FinCoNet
INTERNATIONAL FINANCIAL CONSUMER PROTECTION ORGANISATION

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Welcome to the FinCoNet newsletter

Dear FinCoNet Members,

Welcome to the fourth 2020 edition of the FinCoNet newsletter.

As 2020 comes to a close, we would like to acknowledge and thank all Members, Associates and Observers of FinCoNet for their dedication and commitment during a year full of challenges. It was good to see so many delegates at the recent Annual General Meeting 2020, exceptionally held virtually due to COVID-19 restrictions. The finalised reports and progress made by the Standing Committees are important accomplishments by FinCoNet, as is the new Programme of Work for 2021/22. They are also a testament to the critical importance of market conduct supervision and financial consumer protection—even more so given the challenges facing consumers today. More information about the AGM can be found in the 'In Focus' section of this newsletter.

Wishing you and your families a happy and healthy festive season and New Year ahead.

In focus

FinCoNet Annual General Meeting 2020

On 11-12 November 2020, the International Financial Consumer Protection Organisation (FinCoNet) held its Annual General Meeting (AGM) using a virtual format because of COVID-19 travel restrictions. Representatives from 44 jurisdictions around the world, as well as international organisations, participated in the AGM. Two new Members of FinCoNet joined the AGM for the first time ie Bank Indonesia and the Central Bank of the United Arab Emirates. The meeting was held back-to-back with an International Seminar on 13 November 2020 on the topic of Creditworthiness Assessments: Current Issues and Challenges.

In welcoming FinCoNet Members, Associates and Observers to the AGM, Ms Maria Lúcia Leitão, Chair of FinCoNet said:

"We have all been working under unprecedented and difficult conditions since the beginning of the COVID-19 pandemic. In this complex framework the importance of conduct of business supervision as a pillar of financial consumer protection has been vindicated. FinCoNet is always ready to support the work of its Members by benchmarking and complementing the different approaches needed to protect financial consumers. International cooperation between authorities is now even more important to better overcoming the challenges ahead."

Mr Chris Green, Vice-Chair of FinCoNet said:

"The importance and relevance of FinCoNet's work to assist its Members protect the interests of consumers of financial products is amplified during this time of uncertainty. Cooperation and collaboration amongst FinCoNet Members have proved invaluable in identifying risks, challenges, supervisory responses and opportunities to enhance consumer protections resulting from the pandemic."

The key points and outcomes from the 2020 AGM were as follows:

FinCoNet Programme of Work 2021-2022

At the AGM, FinCoNet approved its two-year Programme of Work (POW) for 2021/22, which comprises the following key workstreams:

- Following the completion of its current workstream on creditworthiness assessments, **Standing Committee 2** will focus on supervisory approaches and challenges regarding credit moratoria in light of COVID-19.
- **Standing Committee 3** will lead a workstream on supervisory challenges relating to the increase in digital transactions (especially payments), including mitigating cybersecurity risks and tackling financial scams.
- **Standing Committee 4** will explore oversight challenges and evolution in approaches for conduct supervisors in the context of COVID-19, including use of SupTech oversight tools.
- Following the completion of its current workstream on policy and supervisory approaches towards financial product governance and culture, **Standing Committee 6** will focus on selling practices of credit and banking products

Report on SupTech Tools for Market Conduct Supervisors (SC4)

The growing use of SupTech tools is changing the face of conduct supervision and many FinCoNet Members are developing approaches and capabilities in this space. FinCoNet Standing Committee 4 presented for approval a report SupTech Tools for Market Conduct

Supervisors, which sets forth the findings of a survey which gathered information from 21 authorities about SupTech strategies and examples of SupTech tools in use or being trialled within market conduct supervisory authorities. The report was approved for publication by FinCoNet Members.

Report on Financial Advertising and Consumer Protection: Supervisory Challenges and Approaches (SC5)

Financial advertising is an important financial consumer protection issue given the potential harm to consumers that misleading, unclear, or false information in financial advertisements may cause. FinCoNet Standing Committee 5 presented for approval the report Financial Advertising and Consumer Protection: Supervisory Challenges and Approaches, which sets out findings on regulatory and supervisory approaches to financial advertising and is based on survey responses from 20 participating jurisdictions. The report, which puts forth a range of conclusions and key takeaways arising from the analysis, was approved for publication by FinCoNet Members.

