CORONAVIRUS: INTERNATIONAL REGULATORY UPDATE 15 – 19 JUNE 2020

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International

The Basel Committee met on 10 and 16 June 2020 to discuss a range of policy issues and to review the impact to date of the pandemic on the global banking system, noting that the crisis had underlined the importance of a resilient banking system and a prudent regulatory framework. All members reaffirmed their expectation of full, timely and consistent implementation of all Basel III standards based on the revised timeline endorsed by the Group of Governors and Heads of Supervision. The Committee views a measured drawdown of banks' Basel III buffers as both anticipated and appropriate in the current period of stress. Supervisors have indicated that they will provide banks sufficient time to restore buffers taking account of economic and market conditions and individual bank circumstances.

In addition to its discussion related to COVID-19, the Committee approved:

- final revisions to the credit valuation adjustment risk framework, which will be published in the coming weeks; and
- a technical amendment on the prudential treatment of non-performing loan securitisations, which will be published for consultation next week.

Members took stock of banks' progress on benchmark rate reforms and discussed potential regulatory implications stemming from banks' transition to alternative reference rates. The Committee places high priority on this issue and expects all banks to be adequately prepared to meet the transition timeline. The Committee also reviewed the responses received to its discussion paper on the prudential treatment for crypto-assets and approved a

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workplan for the next phase of the work, with a view to future consultation.

In view of improvements in US dollar funding conditions and low demand at recent 7-day maturity US dollar liquidity-providing operations, the Bank of England, the Bank of Japan, the European Central Bank and the Swiss National Bank, in consultation with the Federal Reserve, have jointly decided to reduce the frequency of their 7-day operations from daily to three times per week. This operational change will be effective as of 1 July 2020. At the same time, these central banks will continue to hold weekly operations with an 84-day maturity.

European Union

The EU Parliament plenary session has approved the proposed regulation amending the Capital Requirements Regulation (CRR) as regards adjustments in response to the COVID-19 pandemic. The adopted changes include:

- 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 European Banking Authority (EBA) has extended the application date of its guidelines on legislative and non-legislative moratoria to 30 September 2020. The EBA has acknowledged the trade-off involved in granting this extension, as persistent liquidity shortages under the current circumstances may develop into solvency issues that need to be properly assessed by banks on a case-by-case basis. The EBA has emphasised that the implementation timeline envisaged in its IRB roadmap to repair internal models remains overall unchanged, but also recognises that there may be institution-specific circumstances requiring more flexibility. Consequently, the EBA notes that supervisors may want to use their supervisory discretion in line with Article 146 of the Capital Requirements Regulation (CRR).

Spain

The Council of Ministers has approved the fifth tranche of the guarantee scheme for loans granted to self-employed individuals (autónomos) and corporates, loans granted to self-employed individuals and micro, small and medium-sized companies (SMEs) in the tourism sector and related activities, and financing granted to companies and self-employed individuals for the purchase of motorised road transport vehicles for professional use. With this new tranche, the Spanish Government will, through the Official Credit Institute (Instituto de Crédito Oficial), guarantee up to a maximum amount of EUR

15,500 million financing granted by credit institutions, financial credit establishments, electronic money institutions and payment institutions.

United Kingdom

The Financial Conduct Authority (FCA) has issued finalised guidance setting out its expectations for insurers and insurance intermediaries when handling claims and complaints for business interruption policies during the test case brought by the FCA. The FCA has also published a feedback statement summarising the responses to its short consultation on the guidance. The FCA expects the insurers covered by the finalised guidance to:

- review their relevant non-damage business interruption policies to classify them as set out and to report the outcomes of these reviews to the FCA by 8 July. This will enable the FCA to publish a list of relevant non-damage business interruption policies affected by the test case;
- consider what general communications they need to make to their non-damage business interruption policyholders, and what communications they need to make to individual policyholders, by 15 July, who have made a claim or complaint in the light of the guidance and the review of relevant non-damage business interruption policies; and
- identify claims and complaints (included those already declined or where the firm has made an adjustment or deduction for general causation) that are potentially affected by the test case and to take account of this guidance when handling these claims and complaints.

The guidance came into immediate effect. The FCA intends to review the guidance in light of the progress of the test case and in any event within six months of it coming into effect to assess whether it is still needed.

Australia

The Australian Securities and Investments Commission (ASIC) has registered an instrument titled 'ASIC Corporations (Amendment) Instrument 2020/565', which amends the following three COVID-19 related legislative instruments to specify an end date for these instruments:

- ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 (purchase plan instrument) – the earlier amendment to the purchase plan instrument will be repealed on 2 October 2020, i.e. six months after the amendment commenced;
- ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289 (trading suspensions relief instrument) – the trading suspensions relief instrument will be repealed on 2 October 2020, i.e. six months after it commenced; and
- ASIC Corporations (COVID-19 – Advice-related Relief) Instrument 2020/355 – this relief instrument will be repealed on 15 October 2020, i.e. six months after it commenced.

ASIC had publicly stated that relief measures provided under these instruments were temporary and that it would repeal the instruments following the COVID-19 crisis. However, following feedback from the Senate Standing Committee for the Scrutiny of Delegated Legislation, ASIC has decided to amend these instruments. ASIC has indicated that it will continue to monitor the appropriateness of these temporary relief measures in light of the uncertain impacts of COVID-19 on capital markets and on the demand for financial advice. Moreover, if ASIC considers it appropriate to end the relief before the six month period or extend the relief, it will give sufficient notice before any early repeal or extension is implemented.

