



COVID-19: Overview of key regulatory measures in financial services across Europe

4 June 2020

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COVID-19: Regulatory measures across Europe



European financial services regulators continue to take actions to help those they regulate in navigating COVID-19, to ensure that the financial markets function effectively and to protect those in greatest need during this crisis.

This newsletter is to keep our clients up to date with the key regulatory measures being adopted across Europe and to provide practical observations from our interactions with clients and the regulators. We will publish periodic updates over the coming months; our fourth publication focusses on key updates from the UK, France, Germany, Spain, and Poland.

Europe

Lockdown measures in many jurisdictions have been eased in recent weeks and we have seen a decrease in regulatory activity across Europe in response to COVID-19. A number of co-ordinated actions have, however, been taken by European financial services regulators including:

1. Announcements on 18 May regarding the expiration of the restrictions on short selling and similar transactions including from the Autorité des Marchés Financiers ("**AMF**") of France (see [here](#) and our France section below for further details), the Comisión Nacional del Mercado de Valores ("**CNMV**") of Spain (see [here](#) and our Spain section below for further details); and the Commissione Nazionale per le Società e la Borsa ("**CONSOB**") of Italy, which announced the early termination of the restrictions that were due to expire on 18 June (see [here](#) for further details); and
2. Statements emphasising the importance of transparency regarding the effects of COVID-19 in the half-year financial statements of listed issuers (following a statement made by the European Securities and Markets Authority ("**ESMA**") on this topic on 20 May (see [here](#) for the full statement)).

European Banking Authority ("**EBA**") preliminary assessment of the impact of COVID-19 on the EU banking sector

According to the EBA, the European banks entered the COVID-19 health crisis with strong capital and liquidity buffers and managed the pressure on operational capacities activating their contingency plans. Asset quality has been affected due to COVID-19, which has had a knock-on effect on banks' profitability. However, the capital accumulated by banks during the past years along with the capital relief provided by regulators should allow banks to withstand the potential credit risk losses derived from a sensitivity analysis based on the 2018 stress test.

The EBA emphasised that:

1. Banks have entered the COVID-19 crisis more capitalised and with better liquidity compared to previous crises;
2. The COVID-19 crisis will have a negative impact on asset quality;
3. Banks have been using their liquidity buffers and are expected to continue using them in the coming months; and
4. Banks' operational resilience is under pressure.

Further details regarding the EBA's assessment can be found [here](#).



UK

Updates

The FCA and PRA continue to identify and communicate areas of concern, particularly regarding:

1. The solvency of financial services firms and disclosures to the market regarding the impact of COVID-19 on firms' financial position;
2. The importance of firms maintaining appropriate systems and controls around market abuse in the current remote working environment; and
3. Adequate protection for consumers.

We have set out below a summary of the key actions taken by the FCA over the last three weeks.

The new Corporate Insolvency and Governance Bill and its applicability to financial services firms

The FCA issued a statement about the FS specific provisions in the new Corporate Insolvency and Governance Bill (the "**CIGB**") on 14 May. The measures in the CIGB fall into two parts; temporary measures, intended to deal with specific issues arising from the COVID-19 pandemic, and permanent changes which are intended to promote corporate rescues and restructurings, for which the current economic circumstances have been the catalyst. There are specific provisions in the CIGB relating to FS firms which are designed to ensure that the existing special insolvency regimes applicable to these firms remain effective and that market participants have legal certainty.

We understand that there will be further readings of the CIGB, but do not anticipate that there will be significant changes. The CIGB is expected to become law in late June/early July 2020.

The temporary measures are:

1. The suspension of Wrongful Trading provisions from 1 March for three months. However, most FS firms (including those that safeguard client assets) are expected to be excluded from this suspension;
2. Provisions relating to statutory demands, winding up petitions and winding up orders; winding up petitions and orders made between 27 April and 30 June will be void unless a petitioner can show that COVID-19 has not had a financial effect on the company, or, even if it has, that the relevant ground for winding up would have been satisfied anyway;
3. Provisions allowing AGMs and meetings to take place virtually; and
4. Provisions allowing for further extensions to the deadlines for filing documents at Companies House.

