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CORONAVIRUS: INTERNATIONAL REGULATORY UPDATE 27 – 31 JULY 2020

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International

Following its June 2020 Stakeholder Dialogue, the International Association of Insurance Supervisors (IAIS) is seeking feedback from stakeholders on the implications of COVID-19 on the insurance sector, supervisors and the future work of the IAIS. Feedback is requested by 28 August 2020.

European Union

The European Central Bank (ECB) has extended its recommendation to banks on dividend distributions and share buy-backs until 1 January 2021 and asked banks to be extremely moderate with regard to variable remuneration. It has also clarified that it will give enough time for banks to replenish their capital and liquidity buffers in order not to act pro-cyclically. The ECB will review whether this stance remains necessary in the fourth quarter of 2020, taking into account the economic environment, the stability of the financial system and the reliability of capital planning. For the same purpose, i.e. preserving banks' capacity to absorb losses and support lending to the real economy, the ECB has also issued a letter to banks asking them to be extremely moderate with regard to variable remuneration payments, for example by reducing the overall amount of variable pay. The ECB does not plan to extend the six month operational relief measures it granted to banks in March 2020, with the exception of non-performing loan (NPL) reduction strategies for high-NPL banks. The ECB will start to follow up with banks regarding prior remedial actions following earlier SREP findings, on-site inspections and internal model investigations. The ECB also plans to resume the issuance of targeted review of internal models (TRIM) decisions, on-site follow-up letters and internal model decisions once the six-month period is over. The ECB will grant high-

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NPL banks an additional six months to submit their NPL reduction plans to provide banks with additional time to better estimate the impact of the pandemic on asset quality. The ECB has also issued a letter to banks communicating its expectations that banks have in place effective management practices and sufficient operational capacity to deal with the expected increase in distressed exposures.

The European Securities and Markets Authority (ESMA) has announced that it is working on a proposal to possibly delay the entry into force of the CSDR settlement discipline regime until 1 February 2022. This is due to the impact of the pandemic on the implementation of regulatory projects and IT deliveries by CSDs and came as a request from the EU Commission. This measure would be additional to the delay foreseen in ESMA's final report on RTS on postponing the date of entry into force of Commission Delegated Regulation (EU) 2018/1229 (RTS on settlement discipline) until 1 February 2021. This was endorsed by the Commission on 8 May 2020 and is subject to the non-objection of the EU Parliament and of the Council until 8 August 2020. The RTS on settlement discipline cover measures to prevent and address settlement fails including:

- rules for the trade allocation and confirmation process;
- cash penalties on failed transactions;
- mandatory buy-ins; and
- monitoring and reporting settlement fails.

ESMA aims to publish the final report on further postponing the date of entry into force of the RTS on settlement discipline by September. Following the endorsement of the RTS by the Commission, the Delegated Regulation will then be subject to the non-objection of the EU Parliament and of the Council.

The European Insurance and Occupational Pensions Authority (EIOPA) has issued a statement on Solvency II supervisory reporting in the context of COVID-19. EIOPA considers that insurance and reinsurance undertakings should now be in condition to comply with the deadlines provided in the Solvency II framework. Insurance and reinsurance undertakings are expected to report in the Solvency II solo quarterly Own Funds template (S.23.01) with a reference date between 30 June and 31 December 2020, a calculation (if it is available as of reference date) or at least an estimation of the Solvency Capital Requirement at the end of each quarter reference date instead of the last calculated one as indicated in the instructions of the implementing technical standards. EIOPA has also urged competent authorities to submit the information received quarterly to EIOPA no later than two weeks upon receipt to allow EIOPA to monitor the situation in a timely manner.

Luxembourg

The Luxembourg financial sector supervisory authority (CSSF) has issued three new circulars:

- to inform all credit institutions designated as less significant institutions under the Single Supervisory Mechanism and all branches of non-EU credit institutions that it complies with and applies the European Banking Authority (EBA) guidelines on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 crisis (EBA/GL/2020/07). The EBA guidelines introduced reporting and disclosure requirements in the context of measures taken by credit

institutions in response to the crisis, covering both payment moratoria on existing loans and public guarantees on new lending exposures. All in-scope entities are therefore required to report the relevant exposures and disclosure information to the CSSF in accordance with the EBA guidelines. Furthermore, for the purpose of assessing the need for additional reporting, such entities are further required to notify the CSSF by 3 August 2020 at the latest, or on a timely basis at any subsequent dates, where they apply or intend to make use of such measures in other jurisdictions;

