeline of the application of international accounting standards on banks' capital;
- treating public guarantees granted during the crisis more favourably;
- postponing the date of application of the leverage ratio buffer; and
- modifying the way of excluding certain exposures from the calculation of the leverage ratio.

The Commission also proposes to advance the date of application of several

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agreed measures that incentivise banks to finance employees, SMEs and infrastructure projects.

The Interpretative Communication confirms recent statements on using flexibility within accounting and prudential rules, such as those made by the Basel Committee of Banking Supervision, the European Banking Authority (EBA) and the European Central Bank (ECB), amongst others. The Commission encourages banks and supervisory authorities to make use of the flexibility in the EU's accounting and prudential frameworks. For example, the Communication confirms the flexibility available in EU rules when it comes to public and private moratoria on loan repayments under the EBA's guidelines of 2 April. The Communication also highlights areas where banks are invited to act responsibly, for example by refraining from making dividend distributions to shareholders or adopting a conservative approach to the payment of variable remuneration. The Communication also recalls how banks can help businesses and citizens through digital services, including contactless and digital payments. The Commission has published a Q&A on the new banking package.

The Commission has also approved:

- a EUR 100 million Dutch State aid scheme in the form of subsidised interest rates on loans, which will be accessible to those small and medium-sized companies (SMEs) whose main source of financing derives from external equity, venture capital or microcredit;
- two Estonian State aid schemes to support companies affected by the coronavirus;
- a EUR 3 billion Finnish scheme to support companies affected by the outbreak through direct grants, equity injections, selective tax advantages and advance payments, as well as repayable advances, State guarantees and loans;
- Greece's modification of a previously approved guarantee scheme to support companies affected by the outbreak, extending its scope and increasing its budget to EUR 2.25 billion;
- a EUR 101.5 Lithuanian million rent compensation scheme to support tenants operating in certain sectors, including retail, hotels, restaurants, culture and sports;
- three Hungarian aid measures, with a total budget of around EUR 900 million, to support the Hungarian economy;
- a EUR 2 billion Slovenian umbrella scheme to support the Slovenian economy through direct grants, wage subsidies, exemption from paying social security contributions, reduction of certain taxes and water fees, bank guarantees, deferred payment of certain credits and compensatory payments; and
- two Slovenian schemes to support companies affected by the outbreak.

The schemes were approved under the State aid temporary framework adopted by the Commission on 19 March 2020, as amended on 3 April 2020.

Meanwhile, the Governing Council of the ECB has decided on a number of modifications to the terms and conditions of its targeted longer-term

refinancing operations (TLTRO III) in order to support the provision of credit to households and firms. In particular:

- the interest rate on all targeted longer-term refinancing operations will be reduced by 25 basis points to -0.5% from June 2020 to June 2021;
- for banks meeting the lending threshold of 0% introduced on 12 March 2020 the interest rate can be as low as -1%; and
- the start of the lending assessment period will be brought forward to 1 March 2020.

The Governing Council has also decided to conduct a new series of seven additional longer-term refinancing operations, called pandemic emergency longer-term refinancing operations (PELTROs). These operations are intended to provide liquidity support to the euro area financial system and contribute to preserving the smooth functioning of money markets by providing a backstop after the expiry of the bridge longer-term refinancing operations (LTROs) that have been conducted since March 2020. Counterparties participating in PELTROs will be able to benefit from the collateral easing measures in place until the end of September 2021 that were announced by the Governing Council on 7 and 23 April 2020. The PELTROs will be conducted as fixed rate tender procedures with full allotment and the ECB has indicated that they will be offered at accommodative terms. The interest rate will be 25 basis points below the average rate applied in the Eurosystem's main refinancing operations (currently 0%) over the life of the respective PELTRO. The first operation will be announced on 19 May, allotted on 20 May and settled on 21 May 2020.

The EU Technical Expert Group on Sustainable Finance has issued a statement highlighting the role it believes the Sustainable Taxonomy, EU Green Bond Standard, and Paris-Aligned and Climate Transition Benchmarks can play in guiding public and private sector plans for recovery from the pandemic, including the European Council's recently announced Roadmap to Recovery.

France

A Ministerial Order extending the scope of 'strategic sectors' for the purposes of foreign investment control to activities in relation to biotechnologies has been published in the French Official Journal. The order supplements the Ministerial Order dated 31 December 2019 on the French foreign investment control regime.

The French Central Bank has published a decision (no. 2020-02) from its Governor replacing the Governor's earlier decision (no. 2016-07) and implementing into French law the ECB's guidelines on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral. The decision amends the French regime applicable to temporary measures and, in particular, the eligibility requirements applicable to additional credit claims that can be mobilised as collateral, and valuation haircuts.