Member Updates Roundtable

The AGM also provided an opportunity for FinCoNet Members to share experiences and update each other on issues of high importance to market conduct supervisors worldwide. Members exchanged views about the risks and challenges they currently face, particularly in light of COVID-19. Notably, Members shared experiences from their jurisdictions relating to forbearance programs, loan payment holidays and moratoria; increases in digital transactions since the pandemic; and the rise in financial frauds and scams linked to COVID-19 experienced in many jurisdictions. This session is a critical and popular part of the AGM as it allows Members to ask questions and share experiences.

International Seminar on Creditworthiness Assessments: Current Issues and Challenges

The AGM was followed by an International Seminar on the theme of Creditworthiness Assessments: Current Issues and Challenges on 13 November 2020. The Seminar brought together FinCoNet Members, academics and other external stakeholders to hear from experts in the field and join an engaging discussion on the topic. Dr Katja Langenbucher, Professor at University of Frankfurt/Sciences Po, presented an overview of the use of Artificial Intelligence in creditworthiness assessments, describing the benefits of risks of such technological developments and the appropriate checks and balances to ensure good outcomes for consumers and credit providers. Mr Pedro Dias, Head of the Regulation, Legal Affairs and Complaints Division of the Banking Conduct Supervision Department at the Central Bank of Portugal and Chair of FinCoNet Standing Committee 2, also presented the work of this Standing Committee, which is conducting an overview of supervisory approaches to creditworthiness assessments. The Seminar also included an engaging panel discussion featuring a range of supervisory, industry, research and consumer perspectives, in particular Mr Ali Erbilgic and Mr Oleg Shmeljov, from the European Banking Authority, Professor Umberto Filotto, Vice-chair of Eurofinas, Ms Deepti George, from Dvara Research, Ms Avitha Nofal and Mr Liaquat Soobrathi, from the Credit Ombud of South Africa and Mr Ira Rheingold, Executive Director of National Association of Consumer Advocates.

Looking ahead: next meetings

The next meeting of FinCoNet will take place 15-17 March 2021, jointly with the G20/OECD Task Force on Financial Consumer Protection.

The FinCoNet AGM 2021, to be hosted by the Central Bank of Portugal, will take place in Lisbon, followed by an International Seminar, from 10-12 November 2021 (tentative dates).

Current issues forum

UK FCA review into repeat lending by high-cost credit firms

Contributor: Sam Stoakes, FCA, United Kingdom

In August, the UK Financial Conduct Authority (FCA) published the findings of a review into relending by firms that offer high-cost credit. High-cost credit customers are more likely to be vulnerable, have low financial resilience and poor credit histories. They often hold multiple credit products and have to juggle repayments, sometimes having to decide which priority debts to pay when they don't have enough for all.

The review, which was completed prior to the coronavirus pandemic, highlights concerns about poor practices by some firms and notes that nearly half of consumers regretted borrowing more money. As firms in this sector begin to lend again, the report sets out the FCA's expectations on how they must treat consumers.

The review found that overall levels of debt increased as consumers took additional credit from high-cost lenders. Some consumers said they experienced financial difficulties as a result, including missing payments and prioritising repayment of debt over other expenses. In some cases, this led to anxiety and stress. Nearly half of consumers who took part in research commissioned for the review said they regretted their decision to borrow more money, and for some products this rose to over 60%.

To carry out the review, the FCA reviewed the borrowing history of around 250,000 customers to better understand the customer journey; a sample of firms' loan books to see how much relending is taking place; and firms' marketing materials, to understand how firms promote relending to existing customers.

The review raises several concerns about firms' conduct, including poor practice in the use of online accounts and apps to encourage consumers to borrow more, and marketing messages which emphasised the ease, convenience and benefits of taking more credit without looking at any of the risks. Some firms suggested that consumers could use additional borrowing, for example to take a holiday, and reinforced the message by including imagery of exotic locations. Some firms also appeared to use 'nudge' techniques such as appealing to social norms by conveying a message that relending is common practice and normal behaviour.

The FCA is concerned about the failure to balance these messages with the risks – including those that can come from taking on more debt than you can afford. There are also concerns about the increased costs to the consumer of refinancing compared with other ways of accessing further credit.

