BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

CRR Article 8.2 information requirements

Applicants for a CRR permission under Article 8.2 should consider providing the PRA with the below information (this list is not exhaustive and the PRA may ask for additional information to assist with the assessment of the application).

a) Names of the entities in the proposed liquidity sub-group (DoLSub);
b) Regulatory classification of the entities – i.e. credit institution, institution;
c) Country of incorporation of the entities in the DoLSub;
d) Group structure chart (setting out the location of the DoLSub within the applicant's wider Group);
e) Explanation of the reason for the application and the intended outcome of the permission;
f) An analysis of how the application meets the conditions of CRR article 8
g) A list of all material affiliates not included in the DoLSub, with an assessment of the liquidity risks posed to the DoLSub;
h) The name of the entity within which the treasury/liquidity management function for the DoLSub will sit;
i) A declaration from the applicant firm that the parent institution on a consolidated basis or a subsidiary institution on a sub-consolidated basis complies with the obligations laid down in Part Six of the CRR in accordance with CRR Article 8.1(a);
j) Full details and explanation (including procedural documentation) of how DoLSub liquidity risks are managed. This should include:
    i. internal liquidity policy;
    ii. details of the limits, methods and systems used to manage and monitor liquidity risk, including whether each entity's management is able to use this to monitor the branch's (if applicable) individual risks; and
    iii. details of any internal limits set regarding liquidity risk
    iv. A copy of the stress-testing procedures and the results of carrying out those procedures.
    v. A copy of the contingency funding plans.
k) A completed LCR/CRR liquidity return on a sterling equivalent basis for the solo institutions;
l) A completed LCR/CRR liquidity return on a sterling equivalent basis for the proposed DoLSub;
m) Legally binding, two-way (i.e. cross-committed), multi-currency loan facilities between the institutions within the DoLSub, such that liquidity can flow freely between all those firms. The expected form of the facility is set out in this document;
n) A declaration from the firms that there are no current or foreseen material, practical or legal impediments to the fulfilment of the contracts referred to in (m);
o) A legal opinion (one for each jurisdiction in which a party to the Loan Facility Agreement is located) from a reputable third-party counsel with expertise in the relevant field dealing with the following matters:
    i. Compliance of the Loan Facility Agreement with all the stipulations set out in (m).
    ii. Parties' corporate standing;
    iii. Whether the obligations are legal, valid, binding and enforceable (including any relevant conflicts of laws issues and corporate benefit issues);
    iv. Due execution (including whether the agreement was within the capacity and powers of the parties, duly authorised, with all necessary consents and approvals); and
    v. Whether the provision of the loan facility, and exercise of the rights thereunder, would conflict with any applicable laws or regulations.

vi. In order to satisfy the above condition in the waiver, the legal opinion should have found that the Loan Facility Agreement complies with all the stipulations and is enforceable in all relevant jurisdictions and under all relevant systems of law.

p) Large exposure restrictions – are the applicants part of a core UK group and thus exempt from LE limits and related restrictions on the flow of liquidity;
q) The inclusion of an FCA entity within a PRA DoLSub may impact the ability of the entities to manage their liquidity and/or the regulators' ability to supervise the entities. A firm that makes an application to include an FCA entity within a PRA DoLSub will therefore be expected to provide additional information explaining in detail how the proposed arrangement is intended to work and how the proposed structure would address any potential risks or issues of complexity arising. Such information could include: details of how the FCA entity's liquidity risks are currently managed and how these arrangements would change under a DoLSub; how the proposed arrangement complies with the CRR Article 8 criteria; a cost-benefit analysis of the proposed inclusion of the FCA entity in the PRA DoLSub, including an analysis of how liquidity requirements for the entities would be affected; a copy of the FCA entity's most recent ILAA, ILSA or equivalent liquidity assessment.

<u>Factors the PRA may take into account when making its assessment</u>

a) All DoLSub members are institutions as defined by the CRR;
b) All DoLSub members are in the same UK consolidation;
c) Is there a core UK group (or other full exemption for LE limits) in place;
d) Whether the proposed DoLSub meets the PRA's ring-fencing policy, set out in SS 8/16.
e) Whether there is a material prudential benefit gained from the formation of the DoLSub;
f) There is an unlimited, cross currency, multilateral facility between all members of the sub-group;
g) Liquidity risks are managed on the basis of the proposed sub-group;
h) There are no material concerns about the management of liquidity risk at the sub-group level including its processes and procedures;
i) All sub-group members should be meeting their individual liquidity requirements prior to the application being made.
j) The impact on the ability of the PRA to supervise entities under the DoLSub arrangement

This list is non-exhaustive.

