HM Treasury

Capital Requirements (country-by-country reporting) Regulations 2013:

draft guidance

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1 Introduction

Aim of this guidance

1.1 This Guidance is published with two main objectives:

- The first is to give, in layperson's language, a broad summary of the Capital Requirements Directive Reporting Regulations 2013 (hereinafter "the Regulations"); and
- The second is to be an aid to the interpretation and application of the Regulations. In this context it is important to note that this is not a legally binding document. Therefore, a court may, but is not required, to take it into account.

1.2 This Guidance will be kept under review by HM Treasury and it will be updated when necessary. When the Guidance is amended, the date of the amended Guidance will be clearly noted. Each edition of the Guidance will be accessible as a link on the HM Treasury website to facilitate reference to the particular edition of the Guidance which is current at the time when an arrangement is entered into.

The Regulations

1.3 The Regulations implement Article 89 i.e. the country-by-country reporting (CBCR) requirements of the Capital Requirements Directive 4 (CRD4). [1] Broadly speaking, they impose reporting obligations on institutions in the United Kingdom within scope of CRD4.

1.4 Specifically, the Regulations require each institution to publicly disclose annually on a consolidated basis, by country where they have an establishment:

a their name, nature of activities and geographic location;

b number of employees;

c their turnover;

d pre-tax profit or loss;

e corporation tax paid; and

f any public subsidies received.

1.5 This information must first be published on 1 July 2014.

1.6 In accordance with Article 89 for the first disclosure on 1 July 2014 institutions only need to publicly report items (a) to (c) of the above list.

1.7 Institutions which are Global systemically important institutions (G-SIIs) are required by 1 July 2014 to report to the European Commission and HM Revenue and Customs on a confidential basis items (d) to (f) of the above list. Following this, the Commission will conduct

[1] Directive 2013/36/EU

an assessment of the potential negative economic consequences of the public disclosure of such information, and report to the European Council and Parliament by 31 December 2014. As a result of this assessment the Commission may choose to bring forward a legislative proposal to alter the disclosure obligations under Article 89 of CRD4. If that were to occur the Regulations will be amended accordingly.

1.8 The Regulations do not prevent institutions from providing a narrative around any information provided or providing additional information that might be considered helpful to readers.

1.9 The Regulations will be enforced by the Prudential Regulation Authority (PRA) for PRA-regulated institutions and by the Financial Conduct Authority (FCA) for all other institutions.

Structure of this guidance

1.10 The introduction above describes the aim of this Guidance as well as providing a broad overview of the Regulations. The remainder of this document follows the structure of the Regulations and is therefore set out as follows:

1. Chapter 2 explains the ongoing reporting obligation and therefore provides guidance on how to interpret the key terms;
2. Chapter 3 describes the interim reporting obligation; and,
3. Chapter 4 describes the provision relating to prior disclosure.

2 Ongoing reporting obligation

Institutions

2.1 Regulation 3(1) states that "*Institutions shall publicly disclose information in accordance with paragraphs (2) to (8) on or before 31st December 2015 and on or before 31st December each year thereafter." Regulation 2(1) states that ""institution" has the same meaning as in Article 4(1)(3) of the CRR*".

2.2 This means that from 1 January 2015 institutions must disclose on an annual basis the information listed in Regulation 3(4).

2.3 The term "institution" is defined by Article 4(1)(3) of the Credit Requirements Regulation (CRR)[1] as a "credit institution" or "investment firm", and each of these terms is further defined in Article 4(1) and (2). Holding companies are not considered "institutions" under CRD4. Therefore, the Government would expect an institution's first step to be determining whether it is in scope of the reporting obligation.

2.4 Branches of institutions established in a third country are not considered "institutions" under CRD4 and the Government does not consider them to in the scope of the CBCR requirements of CRD4.

Consolidated basis

2.5 Regulation 3(2) states that "*Subject to regulations 5 and 6 the information shall be disclosed on a consolidated basis in accordance with international accounting standards for each country in which the institution has a subsidiary or branch, or both.*" Regulation 2(1) then defines international accounting standards.

