

CORONAVIRUS: INTERNATIONAL REGULATORY UPDATE 8 – 12 JUNE 2020

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European Union

The European Central Bank (ECB) has [decided](#) to increase the envelope for the pandemic emergency purchase programme (PEPP) by EUR 600 billion to a total of EUR 1,350 billion. In response to the pandemic-related downward revision to inflation over the projection horizon, the PEPP expansion is intended further to ease the general monetary policy stance, supporting funding conditions in the real economy, especially for businesses and households. The ECB has indicated that purchases will continue to be conducted in a flexible manner over time, across asset classes and among jurisdictions, to allow the ECB Governing Council to stave off risks to the smooth transmission of monetary policy. In addition, the horizon for net purchases under the PEPP will be extended to at least the end of June 2021. In any case, the Governing Council has indicated that it will conduct net asset purchases under the PEPP until it judges that the coronavirus crisis phase is over.

The EU Commission has approved:

- a EUR 33 million [Cypriot aid scheme](#) deferring VAT payments to ease the liquidity constraints of companies affected by the outbreak;

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- a EUR 5 billion [French 'umbrella' scheme](#) to support research and development, testing and upscaling infrastructures and production of coronavirus relevant products;
- a [Polish recapitalisation scheme](#) of up to EUR 1.65 billion (PLN 7.5 billion) to support large enterprises and certain larger small and medium-sized enterprises (SMEs); and
- an approximately EUR 3.7 billion (SEK 39 billion) [Swedish scheme](#) that partially compensates companies exposed to large turnover decline for damage suffered due to 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 and 8 May 2020.

The General Board of the European Systemic Risk Board (ESRB) has taken a [second set of actions](#) in response to the emergency. In particular, the ESRB has:

- decided to establish an EU-wide framework to monitor the financial stability implications of the debt moratoria, guarantee schemes and other fiscal measures being put in place by Member States and adopted a [recommendation](#) that introduces minimum requirements for national monitoring. With its new framework, the ESRB intends to complement and enhance what is being done at the national level by fostering the exchange of experiences and the early identification of cross-sectoral and cross-border issues;
- highlighted that the monitoring of liquidity risks in the insurance sector needs to be improved and noted that the European Insurance and Occupational Pensions Authority (EIOPA) and national insurance supervisors have been considering developing a liquidity monitoring framework for (re)insurers as a response to the pandemic. In a [communication to EIOPA](#), the General Board strongly encourages EIOPA and its members to finalise and operationalise that framework promptly;
- decided to support and complement previous initiatives of the European Central Bank, the European Banking Authority, EIOPA and national authorities by issuing a [recommendation](#) on the restriction of distributions during the pandemic, which covers banks, certain investment firms, insurers, reinsurers and central counterparties; and
- issued a [recommendation](#) on liquidity risks arising from margin calls aimed at limiting cliff effects in relation to the demand for collateral, also including client clearing services and non-centrally cleared markets; enhancing CCP stress test scenarios for the assessment of future liquidity needs; limiting liquidity constraints related to margin collection; and promoting international standards related to the mitigation of procyclicality in the provision of client clearing services and in securities financing transactions.

The EU Parliament's Economic and Monetary Affairs (ECON) Committee has [adopted its position](#) on the proposal for a regulation amending the Capital Requirements Regulation (CRR) as regards adjustments in response to the COVID-19 pandemic. The adopted changes include:

- the extension by two years of the transitional arrangements for IFRS 9 and further relief measures to ensure that banks can further provide credit to the real economy;
- the alignment of minimum coverage requirements for non-performing loans guaranteed by the public sector with those guaranteed by official export credit agencies;
- deferred application of the leverage ratio buffer by one year to January 2023;
- advanced application of a more favourable prudential treatment of loans to pensioners or employees with a permanent contract that are backed by the borrower's pension or salary;
- advanced application of both the SME and infrastructure supporting factors to allow for a more favourable prudential treatment of certain exposures to SMEs and infrastructure, ensuring credit flow to SMEs and supporting infrastructure investments;
- banks will no longer be required to deduct certain software assets from their capital, supporting an accelerated digitalisation of the banking sector; and
- liquidity measures provided by central banks in a crisis context to be effectively channelled by banks to the economy.

The Parliament plenary vote is scheduled to take place on 19 June.