Luxembourg

Two Grand Ducal Regulations of 24 April 2020 providing new financial support measures for micro and small commercial and craft enterprises have entered into force. Various new forms of aid are available, in particular EUR 5,000 for companies with up to 9 employees and EUR 12,500 for those with up to 20

employees. The new measures may be combined with the previous non-refundable financial aid provided that the company concerned remains closed after 24 April or shows a 50% fall in turnover.

The Luxembourg financial sector supervisory authority (CSSF) has issued a new circular (CSSF 20/741) to inform all credit institutions that it complies with and applies the EBA guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis (EBA/GL/2020/02). The CSSF has emphasised that all entities that have adhered to general payment moratoria effectively implemented by 30 June 2020 and that intend to benefit from the EBA guidelines should comply with them. The CSSF further requires credit institutions to collect specific information on exposures where the moratorium has been applied and to report certain information to the CSSF. Credit institutions are also expected to make use of general payment moratoria in a transparent manner. The CSSF has highlighted the need for credit institutions to continue identifying and measuring credit risk in a timely and accurate manner, as general payment moratoria do not remove the obligation carefully to assess the credit quality of exposures benefiting from any moratorium.

In addition, the CSSF has updated its COVID-19 FAQs to summarise the main aspects of the prudential treatment of private moratoria following the EBA statements of 25 March and 2 April 2020. Amongst other things, the CSSF has indicated that:

- institutions may classify as not forborne and performing under the CRR exposures that are in scope of 'eligible' industry-wide private moratoria which have been set up in response to the COVID-19 pandemic; and
- while a private moratorium initiated by a single institution does not qualify as an eligible moratorium in the sense of EBA GL/2020/02, the industry-wide private moratorium initiative which has been set up in Luxembourg under the coordination of the Luxembourg Bankers' Association fulfils the eligibility criteria.

The CSSF has further indicated that:

- where moratoria are implemented in Luxembourg with a view to benefiting from such treatment, they may only cover performing obligators who did not experience payment difficulties before the application thereof; and
- exposures that had already been subject to forbearance measures at the moment of the moratorium's application cannot be reclassified (upgraded) as a result of such application.

Netherlands

The Business loan guarantee scheme has been extended to help businesses deal with the crisis. The amount for which the government stands as guarantor has been increased to EUR 150 million and the maximum guarantee percentage has been increased from 50% to 80% for large companies and to 90% for SMEs. The guarantee ceiling has been raised to EUR 10 billion. The SME credit guarantee scheme (BMKB) has also been extended. In particular, the maximum guarantee percentage has been increased from 50% to 75% and is now also applicable to bridging loans and current accounts. The term has been extended to 4 years.

United Kingdom

HM Treasury has announced amendments to the UK's Coronavirus Business Interruption Loan Scheme (CBILS) to support small businesses. A new 'Bounce Back Loan' scheme is intended to help small and medium-sized businesses to borrow between GBP 2,000 and GBP 50,000. The government will guarantee 100% of the loans with no fees or interest to be paid for the first 12 months. Loan terms will be up to 6 years and no repayments will be due during the first 12 months. The Government has indicated that it will work with a network of accredited lenders to agree a low rate of interest for the remaining period of the loans.

The Prudential Regulation Authority (PRA) has issued a statement on the regulatory treatment of the CBILS and the UK Coronavirus Large Business Interruption Loan Scheme (CLBILS), setting out its observations on whether the guarantees provided by the Secretary of State for Business, Energy and Industrial Strategy under the schemes are eligible for recognition as unfunded credit risk mitigation (CRM) under the CRR. The Financial Conduct Authority (FCA) has also issued a statement setting out its approach to its regulation of firms in relation to the schemes.

Separately, the FCA has published a 'Dear CEO' letter on the need to ensure fair treatment of corporate customers preparing to raise equity finance, emphasising the need for firms to adhere to the FCA's rules and principles and to fulfil their obligations under the Market Abuse Regulation (MAR).

The FCA has also published a further statement from the Working Group on Sterling Risk-Free Reference Rates (RFRWG) on the impact of coronavirus on the timeline for firms' LIBOR transition plans. It follows the joint statement made on 25 March. The new statement emphasises that it remains the central assumption that firms cannot rely on LIBOR being published after the end of 2021. The FCA and the Bank of England have worked with members of the RFRWG and its sub-groups and task forces to consider how all firms' LIBOR transition plans may be impacted by coronavirus.