The report also calls out concerns about behaviour which suggests some customers may be trying to deal with financial difficulties through further borrowing. In these cases, the FCA expects the firm to assess whether further borrowing is in the customer's best interests. They should do this by considering the customer's overall financial situation and whether forbearance or debt advice might be more appropriate than additional lending.

The review follows the publication of a letter sent in March 2019 to all high-cost lenders where the FCA highlighted the risk that

repeat borrowing could indicate a pattern of dependency on credit that is harmful to the borrower. Rigorous affordability assessments are key to avoiding harm in this area, and firms should ensure they are making proportionate and responsible assessments of the sustainability of borrowing.

Thematic reviews in Market Conduct Supervision

Contributor: Banco de España

Banco de España, through the Market Conduct Department, supervises the conduct of financial institutions in order to ensure financial consumer protection, one of this authority's fundamental objectives. In carrying out its market conduct supervision tasks, Banco de España has at its disposal a wide range of practices and tools, the main ones being on-site and off-site supervision and thematic reviews.

The main objectives of the thematic reviews are, on the one hand, to obtain knowledge of the market on a specific topic and assess emerging related issues and, on the other hand, verify compliance with regulation related to that specific topic.

Thematic reviews consist of an evaluation of one concrete area of legislation across the banking sector or a significant sample of it. Thematic reviews may cover a specific product (revolving cards or auto financing) or a specific phase of the commercialization process (advertising or financial entities complaints handling services), or a combination of both (the review of commercialization of a product through distance channels). Occasionally, thematic reviews can also refer to a specific type of entity where the impact of the supervisory pressure or the level of supervisory knowledge is lower.

The topics for thematic reviews are usually chosen based on an evaluation of the main supervisory priorities performed on an annual basis. Taking into account previous knowledge held by the market conduct supervisor, an annual Supervisory Program is agreed and approved by the Banco de España Executive Commission.

The process for a thematic review generally includes the following steps:

- Designate the team in charge of the thematic review, taking into account the annual supervisory plan, available resources and additional circumstances and necessities. The composition of the team takes into consideration the skills, expertise and seniority of the possible members.
- Analysis of the information already available, both internal and external, including review of related aspects in previous on-site and off-site inspections, complaints both at the financial entity complaints handling service and at the Banco de España level, regulatory reporting, ad-hoc information obtained in meeting with financial service providers, etc.
- The sample of financial entities is agreed and initial letter is sent to them in order to introduce the matter and to request information and documentation. At a later stage, additional information may be required. Documentation received from the financial entities is thoroughly examined and deeply analysed.
- The outcome of the thematic reviews is reflected in an aggregated written report. This report is approved by the Executive Commission of Banco de España. Individual reports analysing the findings for each financial entity

are also frequently produced, especially when specific enforcement measures are taken in respect of each entity.

- Conclusions of the review are always transmitted to the supervised financial entities in writing, and sometimes in a meeting. Depending on the findings, enforcement measures are imposed, normally in the form of requirements or recommendations.
- Depending on the issue and on the relevance of the findings, good practices guidelines may be issued or a legislative review may be proposed.

As a result of thematic reviews, enforcement measures may be taken, a better knowledge and monitoring of the sector is obtained and best practices and industry trends are identified. In some cases, and based on the findings and on the information gathered from the reviews, regulation might be revised.

In comparison with on-site inspection practices, where an in-depth analysis of one specific use in one single financial entity is performed involving the revision of a representative sample of client contracts, thematic reviews cover a broader scope and a broader sample of entities. Thematic reviews do not usually allow collecting sufficient evidence as to impose a legal disciplinary procedure to a single entity if the level of breach of rules identified is considered material, but instead, provides a floor level of discipline for the whole sector on one specific matter. In any case, where in the course of a thematic review, a significant evidence of poor compliance is observed for one financial institution, this is considered for an on-site inspection in the next year's supervisory plan.

Although the thematic reviews described above always have a supervisory focus, there may be other thematic reviews exclusively focused on research to gain insight on a particular topic.

Thematic reviews often involve other departments within the organization. In this sense, there might be exchange of information, criteria, experiences and supervisory practices for a better development of the tasks.