The permanent measures are:

5. A company moratorium restricting the commencement of insolvency proceedings and legal action for businesses for an initial period of 20 business days (but which may be extended further (a) by the directors filing certain notices at Court by day 15 the end of the initial 20 business day period or (b) after the initial period, with the consent of creditors or permission of the Court); and
6. The prohibition of ipso facto (termination) clauses; there were already provisions in the Insolvency Act 1986 banning ipso facto clauses in contracts dated after 1 October 2015 and in relation to suppliers who were defined as "essential". Now, all suppliers (subject to some exclusions, most notably relating to FS firms) will not be able to terminate on grounds of insolvency or in relation to breaches of contract which arose prior to the insolvency. Once the bill becomes law, these provisions will apply to existing as well as new contracts.

Most FS firms (including banks, insurers, payments and e-money institutions) and contracts of a "financial" nature, will be excluded from the measures relating to the company moratorium and the prohibition of ipso facto termination clauses respectively. Firms would be well advised to scrutinise these exemptions, as they are very widely drafted.

Restructuring Plan

The CIGB also amends the Companies Act 2006 to introduce a new restructuring scheme of arrangement which is expected to be available to FS firms (through appropriate safeguards, including a role for the FCA and PRA). The new Part 26A restructuring scheme is based substantially on the existing scheme of arrangement under Part 26 of the Companies Act 2006 and it is anticipated that case law on the operation of Part 26 schemes will apply to the scheme.

The main difference is that the Part 26A scheme offers the opportunity to "cram down" a dissenting class of creditors or members, and this may potentially lead to junior creditors trying to "cram up" and impose restructurings on a more senior class, where it can be demonstrated that the senior class remains better off than would be the case under the "relevant alternative".

For more detailed information regarding the CIGB please see the article on our COVID-19 hub [here](#).

Market Watch 63 newsletter on market conduct and transaction reporting issues

In this edition of Market Watch, the FCA sets out its expectations regarding market conduct in the context of increased capital raising events and alternative working arrangements due to COVID-19.

The FCA has stated that it recognises the uncertainty created by COVID-19 and the operational challenges arising from the public

policy on social distancing. However, the regulator expects all market participants to act in a manner that supports the integrity and orderly functioning of financial markets, including complying with all their obligations under relevant regulations, including the Market Abuse Regulation ("**MAR**") (a point which it has made in many publications since the beginning of the pandemic). In particular, the FCA has stated that it expects firms to have the right systems and controls in place around market abuse, conflicts of interest management and conduct with a specific focus on:

1. Ensuring inside information continues to be appropriately identified and handled;
2. Ensuring inside information is appropriately disclosed by issuers;
3. Maintaining robust market surveillance and suspicious transaction and order reporting ("**STORs**") by relevant market participants;
4. Meeting the transparency and short position covering requirements under the Short Selling Regulation ("**SSR**"); and
5. Identifying and managing conflicts of interest by market participants that may arise around capital raising events.

The FCA emphasised that it will continue to use its range of powers to monitor, make enquiries, investigate, and if necessary take enforcement action to protect the integrity and orderly functioning of the market during the pandemic (echoing effective warnings issued by the regulator in its [2020/2021 Business Plan](#)).

Firms should ensure that they conduct frequent assessments of their systems and controls in the current working environment, in particular in relation to market abuse, the management of conflicts of interest and market conduct in order to mitigate the risk of the FCA taking either supervisory or enforcement actions. Where any problems are identified, these should be remedied as swiftly as possible. As we have mentioned in previous editions of this newsletter, it is more important now than ever, that firms maintain an open and cooperative dialogue with the FCA and firms should pay particular regard to their Principle 11 obligations, seeking external advice if required.

The full newsletter published by the FCA can be found [here](#).

FCA introduces additional temporary relief for half-year financial reports for listed companies

According to the temporary relief, publicly listed companies which need more time to complete their half-year financial reports now have an extra month to publish them. Currently, under the Transparency Directive, listed companies are required to publish half yearly financial reports no later than three months from the end of the period to which the report relates meaning 30 September. However, the relief measures introduced by the FCA extend this deadline to 31 October.