The statement welcomes the continued progress on LIBOR transition, but also recognises that it will not be feasible to complete transition away from LIBOR across all new sterling LIBOR linked loans by the original end-Q3 2020 target. It acknowledges that there will likely be continued use of LIBOR-referencing loan products into Q4 2020 in particular, to maintain the smooth flow of credit to the real economy. Taking this into consideration the RFRWG recommends that:

- by the end of Q3 2020 lenders should be in a position to offer non-LIBOR linked products to their customers;
- after the end of Q3 2020 lenders, working with their borrowers, should include clear contractual arrangements in all new and re-financed LIBOR-referencing loan products to facilitate conversion ahead of end-2021, through pre-agreed conversion terms or an agreed process for renegotiation, to SONIA or other alternatives; and
- all new issuance of sterling LIBOR-referencing loan products that expire after the end of 2021 should cease by the end of Q1 2021.

In other news, the FCA has announced that it intends to seek legal clarity on business interruption (BI) insurance to resolve doubt for businesses who are facing uncertainty on their claims. In a statement, the FCA has outlined its

intention to seek a court declaration, on an agreed and urgent basis, to resolve uncertainty for customers making BI claims, and the basis on which firms are making decisions to accept claims. The FCA is seeking to bring to court what it believes are the key relevant cases which provide the greatest clarity on specific policy clauses as soon as possible to get an independent view on these disputed BI insurance policies if there remains unresolved uncertainty. It will seek to put cases before the Court on an agreed basis with the insurers concerned in order to get the fastest possible judgement. The FCA is writing to a small number of firms seeking clarification about whether they are declining, or intend to decline BI claims and it expects these firms to reply to it to clarify their position by no later than 15 May 2020. Based on the information obtained, the FCA will consider which firms to ask to join the court process.

The FCA is also proposing a series of measures to support both consumers and businesses who hold insurance products and who are facing other issues as a result of coronavirus. This package of measures sets out how the FCA expects insurance firms to:

- ensure products continue to offer value and are appropriate for customers taking into account the impact of coronavirus taking into account the firm's ability to deliver the benefits promised; and
- help individual customers who may be finding it difficult to pay their insurance premiums or meet their premium finance payments as a result of coronavirus.

In addition, the FCA has announced that, given the exceptional circumstances of the pandemic, it is giving the industry an additional six months to implement strong customer authentication (SCA) for e-commerce in order to minimise potential disruption to consumers and merchants. The new timeline of 14 September 2021 replaces the 14 March 2021 date. The FCA has emphasised that firms are required to take all necessary steps to comply with the revised detailed phased implementation plan and critical path to avoid the risk of enforcement action. It also expects UK Finance, as coordinator for the industry, to discuss the detailed phased implementation plan and critical path with all stakeholders and agree it with the FCA as soon as possible. In the meantime, firms should continue with the necessary preparatory activities such as robust end-to-end testing. After 14 September 2021, any firm that fails to comply with the requirements for SCA will be subject to full FCA supervisory and enforcement action.

Finally, the FCA has published a new webpage setting out how it is reviewing its work plans so that it can delay or postpone activity that is not critical to protecting consumers and market integrity in the short-term. One of the immediate actions the FCA is taking is to extend the closing date for responses to its open consultation papers and calls for input until 1 October 2020 and rescheduling most other planned work. It has also scaled back its programme of routine business interactions, especially through meetings so that it only contacts firms on business-critical requests and responses to the current situation.

Hong Kong

In light of the increased use of remote office arrangements, the Securities and Futures Commission (SFC) has issued a circular to remind licensed corporations to assess their operational capabilities and implement

appropriate measures to manage the cybersecurity risks associated with these arrangements. The SFC notes that when staff work remotely they may access the licensed corporation's internal network and systems from outside the office and hold meetings through videoconferencing platforms. Accordingly, the circular sets out some examples of controls and procedures to assist in the protection of licensed corporations' internal networks and data. The SFC has emphasised that the examples set out in the circular are not exhaustive and that licensed corporations should implement and maintain measures appropriate to the situation and commensurate with the size and complexity of their operations.

Japan

With view to ensuring the smooth financing of financial institutions and firms as well as maintaining stability in the financial markets, the Bank of Japan has decided further to enhance its monetary easing through:

- an increase in purchases of commercial paper and corporate bonds;
- strengthening the special fund-supplying operations to facilitate financing in response to COVID-19; and
- further active purchases of Japanese government bonds and treasury discount bills, in order to maintain stability in the bond market and stabilise the entire yield curve at a low level.

The Bank of Japan has also provided certain guiding principles regarding market operations as well as purchases of exchange-traded funds and Japanese real estate investment trusts. In addition, the Bank has indicated that it will closely monitor the impact of COVID-19 and will not hesitate to take additional easing measures if necessary, and that it expects short-term and long-term policy interest rates to remain at their present or lower levels.

Singapore

The Monetary Authority of Singapore (MAS) has updated its set of frequently asked questions (FAQs) relating to COVID-19 by adding a new Question 5 to the FAQs. The newly added FAQ provides guidance on whether the use of alternative record keeping methods (such as sending a subsequent email to the customer to recap on and confirm communications pertaining to the customer's order) are acceptable if a financial institution faces challenges in recording telephone conversations on order instructions received by representatives who are working remotely from home due to COVID-19.

