

CORONAVIRUS: INTERNATIONAL REGULATORY UPDATE 06 – 10 JULY 2020

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European Union

The EU Commission has approved:

- [approved](#) a EUR 6.2 billion Italian scheme to support small businesses and the self-employed affected by the outbreak. Under the scheme, the public support will take the form of direct grants. The scheme is open to small businesses and the self-employed active in all sectors except the financial sector and public administration; and
- [approved](#) Latvian plans to set up a fund with a current target size of EUR 100 million that will invest through debt and equity instruments in large enterprises active in Latvia affected by the coronavirus outbreak.

The schemes were approved under the State aid Temporary Framework.

The European Banking Authority (EBA) has published a [report](#) on the implementation of selected COVID-19 policies. The report is intended to clarify the implementation of the EBA's April 2020 [guidelines](#) on legislative and non-legislative moratoria on loan repayments by addressing a number of interpretative questions and presents an overview of the general payment moratoria in place in the EU based on notifications sent to the EBA. In addition, the report includes considerations on the COVID-19 issues which can arise in applying the operational risk framework. The report sets out common criteria intended to provide clarity on the supervisory and regulatory expectations regarding the treatment of COVID-19 operational risk losses in the capital requirement calculations. The report also encourages credit institutions to collect information on data losses, even when these are not expected to be part of the setting of capital requirements.

The EBA has also published a [statement](#) on resolution planning in light of the COVID-19 pandemic, which reiterates the importance of resolution planning in

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times of uncertainty to ensure that resolution stands as a credible option in times of stress. In addition, the statement highlights the importance for resolution authorities to continue promoting institutions' efforts to enhance their capabilities and increase their resolvability. The EBA has indicated that resolution authorities should:

- take into account the impact of COVID-19 on banks and their business models when taking decisions on resolution plans and on the minimum requirement for own funds and eligible liabilities (MREL); and
- use and test resolution colleges as the main fora to exchange information and share decisions in these times of stress.

The European Securities and Markets Authority (ESMA) has issued a [public statement](#) to promote coordinated action by national competent authorities (NCAs) in relation to the prohibition of providing external support to money market funds (MMFs) within the meaning of Article 35 of Regulation (EU) 2017/1131 (MMF Regulation)

The European Insurance and Occupational Pensions Authority (EIOPA) has issued a [statement](#) calling on insurance companies to review their product oversight and governance measures because of the potential impact the pandemic can have on products and their utility for customers. EIOPA is asking insurance manufacturers to identify products whose main features, risk coverage or guarantees have been materially affected by the pandemic. If such products no longer offer value to the target market, insurers should assess whether there is the risk of possible unfair treatment. The assessment should be on a medium to longer term basis, to take into account product lifecycles and the evolution of the impact of the pandemic. Where there is a possibility of unfair treatment, EIOPA expects remedial measures to be taken. These measures should be proportionate to potential unfair treatment and take account of legal requirements in national civil and insurance law.

Germany

Following the adoption by the German Parliament (Bundestag and Bundesrat) of a law establishing an Economic Stabilisation Fund (Wirtschaftsstabilisierungsfonds) to enable government stabilisation measures to mitigate the impact of the pandemic on German companies in March 2020 (see the related Clifford Chance briefing paper [here](#)), the German Federal Ministries of Finance and for Economic Affairs and Energy have announced in a joint [press release](#) that the EU Commission has granted the required approval. The fund is intended to stabilise non-financial undertakings by overcoming liquidity bottlenecks and by establishing the framework conditions to strengthen their capital base. For this purpose, the underlying law provides for two stabilisation measures: the granting of state guarantees and recapitalisation measures.

Spain

[Royal Decree-Law 25/2020](#) of 3 July on urgent measures to support economic recovery and employment (RDL), which adopts a series of measures to support the productive sector, employment and incomes, has entered into force. The RDL approves a guarantee scheme to encourage financing focused on investment, as opposed to the previous scheme which was mainly aimed at addressing liquidity needs caused by the pandemic. The scheme is due to have a maximum amount of EUR 40 billion and will be granted by the

Ministry of Economic Affairs and Digital Transformation until 31 December 2020 to encourage financing granted by supervised financial institutions to companies and self-employed workers for the purpose of making investments. The applicable conditions and requirements to be met, including the deadline for the application for the guarantee scheme shall be established by the Council of Ministers. Likewise, a fund to support the solvency of strategic companies is being established, with the purpose of compensating the impact of the health emergency on the balance sheet of solvent companies considered to be of strategic importance for the economy. The fund shall be temporary with an initial allocation of EUR 10 billion for the acquisition of financial instruments, including debt, hybrid instruments or shares in the capital of such companies. The RDL also includes measures for the implementation of the Support Plans for the Tourism and Automotive Sector. Amongst other things, a mortgage moratorium is being adopted for real estate used in tourism. Self-employed workers and legal entities with a registered office in Spain who are experiencing financial difficulties as a result of the coronavirus crisis may benefit from this measure provided that they are not subject to other coronavirus-related moratoria.