Further details on the temporary relief can be found in Primary Market Bulletin Issue No. 28 [here](#).

FCA statement on market practice on going concern assessments during COVID-19

The FCA stated that the postponement of the deadlines for the publication of half-year and full year financial statements will assist issuers in conducting 'going concern' assessments in light of COVID-19 related uncertainties.

The regulator urged issuers and their auditors to take into account the real impact of COVID-19 during the collation, review and assessment of the financial statements, ensuring these are accurate and reflective of the true state of the business, given the importance of accurately informing investors about the impact of COVID-19.

In a joint statement by the FCA, the FRC and the PRA on 26 March, the regulators said that in the "*extraordinary circumstances of the COVID-19 pandemic, it is likely that more companies' financial statements will need to include such disclosures*". However, the regulator stressed that it is vital for investors and intermediaries to understand the meaning of the disclosures and react appropriately, encouraging all users of financial statements to take into account the extraordinary circumstances caused by COVID-19 and that these might result in uncertainty in companies' financial positions.

Further details on the FCA statement can be found in Primary Market Bulletin Issue No. 28 [here](#).

FCA acts to strengthen protections for customers using payment firms

As a result of COVID-19's negative impact on firms' finances, the FCA has launched a consultation on additional guidance for payments firms to strengthen the way in which they look after customers' money. The consultation which the FCA planned to conduct later this year as part of a wider programme is now running until 5 June, encompassing all payments firms with the final guidance being published towards the end of June.

The regulator stressed that the payments sector, which is developing rapidly, is a priority area and the consultation follows ongoing work to ensure payments firms are adequately protecting customer funds.

Further details regarding the consultation can be found [here](#).

FCA confirms support for customers who are struggling to pay their mortgage due to COVID-19

On 2 June, the FCA updated its guidance to firms in relation to mortgages and COVID-19, stating how firms should support mortgage customers who are either coming to the end of a payment holiday, or who are yet to request one.

For customers still experiencing temporary payment difficulties due to COVID-19, firms are to offer support, with options including

a full or part payment holiday for a further three months. Customers yet to apply for a payment holiday have until 31 October 2020 to do so.

The measures confirmed by the FCA also include that the current ban on lender repossessions of homes will be continued to 31 October, ensuring that self-isolation can continue if necessary. The FCA also stressed that firms should be particularly aware of the needs of vulnerable customers when contacting them.

It should be noted that the above guidance does not apply to consumer credit products which are covered by separate guidance. The updated guidance comes into force on 4 June.

Further details regarding the FCA's updated guidance can be found [here](#).

Update on regulatory engagement regarding firms' LIBOR transition plans

In our last edition, we highlighted that the UK's financial regulators remain adamant that firms cannot rely on LIBOR being published after the end of 2021.

Due to COVID-19, transition data reporting at the end of Q1 was suspended by the PRA and the FCA for dual regulated firms. In addition, some of the Q1 firm meetings were cancelled. However, both regulators have now decided to resume full supervisory engagement with these firms on their LIBOR transition progress from 1 June, which will include transition data reporting at the end of Q2.

Please see the FCA's article link [here](#) and the Bank of England May 2020 Interim Financial Stability Report published on 7 May link [here](#) for further details regarding the importance of the transition away from LIBOR.

FCA Statement on how firms should handle post and paper documents

The FCA recognised that during the COVID-19 pandemic some important functions, such as processing post will be more difficult for firms to do in a timely manner.

The FCA has also acknowledged that in the current circumstances, some firms may not be able to comply fully with the requirements for post and paper-based processes. However, the regulator expects firms to notify them as soon as possible at firm.queries@fca.org.uk if compliance with the rules is not currently possible, demonstrating the mitigating steps taken by the firm before returning to full compliance "as soon as practical".

Particular emphasis was placed by the FCA on how suitability assessments should be conducted by firms when face-to-face meetings are not feasible; specifically, the regulator expects firms to use other methods to conduct a suitability assessment, such as phone calls and relevant due diligence checks online following which a firm should send out the assessment without delay, whether online or by post.

