

Financial Services Bulletin

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News

Chancellor's Speech at The Lord Mayor's Dinner for Bankers & Merchants of the City of London at Mansion House

The Chancellor of the Exchequer gave a speech on 16 June 2010 at the annual Mansion House dinner, outlining the Government's proposals for reforms to the regulatory system. The Chancellor set out the Government's intention to give the Bank of England control of macro-prudential regulation and oversight of microprudential regulation. The three key policy proposals that will achieve this were also outlined:

1. The Government will legislate to create an independent Financial Policy Committee (FPC) in the Bank of England, to analyse emerging risks to the financial stability of the UK's economy and coordinate the appropriate response. It will have a clear remit and powerful tools to identify risks to the resilience and stability of the financial sector as a whole and take action to address them.
2. The Government will legislate to create a new Prudential Regulatory Authority (PRA) as a subsidiary of the Bank of England, to ensure that systemic risks

can be considered alongside firm-specific issues. The PRA will be solely responsible for day-to-day prudential supervision of financial institutions.

3. The Government will legislate to establish an independent Consumer Protection and Markets Authority, with a strong mandate for promoting confidence in financial services and markets, ensuring that markets are transparent in their operation and that all participants get the degree of information and protection that suits them.

The Chancellor committed to putting the necessary primary legislation in place within two years. The Government will publish an initial consultation on these reforms before the summer recess.

The full text of the Chancellor's speech is available from the Treasury website, www.hm-treasury.gov.uk.



HM TREASURY

Bank Levy

The Chancellor announced on 22 June 2010 that the Government will introduce a bank levy from 1 January 2011. A joint statement was also released by the UK, French and German Governments.

The levy will apply to:

- the consolidated balance sheet of UK banking groups and building societies;
- the aggregated subsidiary and branch balance sheets of foreign banks and banking groups operating in the UK; and
- the balance sheets of UK banks in non-banking groups.

These institutions and groups will only be liable for the levy where their relevant aggregate liabilities, as set out below, amount to £20 billion or more. In calculating branch liabilities and Tier 1 capital, the Government proposes to use the principles applied to the capital attribution methodology used for Corporation Tax purposes.

The levy will be based on total liabilities (i.e. both short and long term liabilities) excluding:

- Tier 1 capital;
- insured retail deposits;
- repos secured on sovereign debt; and
- policyholder liabilities of retail insurance businesses within banking groups.

The Government proposes that any derivative liabilities will only be taken into account where they are net derivative positions, but will consider the technical details of this and other aspects of the levy design in consultation with industry over the summer.

It is proposed that the levy will be set at 0.07 per cent which is expected to raise over £2 billion annually. However, there will be a lower rate of 0.04 per cent in 2011. There will also be a reduced rate for longer-maturity wholesale funding (i.e. greater than one year remaining to maturity) to be set at 0.02 rising to 0.035 per cent; half the main rate.

The levy will not be deductible for Corporation Tax.

There will be anti-avoidance provisions to prevent avoidance of the levy. HM Revenue and Customs will administer the levy. The levy is intended to encourage banks to move to less risky funding profiles. The Government believes that banks should make a fair contribution in respect of the potential risks they pose to the UK financial system and wider economy.

The joint statement from the UK, France and Germany shows that this is a view shared by our international partners. The levy is based on the valuable work undertaken by the International Monetary Fund and complements the wider financial regulatory reform agenda.

Systemic risks must always be assessed in light of the circumstances at the time. The regulatory reforms underway are aimed at ensuring that no firm is too big to fail and that all firms are resolvable. The levy is a contribution reflective of economic risk, it is not an insurance against failure or a fund for future resolution.

The Government will consult over the summer. Final details of the levy will be published later this year, following this consultation.

E-Money Directive

The E-Money Directives set the regulatory framework for issuers of electronic money. The first Directive from 2000 is being updated to take account of technological changes, and to remove barriers to entry to non-bank e-money issuers like mobile phone operators and internet money-remitters. For example, the new E-Money Directive will allow issuers to undertake a wide range of mixed business activities for the first time.

