

LIBOR transition checklist



Due Diligence

- Identification of contracts using the relevant benchmark and categorising them including by market, currency, format and duration.
- Risk analysis of use of LIBOR in the business and exposure to the benchmark. This will go beyond a review of the use of the benchmark in relevant transactions as LIBOR may be used as a benchmark in different ways across the business e.g. in valuations.
- Identification of regulatory requirements and deadlines.
- What operational systems and procedures are likely to be affected? What actions are required to change those systems, who needs to approve those decisions and undertake the required procedures and within what timescale could this be done?
- What are current policies with respect to the use of LIBOR in documentation on new transactions?



Contractual Analysis

- What is the contractual procedure for transition to a new benchmark (if any)?
- Is there a discretion granted to either party to make changes and, if so, what limits are placed on that discretion?
- Are consents required to a change of benchmark and from who? Within what timescale could those consents be obtained?
- What other consequential amendments may be necessary and what requirements, such as consent, are placed on any such amendment?
- Does the existing contract establish any procedure for agreeing a spread value adjustment or any equivalent payment? If not, how will this be established?
- What is the position under hedging contracts or other ancillary contracts which may relate to the financing? What recourse would there be in the case of inconsistency between the fallback provisions in related contracts, such as a loan and the corresponding hedging agreement?
- Could proposed amendments impact any security granted in respect of the relevant transaction?
- Could the cessation of LIBOR trigger market disruption clauses or clauses which change the basis for the calculation of interest and how should these clauses be invoked?
- What mechanisms are set out in the contract to resolve disputes as to the appropriate benchmark (if any)?
- Would the cessation of LIBOR in the absence of any contractual fallback provision constitute an illegality event?
- Would the cessation of LIBOR in the absence of any contractual fallback provision frustrate a contract?
- What recourse would there be in circumstances where transition to a new benchmark has negative financial implications for parties to the relevant financing?



Tax and Accounting Analysis

- What are the accounting consequences of the proposed change? For example monitoring potential changes to accounting standards to facilitate the continuation of hedge accounting.
- What are the tax consequences of the proposed change? For example the impact on the administration of withholding tax and gross up provisions, any capital gains tax consequences of amending documentation and corporation tax implications of possible changes to accounting treatment.



Regulatory Analysis

- What regulatory duties, principles and deadlines apply to transition? This will involve continual monitoring of statements and communications from regulators.
- What reporting requirements are mandated by regulators and by when is a response required?
- Who is responsible for compliance?
- What are the requirements for informing and liaising with customers?



Competition Law Analysis

- Are there any competition law considerations to be aware of? What arrangements are in place to maintain confidentiality and avoid the sharing of commercially sensitive information?



**Register your
interest today!**

+44 20 7444 2468
nortonrosefulbright.com