

FINANCIAL ALERT



No. 6/2021

European Commission has designated a replacement for CHF LIBOR

The CHF LIBOR benchmark rate will disappear from the world financial market with the end of 2021. In the European Union it will be replaced with SARON. The introduction of SARON to existing credit agreements will not require changing (annexing) those agreements.

The implementing regulation of the European Commission (EC) designating replacements for settings from the CHF LIBOR family was published in the Official Journal of the European Union on 22 October 2021. Selected rates from the SARON Compound family have been designated as their replacements, with an appropriate adjustment arising out of historic differences between those rates and CHF LIBOR. The following replacements have been designated:

- 1M CHF LIBOR = 1-month SARON Compound Rate with a percentage point adjustment of "-0,0571"
- 3M CHF LIBOR = 3-month SARON Compound Rate with a percentage point adjustment of "0,0031"
- 6M CHF LIBOR = 3-month SARON Compound Rate with a percentage point adjustment of "0,0741"
- 12M CHF LIBOR = 3-month SARON Compound Rate with a percentage point adjustment of "0,2048"

As of 1 January 2022 the replacements will be used by law in all

agreements and financial instruments, which had no relevant fallback clauses as of the effective date of the EC regulation. In practice, the introduction of replacements by law means that there is no need to modify the content of existing financial agreements. The Polish Financial Supervision Authority (KNF) has announced that it expects supervised entities that apply CHF LIBOR in agreements and financial instruments covered by the EC regulation to take active communication measures with respect to their customers, including professional customers, to inform them of the changes in the performance of agreements after 1 January 2022. As a reminder: the reason for the designation of a replacement by the EC is the 5 March 2021 announcement by the British supervisory authority FCA that with the end of 2021 it would cease to develop many of the reference rates from the LIBOR



DR ANDRÉ HELIN, BDO Managing Partner

family, including all CHF LIBOR settings. The KNF has also stated that the SARON rates chosen as the basis for the replacement meet all of the regulatory requirements with regard to their development method set out in the BMR and are on the list of reference rates from third countries that are authorized for use in the EU.

UKNF has issued its position on prohibiting the sale of unit-linked life insurance

At the end of October the Office of the Polish Financial Supervision Authority (UKNF) published its position on adapting the operations of insurance companies to the requirements of its decision of 15 July 2021 (DNM-DNMZWP. 6065.79.2021) that prohibits the marketing, distribution and sale of insurance based investment products - life insurance contracts if they are unit-linked.

In its position the UKNF sets out its expectations with regard to material aspects of management systems, for insurance companies to ensure compliance with the requirements of the decision, as well as the obligation to conduct tests and analyses to verify compliance with those requirements. At the same time, the position addresses interpretation issues communicated by insurance companies.

As a reminder, the decision prohibits the marketing, distribution and sale of insurance based investment products - unit-linked life insurance contracts, for which the average return is lower than 50% of the interest rate for the period specified in the decision according to the relevant risk-free interest rate term structure, or for which the investment rules and restrictions defined in the regulations of the unit-linked fund fails to ensure



that the assets of the unit-linked fund will not be invested in contingent convertible instruments (CoCos).

The decision applies in the territory in Poland, which means that insurance companies irrespective of their place of establishment and country from which they operate are required to comply with the decision if they provide services to customers who have their place of establishment or habitual residence in the territory of Poland, as well from the territory of Poland, which means that insurance

companies with their place of establishment in Poland are required to comply with the decision if they provide services to customers who have their place of establishment or habitual residence outside the territory of Poland.

The decision is effective as of 1 January 2022 and applies to all contracts concluded on or after that date, irrespective of when the marketing of the product began.

Responsibility for conducting operations in accordance with the requirements of the decision

rests with insurance companies, which should take a series of steps to that effect, both before and after the decision becomes effective.

As stressed by the UKNF, it is important for insurance companies to verify that the unit-linked life insurance contracts they market, distribute or sell are consistent with the requirements of the decision, and such verification should be part of the product management and supervision processes, with key functions being incorporated in those processes.



Common European enforcement priorities for annual reports published

Consideration and disclosure of the effects of COVID-19, consideration of climate and climate policy related risks, disclosure of information on the application of requirements relating to determining and recognizing expected credit losses – are the main enforcement priorities for 2021 annual reports.

