FINANCIAL REGULATION

COVID 19 Practical Considerations: Regulatory Flexibility for Banks and Investment Firms

22 April 2020

The Central Bank of Ireland (**CBI**) has announced measures designed to give regulatory flexibility to, among others, banks and investment firms as they manage the impact of the COVID-19 pandemic on their operations.

BACKGROUND

In recent weeks, the European Central Bank (**ECB**), the European Banking Authority (**EBA**) and the European Securities and Markets Authority (**ESMA**) made various announcements and recommendations setting out areas in which regulatory flexibility may be available to (among others) banks and investment firms as they manage the impact of the COVID-19 pandemic on their operations.

The CBI has now also confirmed that it will apply various measures announced by the ECB, EBA and ESMA, and has provided additional detail in certain areas.

This briefing focuses on the regulatory flexibility announced by the CBI in respect of banks and investment firms only.[1] Please see the briefing published by our Asset Management and Investment Funds Group for information on the regulatory flexibility announced by the CBI for investment funds and fund management companies (COVID-19: Practical Considerations for Irish Fund Management Companies Periodic Filings – Central Bank announces flexibility measures).

BANKS DIRECTLY SUPERVISED BY THE CBI

CBI Announcement for Banks Directly Supervised by the CBI

- Capital and Liquidity Requirements

  On 12 March, the ECB announced measures designed to ensure that banks directly supervised by it could "*continue to fulfil their role in funding the real economy*" (ECB Banking Supervision provides temporary capital and operational relief in reaction to coronavirus). The ECB agreed to allow those banks operate temporarily below:

  - the level of capital defined by the Pillar 2 Guidance (which indicates to banks the adequate level of capital to be maintained to provide a sufficient buffer to withstand stressed situations);
  - the capital conservation buffer (which was introduced to ensure that banks have an additional layer of usable capital that can be drawn-down when losses are incurred, and is set at 2.5% of risk-weighted assets); and
  - the liquidity coverage ratio (which requires internationally-active banks to hold a stock of high-quality liquid assets at least as large as their expected total net cash outflows).

The ECB noted that those temporary measures would be enhanced if the countercyclical capital buffer (which is designed to ensure that banks have additional capital in place to absorb losses when risks materialise) was relaxed by the appropriate national authorities.

The ECB also confirmed that banks could partially use capital instruments that do not qualify as Common Equity Tier 1 capital (such as Additional Tier 1 or Tier 2 instruments), to meet the Pillar 2 Requirement (the capital requirement which applies in addition to, and covers risks which are underestimated or not covered by, the Pillar 1 minimum capital requirement). This measure was scheduled to come into effect in January 2021 as part of the CRD V Directive, but was effectively brought forward by the ECB announcement.

The CBI has confirmed that it will mirror the above measures in respect of banks directly supervised by it. It had already announced the relaxation of the countercyclical capital buffer from 1% to 0% with effect from 2 April 2020 to support the supply of credit to Irish households and the Irish economy.

The CBI has emphasised that banks

1 While not specifically covered in this Briefing, the CBI has also confirmed that it will apply ESMA's statement of 27 March 2020 in which, in respect of issuers facing imminent reporting deadlines under the Transparency Directive, ESMA recommended forbearance by national competent authorities (**NCAs**). Read our briefing on that recommendation here. The CBI also confirmed that it will apply the measures set out in ESMA's statement of 19 March 2020 (updated on 26 March 2020) which encouraged NCAs not to prioritise supervisory actions towards entities subject to securities financing transactions reporting obligations, which were due to come into application on 13 April 2020, until 13 July 2020.

should *"continue to apply sound underwriting standards, pursue adequate policies regarding the recognition and coverage of non-performing exposures, and conduct solid capital and liquidity planning and robust risk management."*

- Remuneration

  The EBA issued a Statement on dividends distribution, share buybacks and variable remuneration on 31 March 2020, and (on 12 March 2020) the ECB signalled its expectation that banks directly supervised by it not use the benefits arising from its recent capital measures to increase variable remuneration. The CBI has now confirmed that it expects the banks directly supervised by it to:

  - review their remuneration policies, practices and awards to ensure that they are consistent with and promote sound and effective risk management, and that they also take account of the current economic situation; and
  - ensure that remuneration, in particular, variable remuneration, is set at a conservative level (with perhaps a portion of variable remuneration being deferred).