ASIC: Australia's growing buy now pay later industry

Contributor: ASIC, Australia

The amount of credit extended in Australia's buy now pay later industry has almost doubled in 12 months. ASIC's industry update, Report 672, charts the growth and popularity of these arrangements, identifies impacts on consumers and outlines recent regulatory developments.

Buy now pay later arrangements allow consumers to purchase and obtain goods and services immediately but pay for the purchase over time.

ASIC found that:

- The number of buy now pay later transactions increased from 16.8 million in the 2017-18 financial year to 32 million in the 2018-19 financial year, representing an increase of 90%.
- There were more than 6.1 million open accounts at June 2019, representing up to 30% of the Australian adult population.
- The total outstanding balance of buy now pay later accounts increased by 53%, from $907 million at June 2018 to $1.4 billion at June 2019.
- Total revenue from the six providers in our review grew by 50% from

$266 million in the 2017-18 financial year to $398 million in the 2018-19 financial year.

Competition from the growing number of buy now pay later arrangements provides consumers with more choice of offerings and features. Most consumers use these products in the way they are marketed – as a budgeting tool or a way to make purchases more affordable over time. However, some consumers are missing payments and incurring fees as a result. Consumer research commissioned by ASIC indicated that 21% of buy now pay later users who were surveyed missed a payment in the last 12 months. This consumer research also identified that some customers using buy now pay later arrangements struggle to meet their repayments.

For example, it was found that:

- In order to meet repayments on time, one in five consumers cut back on or went without on essentials such as meals.
- One in five consumers missed or were late paying other bills in order to make their buy now pay later payments. These consumers missed bills such as household bills (44%), credit card payments (32%) and home loans (22%).
- 15% of consumers took out an additional loan to make their buy now pay later payment. Half of these consumers were under 30 years old.

Background

The six providers in our review offer a range of maximum loan amounts from $1,500 to $30,000 and the loan term from 6 weeks to 60 months.

Revenue sources for buy now pay later providers include merchant fees, missed payment fees and other consumer fees, such as establishment fees and account-keeping fees. Consumers are generally not charged interest.

Consumer payment behaviour data from the Reserve Bank of Australia shows that consumers are continuing to shift away from paper-based forms of payment such as cash and cheques. At the same time there have been developments in contactless payments technology.

Regulation of buy now pay later

Buy now pay later arrangements are not regulated under the *National Consumer Credit Protection Act* 2009 and as a result, providers are not required to be licensed or to comply with laws that prohibit a lender from providing credit that would be 'unsuitable' for the consumer. However, these arrangements are regulated under the *Australian Securities and Investments Act* 2001 meaning that ASIC can take action where a provider engages in misleading or unconscionable conduct.

Buy now pay later products are subject to new consumer outcomes focused regulatory tools including the product intervention power and design and distribution obligations (which come into effect in October 2021).

The industry is also initiating self-regulation with the development of a code of conduct.

ASIC's review

The Review follows from an earlier market review: see Report 600 *Review of by now pay later arrangements,* November 2018.

The review examined six buy now pay later providers and four major financial institutions. Providers reviewed were: Afterpay, Zip Pay, Payright, Openpay, BrightePay and Humm.

Consumer research was also commissioned to help us understand consumer behaviour and experiences with buy now pay later arrangements.

ASIC's MoneySmart website explains how buy now pay later services work and how consumers can avoid getting into financial trouble when using them.

New Bank of Russia recommendations on debt restructuring for individual borrowers and SMEs in response to Covid-19

Contributor: Daria Silkina, Bank of Russia

In Russia, as a response measure to the COVID-19 pandemic, credit holidays were introduced on 3 April 2020 to support individuals, individual entrepreneurs and SMEs suffering income decline. This measure expired on 30 September 2020[1].

On 30 September, the Bank of Russia issued additional recommendations for financial institutions.

The Bank of Russia recommends that lenders shall satisfy borrowers' applications filed in the period from 10 October to 31 December for restructuring of debts, on which credit holidays in accordance with the Law have been provided.[2] The Bank of Russian recommends that lenders decide in favour of a change in terms and conditions of a credit agreement for a period of not more than three months beginning with the date of the borrower's application and on conditions adequate to the lender's proprietary debt restructuring programs.

The same approach is recommended by the Bank of Russia in respect to debts previously restructured in accordance with the lender's proprietary restructuring programs.

