



The phasing out of the London Interbank Offered Rate (“**LIBOR**”) has been on the cards for a number of years, especially in view of the LIBOR scandal following the 2008 financial crisis. On 27 July 2017, Andrew Bailey, then the Chief Executive of the FCA, informed market participants that they should not rely on LIBOR being available as a benchmark following 2021. This phasing out was given greater impetus from 1 January 2018 when the provisions of the EU Benchmarks Regulation (Regulation (EU) 2016/1011) imposed requirements on those responsible for interest rate benchmarks to prioritise data from transactions and objective market data so far as practicable (rather than expert observation or expert judgments). From 31 December 2021, most, but not all, LIBOR settings will cease to be published (the overnight and 12-month US dollar LIBOR settings will stop being published from 30 June 2023 and the FCA is consulting on when to cease requiring the ICE Benchmark Administration to publish the remaining LIBOR settings (including 1-month sterling LIBOR settings)).

Given that, in 2019, the LIBOR interest rate benchmark was estimated to be used in \$300 trillion worth of transactions, the all-important questions are:

1. What is LIBOR to be replaced with; and
2. What steps do market participants need to take to account for the LIBOR transition?

## **Alternatives to LIBOR**

There is no single replacement to LIBOR. However, many market participants are utilising what are known as near risk free reference rates (“**RFRs**”) rather than inter-bank offered rates, such as LIBOR. Whereas LIBOR is a daily benchmark interest rate, calculated with reference to the submissions of a number of panel banks, RFRs are based on historical transactions. RFRs, being based on actual, backwards facing transaction data, are intended to be less vulnerable to market manipulation than LIBOR.

There are a number of RFRs; in a UK context, the Bank of England has published the daily Sterling Overnight Index Average (“**SONIA**”) Compounded Index since 3 August 2020. The SONIA Compounded Index simplifies the calculation of compounded interest rates. SONIA is the Working Group on Sterling Risk Free Reference Rates’ preferred benchmark for the transition from LIBOR to sterling RFRs.

## **Steps which need to be taken**

There are a number of difficulties which arise with respect to replacing LIBOR with RFRs. In particular, it must be stressed that RFRs and LIBOR (as well as other inter-bank offered rates) are not simply different names for essentially similar benchmarks. The transition away from LIBOR requires serious consideration as to how such transition will be effected.

The first step which needs to be taken is considering any extant facilities and determining what, if any, amendments need to be made to such facilities. For instance, it may be the case that the existing



underlying facility agreement has a mechanism which accounts for transitioning away from LIBOR (e.g. provisions contemplating a move to a differing, specific screen rate).

However, if there is no such specific wording then it will likely be necessary to amend the facility documentation by means of an amendment agreement. Consideration will need to be given to the appropriate replacement to LIBOR. Whilst the SONIA Compounded Index is emerging as the market standard RFR in a UK context, it may be appropriate to utilise a different RFR or other replacement option to LIBOR. Regard should be given to whether the proposed replacement to LIBOR will be commercially acceptable to all parties, given that express written consent may be necessary.

With regards to Jersey, the major issue which arises regarding the move away from LIBOR is with respect to secured facilities where there is Jersey law governed security over Jersey situate assets. Amendments to a secured facility agreement may call into question whether the existing Jersey law security remains valid. This will require detailed consideration of the security agreement in each case. Depending on the terms of the existing security agreement, existing security may need to be confirmed or new security created.

Voisin has been involved in advising a significant number of major UK and international clients on relevant Jersey aspects of moving away from LIBOR and can assist at all stages of the LIBOR transition.

For further information or specific advice, please contact [Daniel Walker](#).

*This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.*