United States

In the United States, the Federal Deposit Insurance Corporation and the Federal Reserve Board have announced that they will extend the comment period for their proposed guidance for resolution plans submitted by certain large foreign banks by 30 days. The proposed guidance, issued in March, would provide additional information on the agencies' expectations for the resolution plans of certain large foreign banks. The extension will allow interested parties additional time to prepare comments until 4 June 2020. In light of the challenges arising from the COVID-19 emergency, the agencies are reviewing and may adjust other upcoming deadlines associated with the resolution planning process.

The Federal Reserve Board has announced an expansion of the scope and duration of the Municipal Liquidity Facility (MLF). The facility, which was

announced on April 9 as part of an initiative to provide up to USD 2.3 trillion in loans to support US households, businesses, and communities, will offer up to USD 500 billion in lending to states and municipalities to help manage cash flow stresses caused by the pandemic. The facility, as revised, will purchase up to USD 500 billion of short-term notes issued by US states (including the District of Columbia), US counties with a population of at least 500,000 residents, and US cities with a population of at least 250,000 residents. To be eligible for the facility, notes must mature no later than 36 months from the date of issuance, an increase from the previously announced 24-month maximum term. In addition, among other rating requirements, eligible issuers must have had an investment grade rating as of 8 April 2020 from at least two major nationally recognised statistical rating organisations. The termination date for the facility has been extended to 31 December 2020 in order to provide eligible issuers more time and flexibility. The Federal Reserve is also considering expanding the MLF to allow a limited number of governmental entities that issue bonds backed by their own revenue to participate directly in the MLF as eligible issuers.

The Federal Reserve has expanded access to its Paycheck Protection Program Liquidity Facility (PPPLF) to additional lenders, and expanded the collateral that can be pledged. The changes are intended to facilitate lending to small businesses via the Small Business Administration's (SBA's) Paycheck Protection Program (PPP). As a result of the changes, all PPP lenders approved by the SBA, including non-depository institution lenders, are now eligible to participate in the PPPLF. SBA-qualified PPP lenders include banks, credit unions, Community Development Financial Institutions, members of the Farm Credit System, small business lending companies licensed by the SBA, and some financial technology firms. In addition, eligible borrowers will be able to pledge whole PPP loans that they have purchased as collateral to the PPPLF. An institution that pledges a purchased PPP loan will need to provide the Reserve Bank with documentation from the SBA demonstrating that the pledging institution is the beneficiary of the SBA guarantee for the loan.

The Commodity Futures Trading Commission's Division of Swap Dealer and Intermediary Oversight (DSIO) has announced that it has issued additional targeted no-action relief to registrants listing new principals and to applicants for registration as associated persons (APs) from the requirement to submit a fingerprint card for any such principal or AP registration applicant.

The Governor of New York State has issued the following two executive orders which, taken together, extend until 15 May 2020 the expiration date of the emergency relief permitting the use of audio-video technology for notarisations in New York:

- Executive Order 202.14, which extends the provisions of various Executive Orders, including Executive Order 202.7 which includes the notarisation relief, until 29 April 2020; and
- Executive Order 202.18, which further extends the effect of Executive Order 202.14 until 15 May 2020.

In addition, the New York Department of State has issued guidance regarding the use of audio-video technology for notarisations.

RECENT CLIFFORD CHANCE BRIEFINGS

Russian Federation – Supreme Court overview of issues related to coronavirus

On 21 April 2020, the Presidium of the Supreme Court of the Russian Federation issued guidance on a range of issues in various areas of law as concerns the impact of the COVID-19 pandemic, restrictive measures imposed by public authorities at various levels on contractual relations, and procedural issues.

This briefing discusses the guidance given by the Russian Supreme Court.

https://www.cliffordchance.com/briefings/2020/04/russian-federation--supreme-court-overview-of-issues-related-to-.html

The impact of coronavirus – Dutch government guarantee regulation in connection with the coronavirus outbreak

On 28 April 2020, the Dutch Ministry of Economic Affairs and Climate published the regulation implementing the guarantee scheme in connection with the coronavirus outbreak (the 'GO-C Regulation'). The GO-C Regulation is one of the economic measures taken by the Dutch government to help prevent liquidity shortages for companies in the Netherlands, such that companies with a healthy outlook can continue to be financed. Under the GO-C Regulation, the Dutch State provides guarantees for loans to companies.

This briefing provides an overview of the main features of the GO-C Regulation as it stands subject to certain interpretation issues.

https://www.cliffordchance.com/briefings/2020/04/the-impact-of-coronavirus--dutch-government-guarantee-regulation.html

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