2.6 In practice this will require institutions to use an accounting approach to consolidation either in accordance with International Financial Reporting Standards (IFRS) or Generally Accepted Accounting Principles (GAAP). The institution that is in scope of the Regulations will be required to report on a consolidated basis (in accordance with international accounting standards) in relation to itself and any subsidiaries or branches it has for each country in which the institution has an establishment. Where a group contains more than one institution which is in scope of the Regulations, but contains entities which are not in scope, institutions may in addition to providing the information required under regulation 3(1) aggregate the separate sets of information required for disclosure within the group to form one disclosure for the whole group (on a country by country basis). The Government would in many cases expect this aggregation could be a simple summation of the information required to be disclosed.

2.7 Regulation 5 contains provisions which institutions which are part of wider groups may use to meet their disclosure obligation. Regulation 5 states *"Where an institution is a member of a group whose members include entities which are not subject to the obligations in regulations*

[1] Regulation (EU) No 575/2013

3(1) or 4(1) it may meet those obligations by publicly disclosing the required information on a consolidated basis in accordance with international accounting standards for each country in which the institution has a subsidiary or branch, or both, in respect of—" it then presents two approaches that would fulfil the obligation in Regulation 3(2):

a The first approach allows the top parent company (regardless of whether it is in scope of the Regulations) of a group that contains an institution which is in scope of the Regulations to report the information on a consolidated basis for all institutions and their subsidiaries or branches within that group on a country by country basis as specified in the Regulations; and

b The second approach allows a parent company (which is not necessarily the top parent company of the group) to report the information on a consolidated basis for a subset of that group as long as all institutions in scope of the Regulations are covered within the consolidation.

2.8 The Government would expect the basis of preparation of such reports to be clearly disclosed.

Reportable information (Regulation 3(4))

2.9 *"The name, nature of activities and location of the institution and any subsidiaries and branches"*: This means the names of the legal entities included in the consolidated information. Institutions may choose to disclose trading names if they believe it is relevant. The nature of activities should be described at the country level. Geographical location will be defined as the jurisdiction of incorporation of the legal entity and for branches it will be the jurisdiction of residence.

2.10 *"Turnover"*: The Government would expect the definition of turnover used by an institution to be consistent with that in the institution's financial statements. For example, for banks/credit institutions we would expect turnover to consist of total income before impairment and operating expenses, but after net interest, net commissions/fees income, investment and trading income and net insurance premiums.

2.11 *"The average number of employees on a full time equivalent basis"*: Institutions are required to adopt a similar approach to calculating this figure as they do for the purposes of section 411 of the Companies Act. Institutions are not required to report information on other workers who are not employees. As mentioned above, institutions are free to add any narrative they consider helpful to explain unusual situations.

2.12 *"Profit or loss before tax"*: As with turnover, the Government would expect the definition of profit or loss before tax used by an institution to be consistent with that in the institution's financial statements.

2.13 *"Corporation tax paid"*: The Governments expects institutions to disclose corporation tax on the basis of the cash amount of corporation tax paid and therefore uses the term "corporation tax paid". Regulation (2) defines corporation tax as the tax charged on profits by section 2(1) of the Corporation Tax Act 2009. Furthermore, the Government would expect institutions to use a similar tax charged on profits in jurisdictions outside of the United Kingdom. Institutions may choose to voluntarily report additional information such as current tax and deferred tax as well as other taxes paid beyond corporation tax in order to help clarify their tax position.

2.14 *"Public subsidies received"*: In the context of CBCR, this should be interpreted as direct support by the Government. This should not include any central bank operations that are designed for financial stability purposes or operations that aim to facilitate the functioning of the monetary policy transmission mechanism. Moreover, schemes in line with the European Commission's guidance on State Aid would not be considered public subsidies in the context of

CBCR; therefore the Government would not consider the Help to Buy scheme a public subsidy in the context of CBCR. Furthermore, general tax deductions (including the R&D tax credit regime available for large companies) that apply across the board would not fall within the definition of public subsidy for the purposes of CBCR.

Publication and audit requirements

2.15 Regulation 3(8) states that *"the information shall have been audited in accordance with the standards required by Directive 2006/43/EC."* The Government expects institutions to use the International Framework for Assurance Engagements in deciding which assurance engagement is appropriate. This Framework defines and describes the elements and objectives of an assurance engagement, and identifies engagements to which International Standards on Auditing (ISAs), International Standards on Review Engagements (ISREs) and International Standards on Assurance Engagements (ISAEs) apply.