In respect of cheques, the FCA has stated that it expects firms to consider the potential harm caused by not being able to cash the cheque on a case-by-case basis and ensure, where possible, they receive the services/cover they require. Furthermore firms need to consider the client money ("**CASS**") implications of how they handle uncashed cheques.

The regulator stressed that these arrangements will be reviewed as the pandemic develops, but firms should revert to full compliance with the requirements as soon as reasonably practicable, and not wait for a further statement from the FCA.

Please see link [here](#) for further details.

FCA seeks clarity on the interpretation of business interruption insurance policies

The FCA is seeking court declarations regarding the meaning of the "wordings" in 17 different types of business interruption insurance policies that policyholders argue should have paid out as a result of COVID-19. The FCA has a dedicated webpage regarding the measures it has taken, or is taking, in relation to business interruption insurance in response to COVID-19. The FCA's webpage can be found [here](#).

Practical observations

The measures summarised above are public actions being taken by the FCA. During the course of our work over the last three weeks we have made a number of observations as to how the FCA is operating in practice:

1. The FCA continues to be very aggressive with current supervisory and enforcement matters. We continue to see a focus on those sectors of the market that are most impacted by the pandemic and as a result present the greatest risk of consumer harm. The FCA appears to be maintaining its focus on smaller firms and is issuing a financial resilience survey to 13,000 solo-regulated firms in order to better understand the impact of COVID-19 on these firms;
2. The FCA continues to send the message that it is very much business as usual and that it will not hesitate to open enforcement investigations if serious misconduct is suspected. Firms should, therefore, ensure that they have accurately documented the actions they have taken in response to COVID-19 (and in light of FCA guidance), any assessments that have been conducted of their systems and controls, the rationale for, and governance around, decisions taken in order to mitigate enforcement risk;
3. The FCA remains in regular contact with firms to assess their current position and expects firms to continue to take reasonable steps to ensure they continue to meet the challenges the pandemic poses to customers and staff, particularly through their business continuity plan;
4. The FCA have been made aware of a scam email in circulation, purporting to be from the FCA, asking firms

about due diligence and asking them to open an attachment. The address it is coming from, connect6@gabriel-FCA.org.uk, is actually in Arizona. There are variants of this email address where the number shown is different, but they all link back to the same origin; and

- Through our engagement with a number of firms and industry bodies, we are aware that a number of firms are experiencing delays in their application for authorisations in respect of both Part 4A permissions and individual approvals under the Senior Managers Regime. Firms should, therefore, be prepared for delays in any such requests to the FCA during these unprecedented times and where possible have contingency plans in place.

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France

Updates

On 9 May 2020, the French Parliament voted to extend the state of health emergency until 10 July 2020. Since 11 May 2020, the French government has announced a widespread relaxation of coronavirus restrictions, with the overall risk level gradually downgraded in many parts. On 2 June 2020, France allowed most bars, restaurants, cafes and public parks to reopen and all travel restrictions within the country will be lifted.

The relaxation measures include a state-supported "StopCovid" contact-tracing app, which will alert users if they have been in contact with a person infected by the coronavirus. The StopCovid app – use of which will remain voluntary – is designed to keep track of users who have been in close proximity over a two-week period. If any become infected, they inform the platform, which alerts the others. Like others in Europe, France has chosen to utilise Bluetooth technology, which allows mobile phones to communicate with each other over short distances, dismissing the alternative of using location.

AMF's Annual Report

The Annual Report of the AMF was published on 29 April. [A letter from the AMF's Chairman](#) to the French President of the

Republic, prefacing the institution's report, describes the initial effects of the pandemic on the sectors falling within the AMF's remit.

The AMF Chairman calls for a Capital Markets Union, which he believes is necessary to finance the rebound of the European economy.

This report also provides an assessment of the temporary ban on the creation of net short positions and on the increase of existing net short positions imposed from 17 March to 18 May. Following the ban, new net short positions fell, on a comparable structural basis, from 1.03% of the market capitalisation on 16 March (before the ban) to 0.54% on 31 March.