EMD2 introduces a lighter prudential regime for e-money issuers who are not banks, and new safeguarding and refund rules to protect customers. It aligns the conduct rules for e-money issuers with those for payments services providers in the Payment Services Directive. The new E-Money Directive was adopted in September 2009 and must be implemented into national law by 30 April 2011.

The Treasury plans to consult on Regulations required to implement the Directive prior to the Autumn.

European Commission Review of the Prospectus Directive

The Prospectus Directive is the EU framework for the preparation of prospectuses in public offers of securities and where securities are admitted to trading on a regulated market. Its objectives are to enhance investor protection and to improve the efficiency of the single market. Its key innovation is that a prospectus approved in one Member State is valid across the EU, giving issuers a 'passport' across the EU capital markets. The Directive came into force on 1 July 2005.

Last year, the Commission consulted on how the Directive could be amended to reduce the administrative burden on issuers, but without reducing investor protection. The amendments include:

- Clarifying the period when publication of a prospectus, or supplementary information to it, is required.
- Introducing a proportionate disclosure regime for rights issues when shares are admitted to trading on a regulated market or an exchange-regulated market.
- Implementing a proportionate disclosure regime for SMEs, credit institutions issuing non-equity securities and companies with reduced market capitalisation.
- No longer requiring a prospectus for employee share scheme offers for companies listed on exchange-regulated markets or outside the EU.
- Clarifying the requirement for and liabilities of a prospectus when securities are sold via intermediaries and not directly by the issuer.
- Increasing the total consideration of the offer for which the directive does not apply from EUR 2.5 million to EUR 5 million.

A general approach was agreed at the Committee of Permanent Representatives (COREPER) on 2 June 2010 and adopted by the European Parliament on 17 June. The draft amending Directive can be found on the Council of the European Union's website at:

<http://register.consilium.europa.eu/pdf/en/10/st10/st10254.en10.pdf>

This will be translated over the coming months and taken through the Juristic Linguist process before being formally agreed by the European Council. The amending Directive will enter into force after its publication in the Official Journal of the European Union. The Government will consult industry on the changes that have been made in advance of implementation.

Update on TheCityUK

On 12 May 2010, TheCityUK was officially launched at a breakfast event in Westminster. TheCityUK intends to bring together financial services promotion in a single, independent, practitioner-led organisation. The new body was set up following recommendations on the competitiveness of financial services and the City of London, in reports chaired by Bob Wigley and Sir Win Bischoff. TheCityUK moved into new offices in Basinghall Street on 1 June, and will focus on three core objectives: restoring the reputation of the industry within the UK; influencing the regulatory landscape; and promoting UK industry abroad. Three committees are charged with pursuing these goals.

The Government will work with TheCityUK on overseas promotion to ensure that industry efforts are focused on the needs of financial services target markets in the Gulf, India, China, Russia and Brazil, and on regulatory issues to ensure that evidence based policymaking is undertaken in Brussels and by international standard setters.

Investment bank resolution project

On 16 December the Treasury published a consultation entitled 'Establishing Resolution Arrangements for Investment Banks'. The paper set out proposals for enabling the orderly wind-down of an investment firm. In particular, the proposals were aimed at reducing the impacts of an investment firm's failure on clients, creditors, counterparties and the wider UK economy. The consultation closed on the 16 March 2010.

The Government is committed to ensuring that the UK market for investment banking services remains competitive and believes that the proposals consulted on will enhance the UK's reputation as a safe place for investors to invest. The Government intends to

publish a progress report in July summarising the consultation responses to the December paper and outlining the next steps for the various proposals. This would be followed by a further consultation paper in August which will set out the proposed special administration regime for investment banks along with draft legislation.

Banking Act 2009

Exclusion of insurance companies from the scope of the special resolution regime (SRR)

The Banking Act 2009 (Exclusion of Insurers) Order 2010 was made on 6 January 2010, coming into force 7 January 2010. The order explicitly excludes insurance companies from the scope of the special resolution regime (SRR) established by the Banking Act 2009.

The SRR can be used to resolve failing banks and building societies. The conventional way of defining a "bank" in legislation is to refer to a UK institution that has a regulatory permission granted by the FSA to accept deposits, and then to refine the definition to exclude regulated bodies that do not carry out banking business. This approach is taken in sections 2 and 91 of the Banking Act. As a result of the permission to accept deposits for the purposes of carrying on insurance business, insurance companies fell within the scope of the definition of "bank" and therefore within the scope of the SRR.