- to inform all credit institutions that the 30 June 2020 deadline by which moratoria must be effectively applied (i.e. payment must be rescheduled) has been extended to 30 September 2020. This new deadline results from the new EBA guidelines (EBA/GL/2020/08) which amended the guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis; and
- to inform all credit institutions that are not significant institutions under the SSM of its updated policy on restrictions of dividend distributions and share buybacks and to provide guidance on the CSSF's expectations with respect to remuneration practices. On 1 April 2020, the CSSF announced its intention to comply with the ECB Recommendation on dividend distributions during the COVID-19 pandemic (ECB/2020/19) and its endorsement of the EBA statement on dividends distribution, share buybacks and variable remuneration. The CSSF has now adopted these new recommendations as a result of recent new European initiatives on the restrictions of distributions, namely the European Systemic Risk Board (ESRB) Recommendation on restriction of distributions during the COVID-19 pandemic (ESRB/2020/7) and the ECB Recommendation (ECB/2020/35) on dividend distributions during the COVID-19 pandemic, which repeals Recommendation ECB/2020/19. The CSSF has also updated its COVID-19 FAQ in accordance with this circular letter. The CSSF has stressed that these recommendations apply until 1 January 2021 and, given their temporary nature, the regulator will further evaluate the economic situation and, together with relevant authorities, consider whether this deadline should be extended after 1 January 2021.

Spain

The Bank of Spain has resolved to extend the ECB's recommendation on dividend distributions to the less significant credit institutions under its direct supervision.

On 3 July 2020, the Spanish Government, via Royal Decree-Law 25/2020 of 3 July on urgent measures to support economic recovery and employment, approved a guarantee scheme of up to EUR 40 billion to encourage financing focused on investment. Further to the guarantee scheme, the Resolution of 28 July 2020 of the Secretariat of State for the Economy and Business Support, publishing the Resolution of the Council of Ministers of 28 July 2020, establishing the terms and conditions of the first tranche of the line of guarantees to finance granted to companies and self-employed workers for the main purpose of financing investments and authorising limits for acquiring expenditure commitments from future years, pursuant to Article 47 of Law 47/2003 of 26 November, General Budgetary, has now been published. Through this Resolution, the Spanish Government has launched the first tranche amounting to EUR 8 billion in order to provide coverage for the financing granted by supervised financial institutions to companies and self-

employed workers so that they are able to meet their liquidity needs for current expenses as well as those arising from new investments. The liquidity guaranteed by this first tranche will be focused on:

- new investment projects within the Spanish national territory;
- the coverage of current and capital expenses related to new investments or to the production and service process;
- the extension, adaptation or renewal of equipment, installations and capacities and
- the costs associated with the reopening of activity.

The supervised financial institutions considered to be eligible for this tranche are credit institutions, financial credit institutions, electronic money institutions and payment institutions which had already entered into the framework agreement with the ICO for the guarantee scheme introduced by Royal Decree-Law 8/2020, of 17 March, effectively operational since 15 May 2020 in accordance with the Council of Ministers Resolution of 10 April 2020. The eligible loans or other transactions are due to be those granted to companies and self-employed workers established in Spain and affected by the economic effects of COVID-19, provided that (i) they have been granted after the Resolution; (ii) accredited persons are not in a delinquency situation in the consultation of the files of the Risk Information Central of the Bank of Spain (CIRBE) as of 31 December 2019; and (iii) accredited persons are not subject to insolvency proceedings as of 17 March 2020. The maximum period of coverage will be eight years. Beneficiaries may apply for a guarantee until 1 December 2020.

United Kingdom

The UK Government has announced an extension of the Coronavirus Business Interruption Loan Scheme (CBILS) to small and micro businesses (those with fewer than 50 employees and turnover of less than GBP 9 million) classified as 'undertakings in difficulty' following recent changes to EU state aid rules. It has also published a letter setting out, among other things, its expectation that all accredited CBILS lenders will implement the required changes, noting the consequence that businesses whose CBILS applications were previously decline may now be eligible. The Government intends to issue guidance to lenders on how to identify 'undertakings in difficulty' in the near future.

The Prudential Regulation Authority (PRA) has issued a statement on dividend payments and share buybacks beyond 2020, noting the ECB's announcement and confirming that it will undertake its assessment of firms' distribution plans beyond the end of 2020 in Quarter 4 2020. The assessment will be based on the current and projected capital positions of the banks and will take into account the level of uncertainty on the future path of the economy, market conditions, and capital trajectories prevailing at that time.

The PRA has also issued a statement providing guidance on the European Banking Authority (EBA) guidelines on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 outbreak. The PRA expects that UK banks and building societies which (i) are, or are controlled by, G-SIIs or O-SIIs designated by the PRA in the most recent list and (ii) have retail deposits equal to or greater than GBP 50 billion on an individual or consolidated basis, should make disclosures similar to those prescribed by the

EBA guidelines, but incorporating a number of specified modifications. It expects such firms to make these disclosures for the highest level of consolidation in the UK. The PRA has also published its own disclosure templates.

The Financial Conduct Authority (FCA) has announced proposals to extend a series of temporary measures to help customers who hold insurance and premium finance products and who may be in temporary financial difficulties because of coronavirus. The original measures came into force on 18 May 2020 and the FCA committed to reviewing them after 3 months. The FCA is seeking comments by 5pm on 28 July on its proposal to extend this guidance until 31 October 2020.