The AMF suspended the ban on the creation or increase of net short positions effective as of 19 May. Therefore, new short positions can now be created and existing short positions increased. The AMF will closely monitor the overall situation in financial markets in order to determine if any further steps are required.

The ESMA decision requiring net short positions holders to notify the relevant national competent authority if the position reaches or exceeds 0.1% of the issued shares capital is still in force.

Activist Shareholders

While many recognise shareholder activism as being useful in setting share price, improving corporate governance and defending the interests of minority shareholders, in 2019, France

saw unprecedented debate on the behaviour of "activist" funds and the need to govern such practices more effectively due to a few particularly extreme cases of activism.

A number of proposals were made in several public reports which considered that improved supervision should be put in place to prevent extreme cases of activism which unduly destabilise issuers, harm the orderly functioning of markets, and ultimately penalise investors.

On 27 April, the AMF proposed new measures concerning shareholder activism. These measures aim to: improve the transparency of market transactions and dialogue between shareholders and issuers; and strengthen the AMF's analytical and response capabilities during activist campaigns so that it may be able to provide swift and appropriate answers, including taking regulatory action, when the circumstances so require.

The AMF's key proposals are described below:

1. To enhance transparency on stake-building by lowering the 5% mandatory reporting threshold and making public any crossing of an additional threshold set forth in the company's articles of association;
2. Greater transparency with respect to short-selling. The AMF called for improved transparency regarding investors' financial exposure to an issuer's financial instruments, the AMF considers that it would be advisable to supplement the reporting of net short positions in equities, when this is required, by information on debt instruments, and in particular bonds and CDSs held simultaneously by the investor;
3. A revision to the AMF's "Guide on ongoing information and management of inside information" to include developments on shareholder dialogue in order to prevent extreme activist campaigns and reduce their potentially destabilizing impact; and
4. Increasing the AMF's capabilities with respect to activist campaigns.

Shareholder / General Meetings

Following ordinance n°2020-321 (adopted by the French government of 25 March) which allowed a relaxation of the rules for the meetings of governing bodies and general meetings, the AMF informed shareholders and listed companies of the exceptional measures taken for the organisation of shareholders' meetings. The AMF strongly encourages shareholders to exercise their voting rights in the current environment.

In the event that a shareholders' meeting is conducted via video conference, any votes must be conducted by remote voting and, except in special cases, must be carried out prior to the meeting.

Companies are also currently authorised to hold their shareholders' meeting without their shareholders - and any other

persons who are entitled to attend these meetings, such as statutory auditors and personnel representative bodies - being physically present or participating by telephone or video-conference.

Shareholders may exercise their voting rights remotely, before the shareholders' meeting, by various means, including in correspondence using a voting form, giving a proxy to a person of their choice or to the issuer without naming the proxy (blank proxy), or voting online via a secure voting platform.

These temporary exemptions are applicable to meetings held between 12 March 2020 and 31 July 2020, unless this period is extended by the State Council ("Conseil d'Etat").