At the beginning of November the European Securities and Markets Authority (ESMA), the EU's securities market regulator, issued its annual public statement on the European common enforcement priorities for 2021 annual financial reports (ECEP). This year's priorities include: consideration and disclosure of the effects of the Covid-19 pandemic, consideration of climate related risks, disclosure of information on the application of IFRS 9 "Financial Instruments" with regard to determining and recognizing expected credit losses, as well as stress the requirements to disclose information in accordance with Article 8 of the Taxonomy Regulation.

The above areas will be considered by local enforcers while they monitor and evaluate the annual

financial statements of listed companies for 2021. The statement contains priorities relating to financial statements prepared in accordance with International Financial Reporting Standards (IFRS), priorities relating to non-financial reporting, as well as other comments relating to alternative performance measures (APM).

Here are the priorities relating to IFRS financial statements: diligent assessment and transparency in accounting for the effects of the COVID-19 pandemic and the recovery phase; consistency between information disclosed in financial statements prepared in accordance with IFRS and non-financial climate-related information, consideration of climate risk, disclosure of all significant judgements and assessment of uncertainty with regard to climate risk accompanied by a clear materiality

assessment; increased transparency in measuring expected credit losses (ECL), in particular with regard to management overlays, significant changes in credit risk, forward-looking information, changes in loss allowances, exposure to credit risk and the impact of climate risk on ECL.

Recommendations relating to non-financial information relate to: the effects of COVID-19 on sustainable development objectives and key non-financial performance ratios, as well as information of any structural changes, as well as climate related policies and their results.

In addition, issuers are reminded of the need to make the necessary preparations to fulfill the reporting requirements of Article 8 of the Taxonomy Regulation, which will go into force as of 1 January 2022.

With regard to APM, the statement stresses that issuers are expected to remain prudent in adapting, labeling and/or creating new APMs to illustrate the effects of COVID-19.

The statement stresses that starting with the 2021 financial year, all financial statements should be prepared in accordance with the European single electronic format.

In short

New regulations on UKNF audits of domestic payment institutions

The minister's of finance, funds and regional policy decree of 22 October 2021 on the detailed method and mode of performing audits at domestic payment institutions has been published in the Journal of Laws (item 2024). The decree regulates the methods of performing audits at domestic payment institutions by authorized employees of the UKNF. The new regulations went into force on 24 November 2021.

Position on the operating principles of crowdfunding service providers

The UKNF has published its position on the risks of failure to by 10 November 2021 adapt the Polish legal

system to the provisions of the Regulation on crowdfunding service providers. It indicates that until the said bill is enacted by legislature, no competent authority will be designated and thus no licensing process can commence based on the provisions of Regulation 2020/1503. This means that until the bill goes into effect, the KNF is not a competent authority as defined in the Regulation.

ESMA on investment recommendations on social media

The European Securities and Markets Authority (ESMA), the EU's securities markets regulator, has published a statement on investment recommendations on social media. It explains what investment recommendations are, how to post them on social



media platforms and what the consequences of possible breaches of the EU Market Abuse Regulation can be. ESMA informs that failure to comply with the rules relating to investment recommendations may result in fines or further supervisory actions.

UKNF on managing investment fund risk

At the end of October, the UKNF published its position on certain aspects of managing the risk of investment funds and alternative investment companies, in which it formulates its supervisory expectations with regard to investment fund company standards of conduct in the area of investment fund management. The position applies to investment fund companies and managers of alternative invest-

ment companies that operate based on permits, as well as to auditors performing assurance engagements on risk management systems of investment fund companies.

Poland supports European Payment Initiative (EPI)

On 9 November, Poland, Belgium, Finland, France, Germany, Spain and the Netherlands adopted a joint statement in support of the European Payment Initiative (EPI). EPI is a pan-European payment solution that connects cards and instant payments under a single brand. The objective is to create an innovative European solution as an alternative to those that exist today. It is also meant to counteract market fragmentation that continues to be present on the European retail payments market.



BDO is an international network of independent audit and advisory firms. Service provision within the BDO network is coordinated from the Brussels global office. BDO's beginnings go back to 1963. We have been present in Poland since 1991. We have 5 offices in: Warsaw, Kraków, Poznań, Wrocław and Katowice. BDO has for years been recognized in prestigious rankings of the activities performed by its Audit and Tax Advisory Departments, including most recently:

- The last distinctions for the company are related to the Rankings:
Companies and Tax Advisors of Dziennik Gazeta Prawna for 2020:
- 1st place The Best Tax Advisor in the category of medium-sized companies
- The 2020 rankings prepared by the Rzeczpospolita and Parkiet dailies:
- 1st Most Active Firm on the Stock Exchange
 - 3rd Best Auditor of Listed Companies
 - 5th Best Audit Firm