The FCA has also:

- launched a call for input on ongoing support for mortgage and consumer credit customers affected by coronavirus. The FCA is asking for early views on what should happen to consumers coming to the end of a second payment deferral under its temporary guidance to firms on providing payment deferrals for mortgage and consumer credit products. It is also asking for views on whether it should extend its current guidance beyond the current deadline of 31 October 2020. Comments are due by 7 August 2020; and
- launched a consultation on guidance for insurance firms to help their customers identify their quickest and easiest options to claim for any cancelled travel or events caused by coronavirus. Comments are due by 13 August 2020.

Australia

The Australian Prudential Regulation Authority (APRA) has updated its capital management guidance for banks and insurers, in particular easing restrictions around paying dividends as institutions continue to manage the disruption caused by COVID-19 pandemic. APRA's updated guidance replaces its recommendation in April 2020 that banks and insurers 'seriously consider deferring decisions on the appropriate level of dividends until the outlook is clearer'. Noting a slight drop in the uncertainty in economic outlook since then, APRA reviewed banking and insurance sectors' financial projections and stress testing results. Considering these and other developments since April 2020 into account, APRA has advised banks and insurers to maintain caution in planning capital distributions, including dividend payments. In particular, APRA advises banks that for the remainder of the calendar year they should:

- retain at least half of their earnings when making decisions on capital distributions, and utilise dividend reinvestment plans and other initiatives to offset the diminution in capital from capital distributions where possible;
- conduct regular stress testing to inform decision-making and demonstrate ongoing lending capacity; and
- make use of capital buffers to absorb the impacts of stress, and continue to lend to support households and businesses.

Hong Kong

Following its circular dated 7 April 2020, the Hong Kong Monetary Authority (HKMA) has issued a circular sharing its key observations and industry practices to assist authorised institutions (AIs) in developing sustained efforts

to cope with the evolving COVID-19 situation and support operational responses which are consistent with the risk-based approach (RBA). The key observations and practices include the following:

- customer due diligence (CDD) under social distancing and travel restrictions – the HKMA has observed that AIs are increasingly using video conferencing to interact with customers in the course of on-boarding and ongoing CDD reviews. Some AIs utilise the flexibility provided in the Anti-Money Laundering and Counter-Terrorist Financing (AML/CFT) Ordinance to delay verifying the customer's identity, while adopting appropriate risk mitigating measures. In addition to remote on-boarding for individual retail customers, some AIs have also expedited testing of similar initiatives for corporate customers;
- pressure on AML/CFT resources – to address the pressure on resources, AIs have been adopting a number of responses to minimise potential impact to AML/CFT processes. Some AIs are also expediting their exploration of regulatory technology solutions to reduce the number of false positives generated from transaction monitoring and screening systems; and
- emerging threats and changes in customers' behaviour – the HKMA observed that AIs have increased their understanding of and vigilance to emerging COVID-19 related financial crime risks. Some AIs have identified changes in customer behaviour and worked to incorporate their understanding of emerging risks into transaction monitoring rules and scenarios. Further, some AIs are applying advanced analytics to help detect networks and common vulnerabilities.

The HKMA has also issued a separate circular to stored value facility (SVF) licensees to draw their attention to the above-mentioned key observations and industry practices. The HKMA believes that the relevant observations and practices will also assist SVF licensees respond to the evolving COVID-19 situation.

United States

The Federal Reserve Board has announced an extension until 31 December of its lending facilities that were scheduled to expire on or around 30 September. The three-month extension is intended to facilitate planning by potential facility participants and provide certainty that the facilities will continue to be available to help the economy recover from the pandemic. The extensions apply to the Primary Dealer Credit Facility, the Money Market Mutual Fund Liquidity Facility, the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility, the Term Asset-Backed Securities Loan Facility, the Paycheck Protection Program Liquidity Facility, and the Main Street Lending Program. The Municipal Liquidity Facility is already set to expire on 31 December, with the Commercial Paper Funding Facility set to expire on 17 March 2021.

The Federal Reserve has also announced the extension of its temporary US dollar liquidity swap lines, which applies to all nine central banks announced on 19 March 2020, and the temporary repurchase agreement facility for foreign and international monetary authorities (FIMA repo facility) to 31 March 2021.

In addition, the Federal Reserve has issued a Federal Open Market Committee (FOMC) statement and implementation note concerning monetary

policy. Among other things, the Committee decided to maintain the target range for the federal funds rate at 0 to 1/4 %, that the Federal Reserve will increase its holdings of Treasury securities and agency residential and commercial mortgage-based securities, and that the Open Mark Desk at the Federal Reserve Bank of New York will continue to offer large-scale overnight and term repurchase agreement operations.

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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