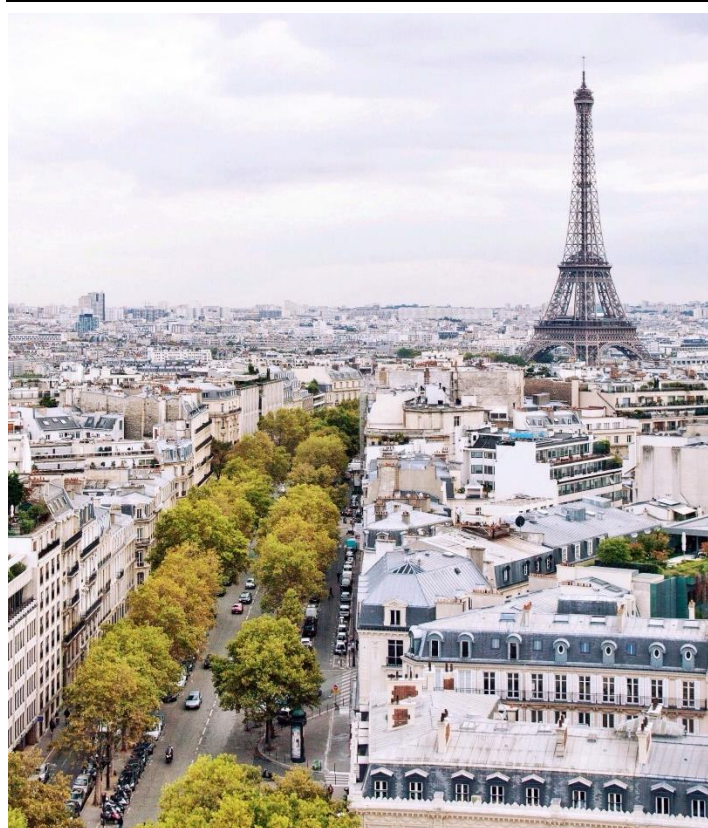
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Germany

Updates

The German Federal Financial Supervisory Authority ("**BaFin**") continues to maintain FAQs summarising its opinion on various COVID-19 related topics. We have summarised a number of these in previous editions of the newsletter. The latest publication by BaFin highlights the importance of electronic communications with BaFin and asks that the regulator is notified in advance of physical mail being sent to it. In addition, BaFin decided not to insist on paper audit reports being filed according to sec. 5 *Prüfberichtsverordnung* until further notice, rather the regulator will rely on the mandatory electronic version. However, BaFin has reserved its rights to request paper versions at a later stage.

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Spain

Updates

Due to COVID-19, Spain remains subject to exceptional measures as a result of the State of Emergency declared on 14 March and which has been renewed five times (currently in place until 7 June 2020).

As of Monday, 25 May, the entire country was in phase 1 of the transition plan out of lockdown. This is expected to have positive economic effects, especially in Madrid and Barcelona, which were the last geographical areas to relax lockdown measures; offices are re-opening and transactions which were put on hold at the beginning of lockdown are now starting to progress.

CNMV ends prohibition on short selling

The CNMV decided not to extend the prohibition on the short selling of shares and financial products over any shares and rights listed on the Spanish stock exchange; the prohibition therefore ended on 18 May. The CNMV has published the Financial Stability Note for April 2020, highlighting (i) the increased financial stress with respect to both financial intermediaries and the bond market, (ii) the high volatility in equity markets (which was the reason for the prohibition), (iii) disruption of risk premiums in debt markets and (iv) the significant increase in credit rating downgrades by rating agencies.

Further details of the CNMV's note can be found [here](#).

CNMV amends criteria used to identify information that should be disclosed to the market by listed companies

This month the CNMV has modified the criteria for, and categorisation of, the different types of information that should be disclosed to the market by listed companies. Since 11 May, the criteria used to identify the information about a listed company which must be released to the market have changed from a "relevant fact" to the following two categories of information:

1. *"confidential information"* which refers to market-sensitive information regarding a specific issuer or financial instrument and which, if made public, could influence the price. Such information needs to be released to the market immediately and any delays must be justified to the regulator who may require detailed information regarding the reason for the delay; and
2. *"other relevant information"* which is not regulated and has no capacity to affect the price but should, nonetheless, be disclosed to the market.

As reported in previous newsletters, all applications to the CNMV must still be submitted online. There is currently no indication as to when the regulator's staff will return to their offices.

Further details of the CNMV's modification and the online application process, can be found [here](#) and [here](#) respectively.

CNMV clarifies criteria for when a notification to the market is required in relation to transactions involving treasury stock

On 22 May, the CNMV published a communication clarifying the criteria for assessing when a notification should be made to the market regarding transactions involving treasury stock when the issuer has entered into equity swaps or other financial instruments. The communication clarifies, amongst other points, when the financial intermediary is to be considered a related party and when to give notice of the subscription to equity swaps, or similar agreements, both in the annual accounts and interim financial reports, as well as within corporate governance reports.

Further details can be found [here](#).

