

CORONAVIRUS: INTERNATIONAL REGULATORY UPDATE 22 – 26 JUNE 2020

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International

The Equator Principles Association published [guidance](#) on the implementation of the Equator Principles during the pandemic, which is intended to provide practical advice for EPFIs, clients and consultants to enable them to continue to meet the requirements of the EPs (both EPIII and EP4) throughout this period.

European Union

[Regulation \(EU\) 2020/873](#) amending the Capital Requirements Regulation (CRR) as regards adjustments in response to the COVID-19 pandemic was published in the Official Journal. Specific amendments include:

- changing the minimum amount of capital that banks are required to hold for non-performing loans (NPLs) under the prudential backstop, including extending the preferential treatment granted to NPLs guaranteed by export credit agencies to national government and other public sector guarantors;
- extending for two years the transition period for arrangements related to the implementation of IFRS 9;
- reintroducing a prudential filter for sovereign bond exposures;
- excluding ‘overshooting’s’ (failures in the back-testing requirement) that occurred in banks’ 2020 and 2021 internal models for market risks, provided they are not a result of deficiencies in the model;
- postponing the introduction of the leverage ratio buffer requirement to January 2023 and introducing targeted changes to the calculation of the leverage ratio;

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- reintroducing certain transitional arrangements for exposures to central governments and central banks that are denominated in a currency of another member state; and
- bringing forward the introduction of some capital relief measures for banks under CRR2, including the preferential treatment of certain loans backed by pensions or salaries and of certain exposures to SMEs and infrastructure.

The Regulation entered into force and applied from 27 June 2020, except for the amendments to exposures excluded from the total exposure measure, which apply from 28 June 2021.

Amendments to regulatory technical standards (RTS) on prudent valuation under the CRR to address issues relating to COVID-19 were published in the Official Journal. [Commission Delegated Regulation \(EU\) 2020/866](#), which sets out a new Annex to Delegated Regulation (EU) 2016/101 containing the formulae to be used for the purpose of aggregating additional valuation adjustments (AVAs), entered into force on 26 June 2020.

Luxembourg

The Luxembourg financial sector supervisory authority (CSSF) issued a [communiqué](#) concerning the measures to be put in place, or that should continue to be applied, by all entities subject to its supervision when their employees and external providers return to work on-site further to the additional measures for the easing of the lockdown announced by the Luxembourg Government. In particular, in order to avoid a second wave of infections and ensure their operational continuity, the CSSF requires that supervised entities:

- identify their vulnerable employee(s) and define the applicable protection measures;
- implement rules to avoid people infected by or suspected of being infected by COVID-19 returning to the office;
- define the organisational rules with respect to internal and external meetings and regarding the reception of visitors;
- implement procedures regarding restaurant, coffee and meeting areas;
- organise specific cleaning or disinfection of office areas and equipment; and
- display barrier gestures, such as [those published by the Luxembourg Government](#).

The CSSF also [updated](#) its COVID-19 FAQs to inform banks and investment firms that:

- the European Banking Authority (EBA) has decided to postpone the data collection exercise regarding high earners (the institutions covered by this exercise are the same as last year, except for those institutions that were newly authorised in 2019 which would be included in the scope of the exercise) and the data collection for its remuneration benchmarking exercise (the institutions covered by this exercise are the same as last year) by three months. The CSSF will contact the entities in scope of these data collections shortly, inviting them to provide the relevant data by 30 September at the latest; and

- the CSSF has decided to postpone the data collection for the remuneration benchmarking exercise at national level by one month. The institutions covered by this exercise are the same as last year, except for the institutions that were newly authorised in 2019 which would be included in the scope of the exercise. The CSSF will contact the institutions concerned shortly, inviting them to provide the relevant data by 30 October at the latest.

In addition, three new laws have been published in the Luxembourg Official Journal. The [law of 20 June 2020](#) on the State guarantee within the framework of the EU level instruments introduced to mitigate the socio-economic consequences of COVID-19 will enter into force on 25 June 2020. The new law authorises the Luxembourg Government to grant a State guarantee to:

- the EU Commission for a maximum amount of EUR 105 million, under Council Regulation (EU) 2020/672 of 19 May 2020 establishing a European instrument for temporary support for the mitigation of the risks of unemployment in emergency situations (SURE) caused by the spread of COVID-19; and
- the European Investment Bank (EIB) for a maximum amount of EUR 45 million, under the European Guarantee Fund COVID-19 set up by the EIB.

The [law of 18 June 2020](#) amending the law of 4 December 2019 on the Luxembourg Export Credit Agency (ODL) will enter into force on 25 June 2020. To make ODL support more flexible for Luxembourg companies during the pandemic, the new law introduces a derogation from the existing ODL legal framework to increase the current threshold of commitments undertaken by ODL on behalf of the Luxembourg State. Under the revised regime, the commitments made by ODL in 2020 on behalf of the State cannot exceed fifty times the own funds allocated to this activity. Furthermore, the new law removes the threshold applicable to commitments made by ODL on behalf of the State in relation to the total amount of its commitments assumed on its behalf with the State guarantee.

Finally, the [law of 20 June 2020](#) establishing a support scheme for projects helping the fight against COVID-19 has entered into force, with retroactive effect as of 1 January 2020. This new law introduces financial support to companies carrying out an investment or research and development project related to the fight against COVID-19. The Government had already introduced such a regime with the [Grand Ducal Regulation of 8 April 2020](#) in order to be able quickly to grant aid to the relevant businesses, but this was limited to the period of a state of emergency. The purpose of the new law is to extend such support schemes to in-scope projects until 15 December 2020.