Form and content of liquidity support undertakings for CRR Article 8.2 permissions

Overview

1. The PRA may grant a CRR Article 8.2 permission to create a Domestic Liquidity Sub-Group (DoLSub) in which the liquidity of the constituent institutions is managed on the basis of that DoLSub. Such a permission would mandate a liquidity undertaking (the **"Loan Facility Agreement"**) between the constituent institutions which should be a multi-currency, 2-way commitment between those institutions having the attributes set out below. The purpose of requiring such an undertaking is to ensure that liquidity can flow completely freely throughout the DoLSub.

Attributes of Loan Facility Agreement

2. The characteristics which the PRA expects the Loan Facility Agreement to possess are prescribed in greater detail as follows:

a) The Loan Facility Agreement should be an enforceable contract for a 2-way, unsecured, revolving loan facility, callable in all currencies that are significant in the businesses of the members of the DoLSub. The obligation of each member institution to lend may be limited to its available liquidity resources. "Available liquidity resources" means in this context:

i) those of the lending entity's liquidity resources that comprise cleared, immediately accessible funds or those of its assets, rights, facilities or other resources that it, using its best efforts, is capable of converting to cleared, immediately accessible funds such that they may be transferred to and received by the borrowing entity in accordance with paragraph 2(k)(i) below;

ii) but excluding:

(1) those of its liquidity resources that the lending entity has calculated it is likely will be needed to meet its liabilities to entities other than those in the DoLSub falling due in the 24 hour period following receipt of a request to borrow from the borrowing entity;

(2) those of its liquidity resources that the lending entity has already agreed to lend to entities in the DoLSub other than the borrowing entity in the 24-hour period following receipt of a request to borrow from the borrowing entity; and

(3) such portion of its liquidity resources which, if lent, would cause the lending entity to become balance sheet insolvent in the sense of section 123(2) of the Insolvency Act 1986.

We further would expect that the Loan Facility Agreement:

(A) not require the lending entity to lend if it reasonably believed that after making the loan, if made in full, it would:

(i) be in breach of its capital resources requirement; or

(ii) run a significant risk that it would not be able to pay its debts as they fell due;

except to the extent approved in advance by the PRA; and

(B) require the lending entity to notify the PRA promptly upon receipt of a request to make such a loan.

b) The PRA expects the Loan Facility Agreement to consist of liquidity support undertakings made between all members of the DoLSub, thereby creating a "cat's cradle" configuration of commitments. Where an applicant firm considers that another type of arrangement is more appropriate (given its group structure), the burden lies on the applicant to show that the proposed structure poses no undue risk in comparison with the "cat's cradle" arrangement. In particular, the applicant firm will need to demonstrate how available liquidity could be moved within the proposed DoLSub if, for whatever reason, the primary lending entity (i.e., the "hub") were to be unable to provide funding. In any event, the entirety of the undertaking(s) comprising the Loan Facility Agreement should be contained in a single document.

c) The Loan Facility Agreement should contain no conditions on the availability of the loan facility to a borrowing entity, or on a drawdown by a borrowing entity, except that:

i) the borrowing entity continues to be a member of the DoLSub; and

ii) the borrowing entity is solvent – meaning that no "insolvency event" has occurred in respect of the borrowing entity. An "insolvency event" occurs when:

(1) an order (including a bank insolvency order or bank administration order, as defined by s.94 and s.141 of the Banking Act 2009, respectively) is made, or an effective resolution passed, for the liquidation or winding up of the relevant entity; or

(2) a receiver, administrator, trustee, bank liquidator, bank administrator, or other similar official shall be appointed in relation to the whole of the relevant entity.

d) The Loan Facility Agreement should be governed by English, Scottish or Northern Irish law.

e) The Loan Facility Agreement should contain a jurisdiction clause providing that disputes arising from the agreement are to fall within the exclusive jurisdiction of the courts of the country of the governing law, save that the borrowing entity may choose the jurisdiction of the courts of the lending entity's country of incorporation/head office (if different).

f) The Loan Facility Agreement should contain an entire agreement clause.