Bank of Spain publishes the Spring 2020 issue of its Research Update

Moreover, the Bank of Spain announced the release of the Spring 2020 issue of its Research Update. This document aims to inform both academic and policy-oriented economists and financial specialists about publications, conferences, and other research activities of the Bank of Spain that took place during the semester from September 2019 to March 2020.

Further details on the Bank of Spain's Research Update can be found [here](#).

Joint supervision by the Bank of Spain and the CNMC of additional funding

Finally, both the Bank of Spain and the National Commission on Markets and Competition (Comisión Nacional de los Mercados y la Competencia or "**CNMC**") continue supervising the granting of the financing lines backed by State Guarantee through the Official Credit Institute ("**ICO**"). In this regard, a fourth tranche of additional funding amounting to 20 Million Euros has been made available to Small and Medium-sized companies as well as sole traders (subject to the terms and conditions established by the Board of Ministers in their 19 May resolution).

Practical observations

Companies are capitalizing on the extra time they have been granted to review their financial results for 2019, thus delaying their annual accounts approval meetings and results publications. All companies are also adapting to the new confidential and market-sensitive information and relevant facts publication procedure introduced by the CNMV; this may affect the level of detail of the information disseminated to the markets and cause delays in the publication of released information.

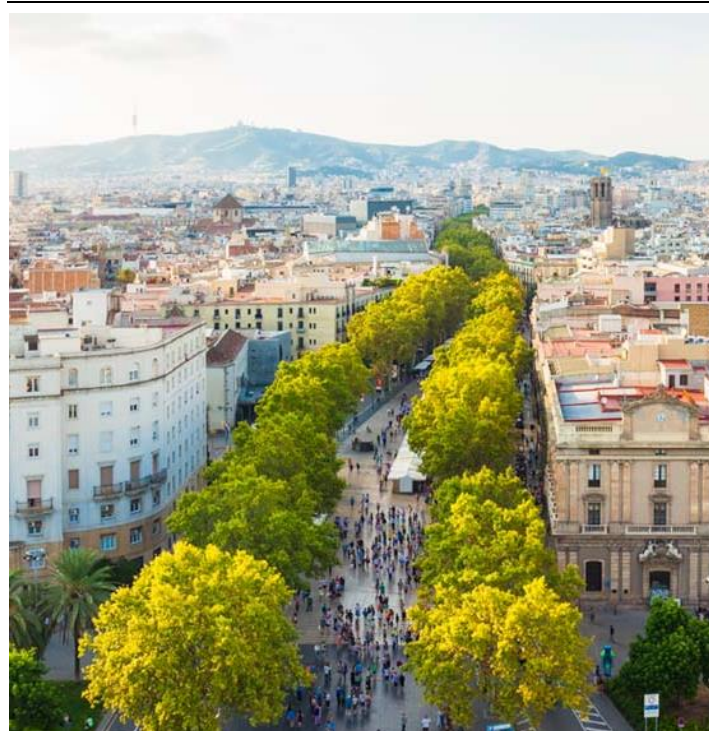
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Poland

Updates

Postponement of Annual General Meeting and deadline for approval of annual financial reports

The Polish Financial Supervision Authority ("PFSA") published an interpretation of the provisions of the regulation issued by the Minister of Finance which amended the deadlines for fulfilling various reporting obligations including conducting the annual general meeting ("AGM"). In normal circumstances, firms were permitted to hold an AGM with a view to approving the annual financial report by 30 June. However, due to COVID-19, the PFSA stated that firms can postpone their AGM to approve their annual financial report by 2 months, therefore extending the deadline for approval of annual financial reports to 31 August. The

rule applies to all entities supervised by the PFSA, including public companies, i.e. companies whose shares are traded on the stock exchange.

Further details of the PFSA's publication can be found [here](#).

Reinstating deadlines in administrative proceedings conducted by the PFSA

The PFSA stated that from 24 May, the deadlines for participants of administrative proceedings have been reinstated. In particular, time has started to run again for the purpose of calculating deadlines for submission of a request for reconsideration of a case or complaint to an administrative court. The suspension of time for the purpose of calculating those deadlines was one of the measures introduced in connection with the COVID-19 pandemic.