The European Securities and Markets Authority (ESMA) has [renewed its decision](#) to temporarily require the holders of net short positions in shares traded on an EU regulated market to notify the relevant national competent authority (NCA) if the position exceeds 0.1% of the issued share capital. The measure applies from 17 June 2020 for a period of three months. The temporary transparency obligations apply to any natural or legal person, irrespective of their country of residence. They do not apply to shares admitted to trading on a regulated market where the principal venue for the trading of the shares is located in a third country, market making or stabilisation activities.

ESMA has also issued a [public statement](#) to clarify the application of the MiFIR open access provisions (OAP) for trading venues (TVs) and central counterparties (CCPs) in light of the recent adverse developments related to COVID-19. The statement is also intended to coordinate the supervisory actions of NCAs by setting out the issues they should consider when assessing OAP requests. ESMA considers that the current market environment, with a high degree of uncertainty and volatility driven by the pandemic, may negatively impact CCPs' and TVs' operations and increase their operational risk. ESMA notes that these increased risks, combined with limited capacity for assessing access requests and for managing the migration of transactions flows, may impact the orderly functioning of markets or financial stability. NCAs are expected to take into consideration, to the extent relevant, the relevant adverse developments when taking decisions on open access requests. ESMA expects CCPs and trading venues to have the necessary operational capacity to process access requests once the exceptional market circumstances have come to an end. The current exemptions under MiFIR, which allow NCAs to temporarily exempt TVs and

CCPs from the OAP for exchange traded derivatives (ETDs), expire on 3 July and from 4 July the OAP for ETDs will apply.

Luxembourg

The Luxembourg financial sector supervisory authority (CSSF) and the Luxembourg Central Bank (BCL) have issued a [communiqué](#) to remind industry participants that the European Systemic Risk Board (ESRB) has set out a first set of [policy actions](#) in five priority areas to address the impact of COVID-19 on the financial system from a macroprudential perspective. These actions constitute a comprehensive set of policy measures that apply to different sectors of the financial system as well as across countries, and address the areas of market illiquidity, downgrades of corporate bonds, guarantee schemes and other fiscal measures, dividend payment restraints and margin call induced liquidity risks. In their communiqué, the CSSF and BCL draw particular attention to the following ESRB policy actions that are related to and have implications for investment funds and their activities:

- the [ESRB recommendation](#) of 6 May 2020 on liquidity risks in investment funds, in which the ESRB recommended that the European Securities and Markets Authority (ESMA) coordinate with national competent authorities to undertake a focused piece of supervisory engagement with those investment funds that have significant exposures to corporate debt and real estate assets;
- the [ESRB public statement](#) of 13 May 2020 on the use of liquidity management tools by investment funds with exposures to less liquid assets, in which the ESRB emphasised the importance of the availability and timely use of liquidity management tools by fund managers, especially in times of stressed market conditions; and
- the [ESRB issues note](#) of 11 May 2020 on liquidity in the corporate bond and commercial paper markets, the procyclical impact of downgrades and implications for asset managers and insurers, in which the ESRB examined how large-scale downgrades of corporate bonds can have an impact on the broader financial sector with the objective of assisting policymakers to better evaluate the risks associated with downgrades including the negative impact they could, among other disruptive effects, have through the potential sale of such assets by financial institutions on market liquidity, particularly in the high yield corporate debt segment.

Netherlands

The Dutch Government has [announced](#) a temporary moratorium of payments law (Tijdelijke Betalingsuitstelwet 2020) for Dutch companies that are in distress as a consequence of the coronavirus. This is a draft law and the consultation ends on 11 June 2020. Entry into force is expected soon. The moratorium applies to any debtor who conducts a business and is not a financial institution, insurance company or an investment fund (beleggingsinstelling) within the meaning of section 1.1 of the Dutch Financial Supervision Act (Wft). The initial period of the moratorium is two months, but this can be extended twice by a maximum period of two months each time (i.e. a maximum period of six months in total).

Spain

The General Directorate of Legal Certainty and Public Faith (Dirección General de Seguridad Jurídica y Fe Pública) has [approved](#) the application

forms for filing with the Registry of Movable Assets (Registro de Bienes Muebles) the suspension of contractual obligations arising from loans and mortgages granted to natural persons in a situation of economic vulnerability. There are two application forms: one for a single agreement and one for several agreements. Both shall be filed by the lender. The forms are for voluntary use, regardless of any other novation that may be agreed under Spanish law.

United Kingdom

The Bank of England and the UK Prudential Regulation Authority (PRA) have issued a [statement](#) acknowledging the ESRB recommendation on the restriction of distributions during the pandemic and noting that, in the context of the UK's withdrawal from the EU, the recommendation applies to UK authorities during the transition period.