2.16 Therefore, depending on individual circumstances, the disclosure could be included in the statutory audit or require an external assurance. Where an institution decides that including the CBCR requirements in the statutory audit is not appropriate, the Government would expect the chosen assurance engagement to provide a similar level of comfort as a statutory audit.

2.17 Materiality is a concept used by preparers and auditors in their assessment of the significance of an item or transaction in the context of a set of financial statements. Information is considered material if its omission or misstatement could influence the decision of users. The Government would expect materiality to be applied in line with the relevant assurance engagement and in the context of country-by-country reporting.

2.18 Regulation 3(7) states that *"where possible the information shall be made available together with the institution's annual financial statement."* Institutions are permitted to report the disclosure on a website if the information is easily and freely accessible. However, where an institution chooses to report the disclosure on a website, the Government would expect the institution to provide a link to that website within their annual report.

3 Interim reporting obligation

3.1 Article 89 of CRD4 imposes a more limited reporting obligation on institutions for the first disclosure (1 July 2014), which is reflected in Regulation 4. For all subsequent annual reports after 1 January 2015 the ongoing reporting obligation applies, which requires reporting of all of the information listed in Regulation 3. Article 89 also imposes a one off confidential reporting obligation for global systemically important institutions.

3.2 Regulation 4(1) states that *"institutions shall publicly disclose information in accordance with regulation 3(2) to (7) with the exception of the information in regulation 3(4)(d) to (f) on 1 July 2014."* This means that all institutions within scope of the Regulations will be required to disclose "the name, nature of activities and location of the institution and any subsidiaries and branches", "turnover" and "the average number of employees on a full time equivalent basis" on 1 July 2014. During the interim period, no institution is required to publicly disclose "profit or loss before tax", "corporation tax paid" and "public subsidies received" (i.e. items in regulation 3(4)(d) to (f)).

3.3 Regulation 4(2) states that "*global systemically important institutions authorised in the United Kingdom shall submit information in accordance with regulation 3(2) to (6) to the European Commission and to Her Majesty's Revenue and Customs with the exception of the information in regulation 3(4)(a) to (c) by 1 July 2014."* Therefore, during the interim period, only global systemically important institutions (G-SIIs) headquartered in the UK will be required to disclose the information in regulation 3(4)(d) to (f) to the European Commission and HM Revenue and Customs by 1 July 2014.

3.4 Regulation 2 defines "global systemically important institutions" (G-SIIs) as *"a group identified as a global systemically important bank by the Financial Stability Board in the Annex to the "2013 update of group of global systemically important banks" published by the Financial Stability Board on 11 November 2013, or any updated version of that list published by the Financial Stability Board subsequently."*

3.5 The "2013 update of group of global systemically important banks" published by the Financial Stability Board on 11 November 2013, which are global systemically important institutions under these Regulations, can be found on the website http://www.financialstabilityboard.org/publications/r_131111.pdf. A hard copy may be obtained from the Secretariat to the Financial Stability Board, Bank for International Settlements, Centralbahnplatz 2, CH-4002 Basel, Switzerland.

3.6 Furthermore, as Regulation 3(8) does not apply for the purposes of the interim disclosure, the Government does not expect the interim CBCR disclosure to be audited.

4 Prior disclosure

4.1 Regulation 6 states that *"Where the information referred to in regulation 3(4) relating to an institution has already been published in another EEA State for the purposes of complying with Article 89 of the CRD the institution need not comply with regulation 3(1) or 4(1) provided the institution publicly discloses where that information can be obtained."*

4.2 This provision is to ensure that institutions do not have to bear the reporting requirement again where it has already complied with it in another Member State. Therefore if a parent institution in an EEA State other than the UK has already complied with Article 89 under the laws of that jurisdiction and therefore published information "on a consolidated basis" for its UK institutions those UK institutions will not be required to fulfil the obligations in Regulations 3 and 4 if they make public where the information published by the top parent can be found.

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This document can be downloaded from www.gov.uk

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