In addition, [Royal Decree-Law 26/2020](#), of 7 July, on economic recovery measures to deal with the impact of COVID-19 in relation to transport and housing, which adopts a series of measures with financial implications, has entered into force. With regard to transport, moratoria are approved for the public transport of goods and discretionary transport of passengers by bus, establishing measures for deferring payments of instalments on loan, leasing and rental agreements granted to the self-employed and companies for the purchase of buses and vehicles for the public transport of goods of more than 3.5 tons of maximum authorised mass. In line with the rest of the legal moratoria previously established for other areas and sectors, these deferrals will be carried out exclusively on the principal. In relation to housing, the RDL adopts certain amendments to the following earlier coronavirus-related regulations:

- Royal Decree-Law 8/2020 of 17 March on urgent extraordinary measures to deal with the economic and social impact of COVID-19 – the possibility of applying for a moratorium on the payment of the mortgage loan is extended until 29 September (the previous deadline was 5 August); and
- Royal Decree-Law 11/2020 of 31 March on urgent complementary social and economic measures to address COVID-19 – the protection measures for vulnerable lessees, which were due to expire shortly, are extended and strengthened. The amendment extends until 30 September (i) the possibility of applying for a moratorium or partial remission of the rent, where the lessor is a large owner or public entity, and (ii) the housing rental agreements eligible for the extraordinary extension of six months. Likewise, in order to prevent a default on non-mortgage loans by people in a situation of economic vulnerability, the possibility of applying for a moratorium is extended until 29 September.

United Kingdom

The Prudential Regulation Authority (PRA) has issued a [statement](#) to insurers to clarify its approach to the application of the matching adjustment (MA) during COVID-19. The statement is intended to ensure consistency in firms' interpretation of the PRA's policy and covers management of the MA portfolio, eligibility, calculation, and reflection in the Solvency Capital Requirement. The

PRA considers that the MA has functioned as intended thus far throughout the crisis.

The PRA has also published a [consultation paper](#) setting out its proposal to extend coverage under the Financial Services Compensation Scheme (FSCS) for Temporary High Balances (THBs), from six months to twelve months from the date of deposit, or the first date the THB becomes legally transferable to the depositor. The proposed extension of coverage would be for a temporary period, and is being proposed in response to the impact of COVID-19 on residential property and investment markets, and access to banking services for some depositors. THB coverage would revert back to six months from 1 February 2021. The policy proposals included in the paper are as follows:

- to extend THB coverage up until, and including, 31 January 2021, from six months to twelve months; and
- to revert back to a six-month THB coverage on 1 February 2021.

The consultation closes on 23 July 2020.

The Financial Conduct Authority (FCA) has published its [finalised guidance](#) for payment and e-money firms on coronavirus and safeguarding customers' funds to strengthen firms' prudential risk management and arrangements for safeguarding customers' funds in this period of economic stress. The finalised guidance follows the consultation paper the FCA published on 22 May 2020.

Australia

The Australian Prudential Regulation Authority (APRA) has [announced](#) an extension of its temporary capital treatment for bank loans with repayment deferrals, as well as temporarily adjusting the capital treatment of loans where terms are modified or renegotiated (restructured). On 23 March 2020, APRA [announced](#) that banks that offered borrowers affected by the COVID-19 pandemic an option to defer repayments for a period of up to six months need not treat the repayment deferral period as a period of arrears for capital adequacy and regulatory reporting purposes. APRA has indicated that it will inform all authorised deposit-taking institutions (ADIs) that this regulatory approach will be extended to cover a maximum period of 10 months from the start of a repayment deferral, or until 31 March 2021, whichever comes first. APRA expects ADIs to grant new or extended loan repayment deferral arrangements after undertaking an appropriate credit assessment to ascertain if an extension or new deferral is appropriate for the particular borrower given their circumstances. APRA has also indicated that it will provide an adjustment to the normal regulatory treatment of loans that are restructured. Under the adjustment, the loan may continue to be regarded as a performing loan for capital and regulatory reporting purposes, where an ADI restructures an affected borrower's facilities before 31 March 2021 with a view to putting the borrower on a sustainable financial footing. APRA will also require ADIs to provide regular disclosures regarding the status of their deferred, restructured and impaired loan portfolios to maintain transparency. Further, APRA intends to publish monthly aggregate data on the extent and nature of loans currently subject to repayment deferrals. Moreover, APRA has indicated that it will actively supervise the implementation of these measures and continue to engage with industry to support affected customers and facilitate the recovery of the Australian economy.