In addition, the Bank of Russia recommends that lenders satisfy borrowers' applications for debt restructuring and change of terms and conditions of a credit agreement in accordance with their proprietary programs[3], if a borrower applies for debt restructuring before 31 December, and neither credit holidays nor any restructuring according to lender's proprietary programs has been provided on such debt earlier.

In the above-mentioned cases, the Bank of Russia recommends lenders not to impose fines on such borrowers due to non-performance or improper performance of their obligations. Such debt restructuring shall not be taken into account by credit bureaus and by lenders as a factor deteriorating the credit history of such borrowers.

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[1] More detailed information on credit holidays in Russia was published in the FinCoNet Newsletter dated June 2020 http://www.finconet.org/FinCoNet_Newsletter_June-2020.pdf

[2] Credit holidays in accordance with the Law provided due to a decline of the borrower's income to a level such that the borrower is not capable to perform their obligations of the consumer credit and due to confirmation of COVID-19 by the second borrower or by family members living with the borrower.

[3] Due to a decline of the borrower's income and due to confirmation of COVID-19 by the second borrower or by family members living with the borrower.

FCAC surveys to assess the financial impact of the pandemic

Contributors: Stephen Wild, Rebecca Kong and Vincent Gadbois, Financial Consumer Agency of Canada (FCAC)

In recent months, FCAC launched two surveys to better understand and track the impact of COVID-19 on the financial situations of Canadians. These two surveys are intended to provide a comprehensive lens on impacts of the COVID-19 pandemic on Canadians' finances, financial well-being, and their access to and use of relief measures implemented by banks and other regulated entities (REs). Taken together, these surveys offer important insights about the impact of the pandemic on the financial health of Canadians.

The information gathered by these surveys will inform the Agency's ongoing supervisory activities, policy and program responses, and consumer education activities. These surveys will run until spring 2021. The final data and reports will be published.

COVID-19 Financial Well-Being Survey

The COVID-19 Financial Well-Being Survey is a monthly survey designed to collect information about Canadians' day-to-day financial management and financial well-being in dealing with the pandemic, and will run until March 2021. The questions in the COVID-19 Financial Well-Being Survey are based on some previous FCAC surveys such as the 2019 Canadian Financial Capability Survey. This allows FCAC to compare Canadians' financial state immediately prior to and during the pandemic. The COVID-19 Financial Well-Being Survey looks at:

- The impact of COVID-19 on changes in Canadians' financial well-being as well as changes in employment, income, investments and debt load
- Uptake of supports offered by government and REs to help Canadians manage their finances during the pandemic
- Methods that Canadians use to manage day-to-day finances during the COVID-19 crisis, including: access to and use of emergency funds and other savings; managing credit and debt, and keeping up with bill payments
- Impacts on debt loads and longer-term savings for retirement
- Financial information and financial advice that Canadians seek in their decision-making
- Canadians' risk of being targeted by fraud and financial scams

Survey on Canadians' Use of Bank Products/Services

The second survey, the COVID-19 Survey on Canadians' Use of Bank Products/Services, was designed to track how the pandemic affected consumers' use of banking products and services, and consumers' uptake and experiences with the financial assistance programs offered by REs during the pandemic. In particular:

- The impact of branch closures on banking behaviour
- Access to banking services, including difficulties experienced because of the COVID-19 crisis
- Access to funds, including any difficulties experienced because of branch closures or other effects of the COVID-19 crisis
- Consumer awareness of banks' hardship programs
- Whether consumers applied to financial hardship programs offered by REs and their experience with those programs

Target population

These surveys target the general Canadian population aged 18 and over. Where feasible, these surveys oversample disadvantaged populations, such as persons aged 18-34, persons living in lower income households, persons with high school education or less, more recent immigrants, and Indigenous persons.

Monitoring trends

Running a series of monthly surveys allows FCAC to monitor trends over time while ensuring REs continue to comply with their legislative obligations, voluntary codes of conduct and public commitments. As the COVID-19 crisis is expected to last until at least spring 2021, running a series of surveys helps FCAC track the aftermath of the response to COVID-19.