United Kingdom

The [Corporate Insolvency and Governance Act 2020](#) has received Royal Assent. The Act introduces both temporary emergency measures and permanent measures, many of which took effect from 26 June 2020, aimed at easing the burden on businesses and helping them avoid insolvency during the period of economic uncertainty caused by the pandemic, including:

- a temporary relaxation of the personal liability that may be imposed on directors;

- not allowing statutory demands served between 1 March and 30 September 2020 to form the basis of a winding up petition;
- not allowing winding up petitions to be presented between 27 April and 30 September 2020 unless the insolvency is not related to COVID-19;
- a standalone moratorium for viable companies providing for payment holidays for certain payments and protection from proceedings including enforcement;
- a new compromise procedure permitting one class of creditors to bind others to an arrangement to eliminate, reduce or prevent or mitigate the effects of any financial difficulties; and
- a prohibition on suppliers relying on termination clauses triggered by formal insolvency proceedings, including the new moratorium and compromise procedure.

The Bank of England has [announced](#) that in light of continued improvements in funding market conditions and recent usage patterns it will discontinue 1-month Contingent Term Repo Facility (CTRF) operations at the end of June 2020. The final operation took place on 26 June 2020.

The Prudential Regulation Authority (PRA) has published a [statement on the implementation of the EBA's guidelines on COVID-19 reporting and disclosure](#), informing PRA-regulated firms that they are not expected to prepare or transmit the reporting templates contained within the guidelines. The PRA is considering how the disclosure elements are to be applied and intends to provide further details in due course.

Australia

The Australian Securities and Investments Commission (ASIC) has [approved](#) a variation of the Banking Code of Practice (Code) by way of an approval instrument titled '[ASIC Corporations \(Approval of Variation of March 2020 Banking Code of Practice\) Instrument 2020/602](#)'.

The variation, as proposed by the Australian Banking Association (ABA) due to the extraordinary external environment caused by the COVID-19, involves the insertion of a 'Special Note' into the Code to allow for special application of specified Code provisions from 1 July 2020 until 1 March 2021 (application period). The [COVID-19 Special Note](#) applies to banking services and guarantees during the application period and has the following effects:

- in certain circumstances banks may not always be able to meet the timelines for customer communication outlined in some provisions of the Banking Code of Practice. Where a Code-subscribing bank does not meet, but has made good faith efforts to meet, the Code's timing requirements this will not amount to a breach of the Code. Despite anything in the COVID-19 Special Note, a subscribing bank will be required to inform the person, within 45 days of the person's complaint of the person's rights to apply for external dispute resolution if the bank has not resolved the person's complaint; and
- the variation clarifies that the effects of COVID-19 may be relevant to Code subscribing banks' obligations when considering providing new or increased loans to a small business borrower. The variation does not, and is not intended to, change any of the relevant Code obligations to engage

with a small business borrower in a fair, reasonable and ethical manner and to exercise the care and skill of a diligent and prudent banker.

Singapore

COVID-19 (Temporary Measures) (Amendment) Act 2020 (Commencement) Notification 2020 and COVID-19 (Temporary Measures) Act 2020 (Amendment of Schedule) (No. 3) Order 2020 gazetted

The Singapore Government has gazetted the following subsidiary legislation:

- [COVID-19 \(Temporary Measures\) \(Amendment\) Act 2020 \(Commencement\) Notification 2020](#) – the Notification has been gazetted to announce that the [COVID-19 \(Temporary Measures\) \(Amendment\) Act 2020](#), except sections 7, 8(f), 15 and 16, comes into operation on 20 June 2020. The sections which have not come into operation provide for, amongst other things, certain enhancements to the temporary relief measures for an inability to perform a scheduled contract that is to a material extent caused by COVID-19 (including a cap on late payment interest, the inability to terminate contracts due to late payment, and the holding over after termination or expiry of a lease or licence of a non-residential immovable property), a new rental relief framework, and temporary relief measures for parties to certain construction-related or supply-related contracts which are affected by a delay in performance or a breach which is to a material extent caused by COVID-19; and
- [COVID-19 \(Temporary Measures\) Act 2020 \(Amendment of Schedule\) \(No. 3\) Order 2020](#) – the Order amends the Schedule to the COVID-19 (Temporary Measures) Act 2020 (Act) to provide that, from 20 June 2020, the leases for the following commercial equipment or commercial vehicles will be covered under the Act as scheduled contracts: (i) any plant, machinery or fixed asset in Singapore that is used for manufacturing, production, or other business purposes; or (ii) commercial vehicles, excluding taxis and private hire cars as described in the Second Schedule to the Road Traffic Act.

United States

The Board of Governors of the Federal Reserve System published the [results of its stress tests for 2020 and additional sensitivity analyses](#) conducted in light of COVID-19. The sensitivity analysis assessed the resilience of large banks under V-shaped, U-shaped and W-shaped recessions, the results of which has led the Board to take the following actions:

- requiring banks to preserve capital in Q3 by:
- suspending share repurchases;
- capping dividend payments to the amount paid in Q2; and
- further limiting dividend payments according to a formula based on recent income; and
- requiring banks to update and resubmit capital plans later in the year to reflect current stresses.

The Board will also conduct additional analyses each quarter to determine whether response adjustments are appropriate.

The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC) and National Credit Union Administration, in conjunction with the state bank and credit union regulators, [issued guidance](#) for interagency examiners on assessing financial institutions' safety and soundness given the ongoing impact of COVID-19. The guidance advises examiners to continue to assess institutions in accordance with existing agency policies and procedures, while remaining flexible in their supervisory response, taking into consideration the unique, evolving and potentially long-term impact of the pandemic.

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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