ASIC has also released an information sheet titled 'Information Sheet 245: Board oversight of executive variable pay decisions during the COVID-19 pandemic' (INFO 245). The information sheet is intended to provide high level practical guidance to support board oversight and the exercise of discretion on the variable pay outcomes of large listed companies' most senior executives (cash and/or equity). The guidance has been informed by the findings in ASIC's 2019 review of remuneration governance practices at 21 ASX listed companies across seven industry sectors. It focuses on:

- the importance of a robust remuneration governance framework, especially to ensure informed decision making; and
- specific factors for boards to consider when exercising their discretion on executive variable pay in the current environment.

ASIC has indicated that it plans to release a detailed final report on the findings of its review into pay practices later in 2020, but has released the information sheet now, in response to the feedback received from representatives of large, listed companies (not subject to the review) that it would be valuable in the current circumstances for these companies to understand some of the key findings and observations made in the course of conducting the review to support their decision making. ASIC has also provided entity specific observations and findings directly to the 21 entities that were subject to the review.

Hong Kong

The Hong Kong Insurance Authority has issued a circular announcing the following additional measures to facilitate individual licensees' ability to comply with the continuing professional development (CPD) requirements under the new regulatory regime for insurance intermediaries:

- merger of the CPD assessment period for 23 September 2019 to 31 July 2020 (first CPD assessment period) with the CPD assessment period for 1 August 2020 to 31 July 2021 (second CPD assessment period);
- raising the cap on CPD hours which may be completed by e-learning activities in the first and second CPD assessment periods; and
- no cap on CPD hours to be earned through CPD activities delivered via virtual classroom platforms.

The circular also sets out provisions regarding the responsibilities of principals and individual licensees, as well as the consequences of non-compliance with the CPD requirements. The Insurance Authority has issued a set of frequently asked questions to provide explanations and basic rules for calculating the minimum number of CPD hours required for individual licensees with different registration or licensing histories, in order to enable principals and individual licensees to have a better understanding of the CPD requirements as set out in the Guideline on CPD for Licensed Insurance Intermediaries.

The Insurance Authority has also announced the extension of the temporary facilitative measures relating to non-face-to-face distribution of specific insurance products for another three months to 30 September 2020. The scope of products covered and the implementation details of the measures remain unchanged. The Insurance Authority introduced two phases of temporary facilitative measures in February and March 2020 to allow non-face-to-face distribution of protective products, including Qualifying Deferred Annuity Policies, Voluntary Health Insurance Scheme products, term life policies, refundable policies without substantial savings component and renewable policies without cash value. To protect policy holders, insurers and intermediaries have to perform upfront disclosure at the point-of-sale and apply an extended cooling-off period of no less than 30 calendar days for policy holders to seek professional advice if necessary.

Meanwhile, the Hong Kong Federation of Insurers (HKFI) has announced the results of a survey on the utilisation of insurers' autonomous alleviation measures and additional benefits for the insuring public. The survey found that, on general insurance business (excluding medical), over 32,000 travel insurance policies have been granted refunds, representing premiums of over HKD 9.6 million. Moreover, around 14,500 claims involving a total amount of over HKD 3 million have been lodged for travel insurance benefits relating to COVID-19, such as quarantine cash allowance. Regarding long term and medical insurance businesses, the survey found that nearly 140,000 applications for premium grace period extensions were handled. Together with those insurers who automatically extended the grace period without requiring a prior application, the industry has altogether offered to defer the receipt of payment of annualised premiums exceeding HKD 8.4 billion. The survey also noted that most insurers have already extended the premium grace period.

United States

The Federal Reserve Board has announced updates to the Secondary Market Corporate Credit Facility (SMCCF), which will begin buying a broad and diversified portfolio of corporate bonds to support market liquidity and the availability of credit for large employers. As detailed in a revised term sheet and updated FAQs, the SMCCF will purchase corporate bonds to create a corporate bond portfolio that is based on a broad, diversified market index of US corporate bonds. This index is made up of all the bonds in the secondary market that have been issued by US companies that satisfy the facility's minimum rating, maximum maturity, and other criteria. This indexing approach will complement the facility's current purchases of exchange-traded funds.

The Federal Reserve Board has also announced that it will resume examination activities for all banks, after previously announcing a reduced focus on exam activity in light of the coronavirus response. In March, the Board announced that it would focus on outreach and monitoring in light of the coronavirus response measures and temporarily reduce its exam activity, with the greatest reduction for smaller banks. Since that time, banks have had time to implement contingency operating plans and adapt their operations, so exam activity will resume. The Board anticipates that exams will continue to be conducted offsite until conditions improve and will continue to work with banks to understand any specific issues they may be facing.

RECENT CLIFFORD CHANCE BRIEFINGS

Coronavirus – the 'legal circuit breaker' – Singapore amends legislation to provide additional relief for SMEs

The COVID-19 (Temporary Measures) Act 2020 (COTMA), Singapore's new legislation to give breathing space to certain businesses and individuals suffering financial distress because of the effects of COVID-19, has been amended to provide additional protection to small and medium enterprises (SMEs).

On 5 June 2020, following a consultation with relevant stakeholders, Parliament passed amendments which include a rental relief framework for eligible SMEs and a cap on late interest charges for specific contracts. The amendments demonstrate the Singapore Government's continued approach of actively legislating to mitigate the economic damage caused by the pandemic, which includes re-writing contractual obligations in certain limited circumstances.

This briefing discusses the amendments.

https://www.cliffordchance.com/briefings/2020/06/coronavirus--the--legal-circuit-breaker----singapore-amends-legi.html

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