APRA has also [updated](#) its existing set of banking COVID-19 frequently asked questions (FAQs) by adding a new Question 9 to the FAQs. The newly added question is intended to provide guidance to ADIs in repurchasing loans from securitisations in response to the COVID-19 repayment deferrals under 'Prudential Standard APS 120: Securitisation' (APS 120). The prudential standard APS 120 permits ADIs to repurchase loans from capital relief and funding-only securitisations only in limited circumstances, including where the borrower is granted a further advance (or similar purpose) and if the loan is not in default.

The Australian Securities and Investments Commission (ASIC) has provided [further information](#) on its focus areas for financial reporting in the COVID-19 environment for years ending 30 June 2020, following its guidance via the frequently asked questions relating to COVID-19 implications for financial reporting and audit published in April 2020. ASIC believes that, in the current environment, the quality of financial reports and related disclosures is more important than ever for investors and to maintain confident and informed markets. Given the adverse impacts on many entities from the COVID-19 pandemic, ASIC requires directors, preparers and auditors to focus on the reporting of asset values, provisions, solvency and going concern assessments, events occurring after year end and before completing the financial report, and disclosures in the financial report and operating and financial review. ASIC also believes that entities may face some uncertainties about future economic and market conditions, and the future impact on their businesses. In this regard, ASIC advises entities that assumptions underlying estimates and assessments for financial reporting purposes should be reasonable and supportable. Further, ASIC reminds entities that it has extended the deadline for both listed and unlisted entities to lodge financial reports under Chapters 2M and 7 of the Corporations Act by one month for certain balance dates up to and including 7 July 2020 balance dates. Entities have been advised that, where possible, they should continue to lodge within the normal statutory deadlines having regard to the information needs of shareholders, creditors and other users of their financial reports, or to meet borrowing covenants or other obligations.

The Australian Securities Exchange (ASX) has [decided](#) to extend its temporary emergency capital raising measures, which were due to expire on 31 July 2020, until 30 November 2020. The decision has been made in light of the high and increasing levels of COVID-19 infections in major overseas markets and the present uncertainty about the nature and level of government economic stimulus in Australia after September 2020. The new date takes account of ASIC's extension of the deadline for listed companies to lodge their audited accounts for the year ended 30 June 2020 until 31 October 2020. It gives companies a further month to complete a capital raising, if they decide they need one, after publishing their audited accounts by the revised deadline. The extension has been implemented by the publication of the following two replacement class waivers:

- [Temporary Extra Placement Capacity Class Waiver](#); and
- [Non-renounceable Offers Class Waiver](#).

On 31 March 2020, ASX [introduced](#) temporary emergency capital raising measures (by way of class waivers) to help listed entities affected by the COVID-19 pandemic to raise urgently needed capital. The class waivers were [updated](#) on 22 April 2020 to clarify certain matters and improve their overall

operation. ASX has made some further minor changes to the class waivers to implement the extension.

Singapore

Finally, the Singapore Government has gazetted the [COVID-19 \(Temporary Measures\) \(Alternative Arrangements for Meetings for Specified Public Bodies and Governing Bodies\) Order 2020](#). The Order has been made in respect of the control measures under the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 and the Infectious Diseases (Measures to Prevent Spread of COVID-19) Regulations 2020, and sets out the alternative arrangements to personal attendance in respect of meetings of specified public bodies and governing bodies. For the purposes of the Order, 'specified public bodies' are the Accounting and Corporate Regulatory Authority, Housing and Development Board, Land Surveyors Board, People's Association and Singapore Food Agency. The alternative arrangements for the convening, holding, conducting or deferral of a meeting of a 'specified public body' or a meeting of a 'governing body' have been set out in the second column of the Second Schedule to the Order, and will be applicable in respect of the provisions of the written law or legal instrument relating to such a meeting set out in the first column of that Schedule. The alternative arrangements apply for the period starting on 27 March 2020 and ending on 30 September 2020. The Order is deemed to have come into operation on 27 March 2020.

C L I F F O R D C H A N C E

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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