Helping to protect and educate financial consumers

These surveys help FCAC monitor consumers' interactions with REs during the COVID-19 crisis, as well as how Canadians are managing their finances and the effects on their financial well-being. This includes analysis to identify specific target populations and the unique issues they are dealing with. The data from these surveys informs the Agency's supervisory approach toward REs, which may involve providing REs with timely communication on the Agency's expectations and guidance on potential responses.

These surveys also provide on-going up-to-date monthly feedback to strengthen FCAC's ability to develop more targeted and timely messaging and tools for Canadians dealing with the financial impacts of the COVID-19 crisis. This data helps in the development of FCAC's marketing and communications material, with the goal of helping Canadians navigate their financial situation through the COVID-19 crisis and strengthening financial consumer protection. FCAC intends to share results from these surveys in a future newsletter contribution.

Management of borrowers facing financial difficulties during the Covid-19 crisis

Contributor: Elias Vargas, Superintendency of Banking, Insurance and Private Pension Fund, Peru

The drastic drop in employment numbers and income caused by the impact of the COVID-19 crisis have left borrowers facing difficulties in meeting their financial obligations. Taking this into account, the Superintendence of Banking, Insurance and Private Pension Fund Administrators of Peru (SBS) decided to allow financial entities to modify their customers' loans' terms and conditions (T&Cs) such as deferrals of payments. At the same time, these measures would not impact customers' credit ratings and would prevent late interest or penalties.

These changes of loan terms and conditions could be carried out by either an agreement with the customers or by wholesale and unilateral changes (without previous communication to customers). However, the latter option was only available to credits without large late payments[1] as long as the period of these credits does not extend for more than 12 months of the original term. The financial entity is obligated to

[1] A maximum of 15 days late on loan payment at 29.02.2020, or 15.03.2020, or 30 days late on loan payment at the time of the change of conditions.

communicate these changes within 7 days, and give the customer the option to opt out and maintain the original loan terms at his request.

In this context, financial entities were able to deploy several strategies to modify their customer loan terms in at least one of their products (credit card, consumer or personal loans, and/or mortgage loans), giving the consumer credit relief through alternatives such as additional grace periods, default interest or penalties forgiveness for past due notes, reduction on interest rates, grace period interest fees forgiveness, etc.

This move allowed a total of 4.8 million borrowers to defer their loan payments by the end of June 2020, (52% women vs. 48% men). By age breakdown, the 40 to 59-year-old range had the highest participation (38.2%) of deferred payments, followed closely by the 25 to 39-year-old range (36%). By type of credit breakdown, consumer and personal loans had a greater share of the pie (66.1%) compared to loans for small businesses and mortgage loans.

Implementing these strategies in such a short period of time brought major challenges to the financial entities as they needed to execute and meet a variety of procedures, methodologies, stages, deadlines, and alternatives to modify their customer loan terms. These actions then generated a complex environment that limited an adequate understanding, analysis and comparison of alternatives by borrowers, as well as an increase in customer complaints, especially during the third quarter of 2020.

In this context, to ensure that creditors apply equal and transparent treatment to customers currently and temporally facing difficulties meeting their financial obligations due to the COVID-19 crisis or in the event of another national crisis, new rules were put in place by the SBS for an adequate treatment of these customers. These new rules have already been included in the updated version of the Market Conduct Management Regulation as of August 29th, made possible by the SBS experience in supervision and international best practices. This update covers the entire process for a deferral of loan payments, which now requires financial entities to develop internal policies and procedures for (a) prompt information and communication to consumers and acceptance of their payment deferral application, (b) complete assessment to offer options more aligned with the customer's financial capacity (in a maximum of 7 days), (c) provide enough time for the customer to select the option that best fits his/her needs (minimum of 7 days in mortgage loans / 5 days in consumer or personal credits), and finally, (d) periodic monitoring of credit and the financial situation of the customer. In addition, the regulation now considers an abusive practice for financial entities to impose restrictions on users needing access to this procedure or benefit.

Finally, although there are now signs of economic recovery in Peru, the consequences of the COVID-19 crisis are still lingering and could even make a greater impact in the upcoming months, which means a bigger challenge for companies regarding the treatment of clients with credit payment difficulties. The circumstances also indicate the need of the SBS to keep an on-going supervision and monitoring of the process itself, coupled with its commitment to promote the proper treatment of borrowers by ensuring their rights and interests are respected and protected. This approach will also strengthen the confidence in the financial system and contribute to its financial stability and integrity.