Further details of the PFSA's publication can be found [here](#).

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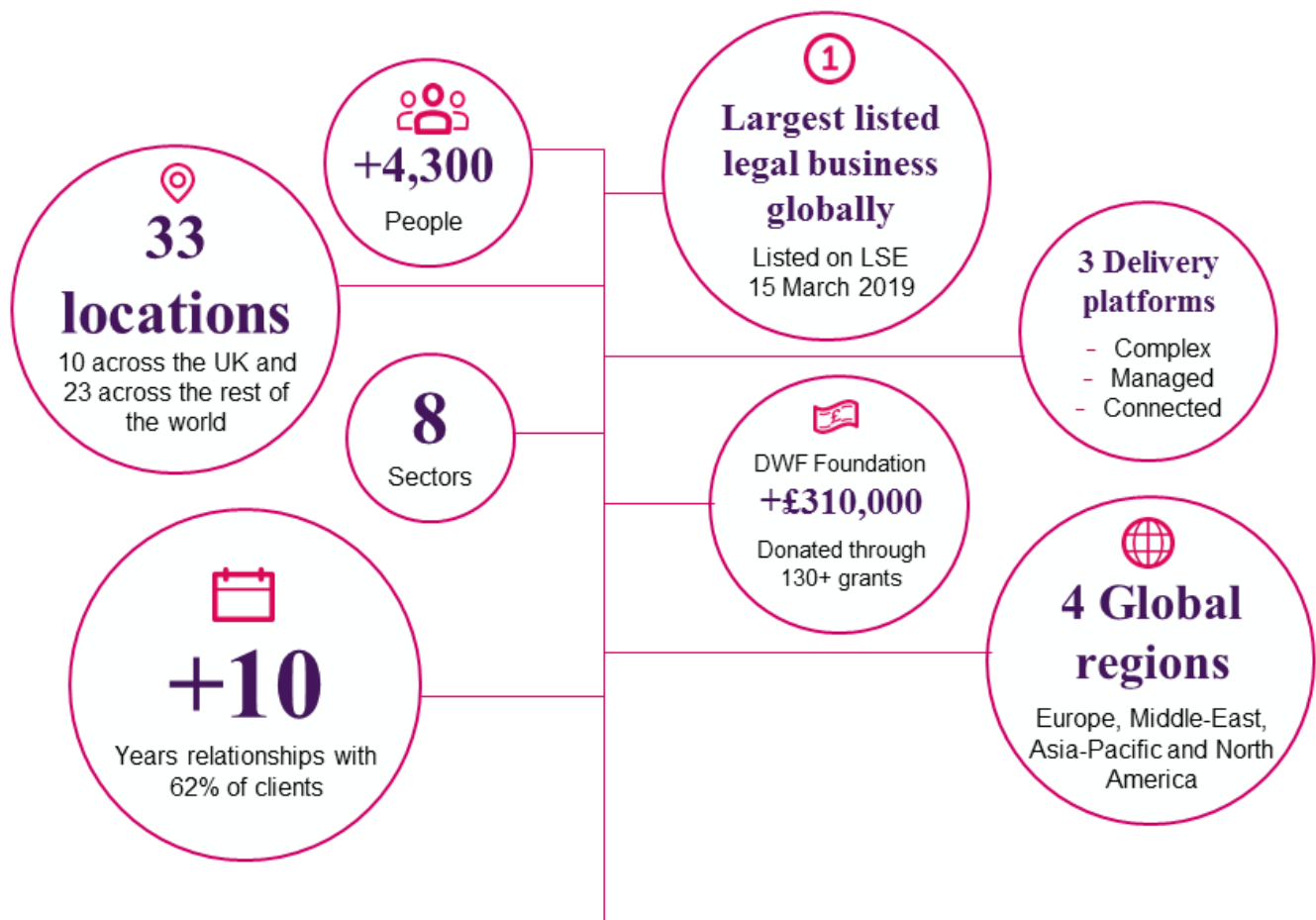
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