However the SRR designed is to deal with firms that carry out banking business, not insurance business, and after consulting stakeholders the Government therefore decided to explicitly exclude insurance companies from scope.

Building society insolvency and special administration

On Monday 18 January 2010 the Banking Liaison Panel (BLP) published advice to the Treasury concerning secondary legislation under sections 130 and 158 of the Banking Act 2009. This legislation applies Parts 2 and 3 of the Act to building societies, creating the building society insolvency procedure (BSIP), and the building society special administration procedure (BSSAP), and will also create the insolvency rules for those procedures. The BLP is an advisory panel with a statutory role to advise the Treasury under section 10 of the Act. The panel's

advice, and further information can be found on the Treasury website: www.hm-treasury.gov.uk

The Building Societies (Insolvency and Special Administration) (Amendment) Order 2010 which was approved in Lords Committee on 18 March and in the Commons on the 23 March. The Order makes technical changes to building society insolvency and special administration. The draft Order is available from the OPSI website www.opsi.gov.uk. The insolvency rules for the BSIP and BSSAP will be made and laid before Parliament in due course.

Live consultations

Infrastructures and Over The Counter (OTC) derivative markets

On 14 June, the Commission published a consultation paper which covers issues relating to organisational and risk management standards for Central Clearing Counterparties (CCPs); interoperability between CCPs; requirements for clearing of OTC derivatives; and the reporting of OTC derivative trades to trade repositories.

The consultation closes on **9 July** and a final proposal on European Markets Infrastructure Legislation from the Commission is expected in September.

Short selling

The European Commission has launched a consultation into the possibility of stand-alone legislation to deal with potential risks arising from short selling. The deadline for responses is **10 July**.

Market Abuse

A consultation into possible amendments to the Market Abuse Directive, has also been published by the European Commission. Interested parties are invited to respond to the Commission by **23 July**.

Transparency Directive

The Transparency Directive aims to enhance transparency of EU capital markets by establishing rules on periodic financial reports and the disclosure of major shareholdings for issuers whose securities are admitted to trading on a regulated market in the EU. Member States were required to implement the Directive by 2007.

The European Commission has issued a report on the operation of the Transparency Directive and has also launched a public consultation on the review. Interested parties are invited to respond to the Commission by **23 August**.

Closed consultations

Special resolution regime – The FSMA (Contribution to Costs of Special Resolution Regime) Regulations 2010

On Tuesday 16 March, Treasury published a consultation document, Special resolution regime: The FSMA (Contribution to Costs of Special Resolution Regime) Regulations 2010. The consultation closed on Wednesday 16 June 2010.

The consultation sought views on all aspects of the draft FSMA 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2010, which will be made under the provisions inserted into the Financial Services and Markets Act 2000 (FSMA) when clause

28 of the Financial Services Bill is enacted. The Banking Act 2009 inserted a new section 214B into FSMA, which made provision to allow the Treasury to require the FSCS to contribute to the cost of using the special resolution regime. Subject to Parliamentary approval, clause 28 of the Financial Services Bill will make significant corrections to these provisions by substituting a new section 214B and introducing two further sections. The consultation document is available from www.hm-treasury.gov.uk.

The Government intends to lay The Financial Services and Markets Act 2000 (Contribution to Costs of Special Resolution Regime) Regulations 2010 in due course.

Web links

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<http://register.consilium.europa.eu/pdf/en/10/st10/st10254.en10.pdf>

Live consultations

Transparency Directive

http://ec.europa.eu/internal_market/securities/docs/transparency/directive/consultation_questions_en.pdf

Short selling

http://ec.europa.eu/internal_market/consultations/2010/short_selling_en.htm

Market Abuse Directive

http://ec.europa.eu/internal_market/consultations/2010/mad_en.htm

Infrastructures and Over The Counter (OTC) derivative markets

http://ec.europa.eu/internal_market/consultations/2010/derivatives_en.htm

Any comments on the bulletin,
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