HM Treasury has [announced](#) an extra GBP 37.8 million of funding to provide essential debt advice services and help more people who are struggling with their finances due to coronavirus. The distribution of the funding across England will be overseen by The Money and Pensions Service (MaPS) and will come from a combination of sources: GBP 20.6 million from Government, GBP 14.2 million will be raised through a one-off increase to the debt advice levy and a further GBP 3 million contribution from MaPS. For the Devolved Authorities, GBP 2m (out of an additional GBP 5.9m) will come from the Devolved Authorities' debt advice levy.

The Financial Conduct Authority (FCA) has issued a [statement](#) on the open access regime for the trading and clearing of exchange-traded derivatives, welcoming ESMA's recommendation that relevant competent authorities should have regard to the risks raised by COVID-19.

The FCA has also started proceedings in its High Court test case on business interruption insurance during the coronavirus pandemic and published the following court documents related to this:

- [Claim Form](#);
- [Particulars of Claim](#);
- [Representative Sample of Policy Wordings](#);
- [Assumed Facts](#);
- [Questions for Determination](#); and
- [Issues Matrix](#).

Australia

The Australian Government has [announced](#) comprehensive reforms to its existing foreign investment review framework. The reform primarily targets increased screening of nationally sensitive acquisitions by the Foreign Investment Review Board (FIRB). This will be achieved by introducing a new zero-dollar threshold (above which Government approval must be sought) for all foreign investment in 'sensitive national security businesses' and by enhancing review and enforcement powers on national security grounds. A definition for 'sensitive national security business' has not yet been provided. A number of other reforms are proposed, including narrowing the scope of the moneylending exemption, so as to require foreign lenders to obtain FIRB approval before taking or enforcing security over assets relating to a 'sensitive

national security business'. The proposed changes have arisen in response to rising national security concerns relating to foreign investment in sensitive businesses and critical infrastructure assets. The changes have been announced against the backdrop of the COVID-19 pandemic, under which temporary measures have already been passed to reduce monetary thresholds to zero for all foreign acquisitions. The reforms are proposed to come into effect on 1 January 2021, but remain subject to a consultation period and release of draft legislation.

The Australian Securities and Investments Commission (ASIC) has published its [Interim Corporate Plan for 2020-21](#), which sets out the following five priorities to tackle the challenges presented by the pandemic:

- protecting consumers from harm at a time of heightened vulnerability;
- maintaining financial system resilience and stability;
- supporting Australian businesses to respond to the effects of COVID-19;
- continuing to identify, disrupt and take enforcement action against the most harmful conduct; and
- continuing to build ASIC's organisational capacity in challenging times.

In addition, ASIC has published a [revised timetable of its ongoing work](#) over the coming months, reflecting changes from its adjusted work programme [announced on 14 April 2020](#). The changes include information on the proposed timing of consultation and release of regulatory guidance in relation to legislation implementing the recommendations of the Financial Services Royal Commission. ASIC has [indicated](#) that for those Royal Commission measures deferred for introduction by 30 June 2021, it will continue to engage with stakeholders in relation to the timing of consultations.

Hong Kong

The Hong Kong Government has [announced](#) that directors or executives of specified listed companies who travel from Mainland China to Hong Kong for essential business activities or return from Mainland China to Hong Kong after completing these activities and satisfy certain eligibility criteria may apply for an exemption from the compulsory quarantine arrangement. The new scheme is intended to facilitate directors or executives of sizable Hong Kong-listed companies to perform business activities that are essential to their operation. The scheme has been launched in addition to the initiative [announced](#) by the Government on 22 May 2020 that facilitates directors of listed companies or listing applicants to fulfil their regulatory requirements. The new scheme covers companies that are listed on the Stock Exchange of Hong Kong (SEHK) and included in the Hang Seng Index, Hang Seng China Enterprises Index or Hang Seng Composite LargeCap, MidCap or SmallCap Index. Under the scheme, the exemption is quota-based and applications will be considered on a task-specific basis. During any calendar month, each of the eligible listed companies can nominate a maximum of two persons (who may be directors or executives) for the exemption. Each nominated director/executive may travel to Mainland China or Hong Kong to perform duties related to the essential operation of the listed companies (such as attending board meetings, business review meetings or meetings with clients, or executing legal documents) once in each calendar month with the compulsory quarantine waived. Multiple applications from the same director/executive within the

same calendar month will not be accepted. The exempted persons will also be subject to certain conditions.