g) The Loan Facility Agreement should contain no terms that limit the enforceability of the agreement by reference to representations, warranties, conditions precedent or events of default (other than insolvency of the borrowing entity).

h) The Loan Facility Agreement should contain a clause stipulating that damages arising from any impecuniosity of the borrowing entity due to non-provision of funds under the Loan Facility Agreement are recoverable, but should contain no liquidated damages or limitation clauses (i.e. no pre- estimates of, or limits on, damages recoverable for breach of the agreement).

i) The Loan Facility Agreement should contain a clause stating that:

i) the purpose of the lending facility is to provide a borrowing entity with liquidity in a range of circumstances;

ii) the lending facility has been provided both to meet the funding needs of the borrowing entity and in connection with the CRR Article 8.2 permission, which has enabled the borrowing and lending entities' DoLSub to fund itself on a more efficient basis;

iii) the facility may be drawn down by a borrowing entity either on its own initiative or in response to a request or requirement from the PRA; and

iv) the circumstances in which the facility may be used include those in which a borrowing entity is unable to access funding from other sources on normal

market terms or at all, and that in such circumstances, damages will not be an adequate remedy for the lending entity's failure to lend money to the borrowing entity under the facility (i.e. for the lending entity's breach of the agreement).

j) The Loan Facility Agreement should contain a clause stating that all parties to the agreement recognise that the purposes of the agreement include (a) the protection of consumers, and (b) wider market stability;

k) The Loan Facility Agreement should contain clauses providing that:

i) liquidity support should be provided by a lending entity to a borrowing entity as cash in cleared, immediately accessible funds within 24 hours of the borrowing entity requesting the loan – it should be provided by the end of the same business day if the borrowing entity makes a request before noon; otherwise it should be provided by noon on the following business day;

ii) the loaned funds may be used by the borrowing entity for its general corporate purposes;

iii) the following provisions apply in respect of a firm ceasing to be a party to the Loan Facility Agreement:

(1) any member of the DoLSub may cease to be a party to the Loan Facility Agreement upon giving not less than 6 months' notice to the other members of the DoLSub; in such circumstances, the contractual relations between the other members of the DoLSub under the Loan Facility Agreement will continue in force unaltered (formally, this may mean that the contract is varied in order to discharge the departing member from its obligations);

(2) when a member of the DoLSub gives notice of its intention to cease to be a party to the Loan Facility Agreement, its obligation to repay any loan whose term extends beyond the date at which it will cease to be a party is accelerated so that the loan should be repaid by the date at which it will cease to be a party to the Loan Facility Agreement;

(3) the outstanding borrowings of a member of the DoLSub under the Loan Facility Agreement should be repaid by the time at which it ceases to be a party to the Loan Facility Agreement;

(4) the Loan Facility Agreement (whether in its original form or as varied) may not be terminated while being relied on for a CRR Article 8.2 permission to form a DoLSub.

iv) if the CRR Article 8.2 permission is revoked by the PRA, each member of the DoLSub has the right to be released from its loan- making obligations to other members of the DoLSub under the Loan Facility Agreement. However, its existing repayment obligations would be unaffected.

l) The Loan Facility Agreement should specify the rate of interest and any other charges to be levied by the lending entity; the rate of interest should be a market rate that would not inhibit use of the loan facility.

Conditions and requirements

3. The PRA expects that the applicant firm has obtained a separate legal opinion (one for each jurisdiction in which a party to the Loan Facility Agreement is located) from a reputable third-party counsel with expertise in the relevant field dealing with the following matters:

a) Compliance of the Loan Facility Agreement with all the stipulations above.

b) Parties' corporate standing;

c) Whether the obligations are legal, valid, binding and enforceable (including any relevant conflicts of laws issues and corporate benefit issues);

d) Due execution (including whether the agreement was within the capacity and powers of the parties, duly authorised, with all necessary consents and approvals); and

e) Whether the provision of the loan facility, and exercise of the rights thereunder, would conflict with any applicable laws or regulations.

4. The PRA expects that the legal opinion should have found that the Loan Facility Agreement complies with all the stipulations and is enforceable in all relevant jurisdictions and under all relevant systems of law.

5. The PRA expects that the applicant firm will make reasonable efforts to keep under review any legal or regulatory changes that could affect the efficacy of the Loan Facility Agreement, and that it will take all reasonable steps to amend the agreement in the light of any such changes in order to maintain the Loan Facility Agreement's efficacy.

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