Mauritius' focus on compliance and regulation on AML/CFT matters

Contributor: Bank of Mauritius

Mauritius is a Member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and has thus committed to implementing the FATF Recommendations. Since the publication of the ESAAMLG Mutual Evaluation Report (MER) in 2018 and the completion of its National Risk Assessment Report in 2019, Mauritius has taken comprehensive actions through the elaboration of a National Strategy and the setting up of a National Committee.

Legal and Regulatory framework

In 2018, the legal framework was revamped with the amendment of the Financial Intelligence and Anti Money Laundering Act 2002 (FIAMLA) and the promulgation of the Financial Intelligence and Anti Money Laundering Regulations 2018 to address the FATF Requirements under various Recommendations. In May 2019, Mauritius passed new legislation, namely the United Sanctions (Financial Prohibitions, Arms Embargo and Travel Ban) Act 2019 and made further amendments to the FIAMLA to align its AML/CFT regulatory framework with the FATF standards.

Cooperation and Coordination

Mauritius has drawn up Memoranda of Understanding/Cooperation as well as an Interagency Agreement with other domestic and foreign Supervisory Authorities. These aim at formalizing coordination on facilitation of policy formulation, exchange of information, joint outreach activities, training of staff, and operational coordination for the combat against money laundering and the financing of terrorism and proliferation in Mauritius.

Risk-based supervision

AML/CFT supervisors are in the process of completing the implementation of the risk-based supervisory framework and have already kick-started risk based on-site and offsite monitoring.

Outreach

Educating regulatees is as important as supervising them. AML/CFT Supervisors have implemented an Awareness-raising strategy whose deployment consists of delivery of outreach programmes on AML/CFT matters to their supervised sectors on an ongoing basis.

Human Resources and Training

The financial sector and Designated Non-Financial Businesses and Professions (DNFBP) supervisors have all set up an AML/CFT Unit and recruited a sufficient number of appropriately qualified staff to implement their risk-based supervisory plan.

Training being a crucial component of supervisory effectiveness, staff training remains high on the agenda of AML/CFT supervisors. A dynamic training plan aimed at increasing the capacity and skills of the staff to execute the risk-based supervisory strategy has accordingly been adopted.

Sanctions Policy

All AML/CFT Supervisors have devised a Sanctions Policy which includes a spectrum of proportionate corrective actions to address the various degrees of deficiencies and severity of non-compliance by supervised entities.

Access to beneficial ownership information

The Registrar of Companies maintains a registry for beneficial ownership information.

It has developed a separate platform whereby competent Authorities can have timely access to Beneficial ownership information on an ongoing basis. The Registrar of Companies has a duty to ensure that beneficial ownership information is accurate and up to date at all times.

Mauritius has a high-level political commitment to completing the action items of the FATF Action Plan within the agreed timeline.

COVID-19 and Business Interruption Insurance Supervisory Framework

Contributor: Central Bank of Ireland

The outbreak of the COVID-19 virus in Ireland and the associated public health initiatives necessary to halt its spread through the population have created significant economic disruption and upheaval. There was an outbreak of COVID-19 in almost every part of Ireland, leading to the Irish Government imposing restrictions in activity, and requiring businesses to close in an attempt to halt its further spread.

The issue of whether or not certain Business Interruption (BI) insurance policies provide cover for the losses arising from such measures has become a central issue both in Ireland and internationally. The Central Bank of Ireland (the Central Bank) has been conducting extensive supervisory engagement and legal analysis in relation to these issues since they have arisen in Ireland.

On 5 August 2020, the Central Bank published its COVID-19 and Business Interruption Insurance Supervisory Framework (the Framework). The purpose of the Framework is to seek the identification and early resolution of issues arising from the interpretation of policy wordings by firms, and to ensure clarity for affected businesses as quickly as possible. The Framework sets out the Central Bank's overall supervisory approach and the general escalation strategy for intervention to address customer harm where necessary. The Framework makes clear and reinforces our expectations of firms, to treat their customers fairly, to settle valid claims swiftly, and how they should approach litigation, recognising the burden of such litigation on the businesses which have felt compelled to take it.