Singapore

The [COVID-19 \(Temporary Measures\) \(Amendment\) Bill](#) has been [introduced in the Singapore Parliament and passed](#). The Amendment Bill is intended to amend the [COVID-19 \(Temporary Measures\) Act 2020](#) to provide a rental relief framework for small and medium enterprises (SMEs) and enhance the relief available for businesses, organisations and individuals who are unable to fulfil their contractual obligations because of the COVID-19 pandemic. In particular, the key amendments to the Act include the following:

- new rental relief framework for eligible SMEs – the amendments put in place a framework of rental waivers mandated by law (ranging from around 2 to 4 months' relief depending on various eligibility criteria) to help affected SMEs who need more time and support to recover from the impact of the pandemic. The framework does this by providing mandated co-sharing of rental obligations between the Government, landlords and tenants. The Ministry of Law encourages landlords and tenants to continue to try and work out mutually agreeable arrangements that best address their specific circumstances;
- relief for tenants unable to vacate business premises due to the pandemic – the relief will be applicable where, due to COVID-19, the tenant is unable to vacate a non-residential property after the end of the lease or licence and before the expiry of the prescribed period (i.e., before 19 October 2020). The tenant will be required to serve a notification for relief on the landlord and meet such other conditions as may be prescribed by the Minister. In such situations, the tenant will not be liable to its landlord, except as otherwise prescribed by the Minister, for failing to vacate the property; and
- cap on late payment interest or charges for specific contracts – the relief will be applicable to arrears that arise due to the COVID-19 pandemic under specific contracts. Creditors will also not be allowed to terminate such contracts due to late payments during the prescribed period.

The Amendment Bill will come into operation on a date that the Minister appoints by notification in the Gazette and the amendments are expected to be implemented at the end of July 2020.

United States

The Federal Reserve Board has [expanded](#) its Main Street Lending Program to allow more small and medium-sized businesses to be able to receive support. The changes include:

- lowering the minimum loan size for certain loans from USD 500,000 to USD 250,000;
- increasing the maximum loan size for all facilities;
- increasing the term of each loan option from four years to five years;
- extending the repayment period for all loans by delaying principal payments for two years, rather than one; and
- raising the Reserve Bank's participation to 95% for all loans.

The Board expects the Main Street program to be open for lender registration soon and to be actively buying loans shortly afterwards.

The Commodity Futures Trading Commission (CFTC) has [extended](#) until 30 September 2020 certain elements of the no-action relief issued in response to the pandemic that was set to expire on 30 June 2020. In particular, the temporary relief extended until 30 September 2020 covers:

- members of designated contract markets and swap execution facilities;
- futures commission merchants and introducing brokers;
- floor brokers;
- retail foreign exchange dealers;
- swap dealers;
- swap execution facilities; and
- designated contract markets.

RECENT CLIFFORD CHANCE BRIEFINGS

UK Coronavirus Future Fund – converting potential

On 18 May the UK Government released full details of the Coronavirus Future Fund, a co-investment scheme between the private and public sectors aimed at securing equity investment for start-up companies unable to access existing state-backed loan schemes. An initial tranche of GBP 250 million is available between now and September 2020, with potential disbursement of further funds to be kept under review.

This briefing discusses the scheme.

<https://www.cliffordchance.com/briefings/2020/06/uk-coronavirus-future-fund--converting-potential.html>

Coronavirus update – Dutch government announces temporary moratorium of payments legislation

On 4 June 2020 the Dutch government announced a temporary moratorium of payments law for Dutch companies that are in distress as a consequence of the coronavirus.

This briefing provides a short overview of the proposed law.

<https://www.cliffordchance.com/briefings/2020/06/coronavirus-update--dutch-government-announces-temporary-morator.html>

Coronavirus Recovery Playbook

In response to the current financial crisis as a result of the Coronavirus pandemic, Clifford Chance has prepared this comprehensive set of slides (the Coronavirus Recovery Playbook) intended to outline helpful approaches and concepts relating to entities and assets under various types of credit stress. The Coronavirus Recovery Playbook is divided into several sections covering a variety of topics, including:

- Rescue capital raises from third parties;
- Issuing equity through rights offerings;

- CMBS – Special Servicing Considerations;
- CRE – A/B Notes;
- NSA Dual Class Roll Up Structure;
- Bridging valuation gap with contingent consideration;
- Duties of directors during times of distress;
- Distressed M&A;
- Distressed Situations – Insurance Products; and
- Strengthening balance sheets through debt reductions.

https://financialmarketstoolkit.cliffordchance.com/en/financial-markets-resources/resources-by-type/Corona_Recovery_US_Playbooks.html

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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