- Dividends

  Following the recent EBA Statement on dividends distribution, share buybacks and variable remuneration and the ECB Recommendation that:

  - banks directly supervised by it not use the benefits arising from its recent capital measures to increase dividend distributions;
  - those banks also refrain from share buy-backs aimed at remunerating shareholders; and
  - national competent authorities apply that Recommendation to banks directly supervised by them,

  the CBI has confirmed that it expects the banks that it directly supervises:

  - not to pay dividends for the financial years 2019 and 2020 until at least 1 October 2020; and
  - refrain from share buy-backs aimed at remunerating shareholders.

- Extensions to deadlines for regulatory returns

  Following from the EBA's statement of 31 March 2020 on Supervisory Reporting and Pillar 3 disclosures in light of COVID-19, the CBI is extending the deadlines for banks directly supervised by it to remit various reports. Details of those reports, and the original and extended remittance dates, are set out in *Table 1: Changes to remittance dates for credit institutions* of the CBI Announcement for Banks Directly Supervised by the CBI.

- Recovery Plans

  The CBI has also advised banks to expect supervisory engagement on their 2020 recovery plans, and to assess the plausibility of the options set out in those plans.

INVESTMENT FIRMS

CBI Announcement for Securities Markets, Investment Management, Investment Firms and Fund Service Providers

- Extensions to deadlines for regulatory returns

  The CBI is extending the deadlines for investment firms to remit the reports set out in Table A of the CBI Announcement for Securities Markets, Investment Management, Investment Firms and Fund Service Providers, provided that investment firms who can meet the existing deadlines continue to do so. Firms who need to avail of the extension must submit the relevant return(s) within the relevant extension period(s).

- Client Assets

  Under the CBI's Client Asset and Investor Money Regulations, investment firms must submit the assurance report that is prepared (at least annually) in respect of its safeguarding of client assets to the CBI. The CBI has announced that it will allow investment firms (where their submissions would have fallen due between April and July 2020) a further two months from the original due date in which to submit the relevant assurance reports.

  This flexibility only applies where it is not possible for the investment firm to meet the original deadline.

  If an investment firm plans to avail of this flexibility, it must notify the CBI, explain the delay, and (if possible) confirm the planned submission date.

OTHER POINTS TO NOTE (APPLICABLE TO BOTH BANKS AND INVESTMENT FIRMS)

- Pillar 3 Disclosures

  The EBA's statement of 31 March 2020 in relation to Supervisory Reporting and Pillar 3 disclosures in light of COVID-19 encouraged competent authorities to be flexible when assessing compliance with the deadlines for the publication of Pillar 3 reports (the public disclosure requirements designed to give market participants sufficient information to assess an internationally-active bank's material risks and capital adequacy).

  For banks and investment firms directly supervised by it, the CBI has now confirmed that it expects them to notify it of any anticipated delay in the publication of their Pillar 3 reports, the reasons for that delay, and the expected publication date. It has also advised that banks and investment firms consider whether additional Pillar 3 disclosures are required to convey the impact of the COVID-19 pandemic on their risk profiles.

- Risk Mitigation Programmes (RMPs)

  Where a bank or investment firm is subject to a CBI RMP (which specifies remedial actions that it must take if particular risks are too high), the CBI expects that bank or investment firm to continue to meet its existing RMP implementation dates if it is in a position to do so. Those who may have difficulties in meeting those implementation dates should engage directly with their supervisor, who will consider on a case-by-case basis whether a postponement may be necessary. The ECB had already announced (in respect of banks directly supervised by it) that it is postponing, by six months, the existing deadline for remedial actions imposed by it as a result of certain inspections and investigations.

- Additional Targeted Information

  The CBI signalled that it will be asking banks and investment firms to submit additional targeted information to it to enable it to assess the impact of the COVID-19 pandemic on the financial sector.

- CBI will review its approach

  The CBI confirmed that it will keep its approach to regulatory flexibility under review as the situation evolves.

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