In particular, the Framework sets out that:

- Insurers are expected to comply with legal and regulatory obligations, to adopt a customer first approach to the resolution of BI insurance issues through lens of their regulatory obligations and take immediate remedial action in line with our expectations.
- Boards of Directors and senior management are expected to be responsible and accountable, to take responsibility for ensuring BI insurance issues are handled in compliance with legal and regulatory obligations and to co-operate with the Bank in the implementation of the Framework.
- Insurers are expected to treat the Government communication to close as a direction / mandate / order.

- Insurers are expected to interpret unclear policy wording in the way most favourable to the customer.

- Insurers are expected to handle claims and legal actions effectively and efficiently.

- Where parties in litigation agree that a case has potential to act as a test case, insurers must narrow the issues in dispute, pay the reasonable costs of the customer and refrain from seeking its own costs.

- Any beneficial outcome from a concluded legal action must be assessed for its application to all other similarly affected groups of customers and immediate remedial action must be taken.

Structure of the Framework

The Framework is made up of four modules, all of which feed into each other and which are being run concurrently. The four modules that make up the Framework are as follows:

- Module 1 – Scope, Information Gathering and Certification

The Central Bank first had to assess the potential scale of the issue. This was achieved through the Central Bank exercising its statutory information gathering powers and issuing statutory information requests to all firms in scope.

- Module 2 – Analysis and Categorisation

The analysis and categorization of the information obtained in Module 1 focused on three main issues:

  - Cover (whether or not there is cover);

  - Causation (whether the COVID-19 related interference and/or interruption caused the relevant loss); and

  - Quantum and Claims Handling.

Based on the information provided to us and certified to us by the insurance firms, we are satisfied that we have reviewed the policy wordings for the majority of BI contract types in the Irish market. In summary, 145,000 policies that include BI cover were identified. Of those, 96,000 have some form of infectious disease extension included in the policy wording. A detailed review of these policy wordings was undertaken, to determine whether the cover provided under the policy should operate in the specific circumstances of COVID-19. Resulting from this analysis of policy wordings, the policies were categorised as follows:

  - 'responsive, where the wording favours the policyholder on cover and causation

  - potentially responsive, where 'strong or reasonable arguments' may be made on the basis of policy wording in favour of the policyholder on cover and causation)

  - non-responsive, where the policy is clear and no argument can be made on cover and/or causation

- Module 3 – Supervisory Engagement and Escalation

The outcome of Module 2 informed the Central Bank's assessment of the level of supervisory engagement and/or escalation that is warranted in respect of any issues of concern identified. Where the Central Bank is of the view that 'cover' or 'causation' exists and claims are being rejected, those expectations have been clearly communicated to the relevant firms. A number of firms have committed to paying out on claims where there is valid cover. We expect firms to assess claims promptly, and

to pay promptly, where the policyholder has a valid claim.

The Central Bank is pursuing a multi-faceted approach to supervisory engagement and escalation. The nature of the escalation depends on the facts and circumstances of each case, and all possible options within the full suite of powers are under consideration.

- Module 4 – Legal Action Outcomes – Wider Beneficial Impact Assessment.

Module 4 anticipates that where a relevant legal action has been concluded, insurers will carry out a beneficial impact assessment to assess whether the outcome affects similar groups of customers and if so, the insurer is expected to take steps to ensure that the outcome is applied to those customers or explain why such action may not be carried out.

As BI insurance remains a supervisory concern the Central Bank is continuing to work to ensure that the objectives of the Framework are delivered without delay in order to provide clarity for affected businesses as quickly as possible. The Central Bank will continue to examine all possible options within the full suite of our powers and will intervene where appropriate, as we take this work forward.

FinCoNet

Established in 2013, FinCoNet is an international organisation of supervisory authorities responsible for financial consumer protection. It is a Member-based organisation set up as a not-for-profit association under French law.

FinCoNet promotes sound market conduct and strong consumer protection through efficient and effective financial market conduct supervision.

Each Member of FinCoNet has responsibility for and an interest in protecting the interests of consumers of financial services. FinCoNet seeks to enhance the protection of consumers, and to strengthen consumer confidence by promoting robust and effective supervisory standards and practices, and sharing best practices among supervisors. It also seeks to promote fair and transparent market practises and clear disclosure to consumers of financial services.

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