

COVID-19 FAQ 6: Are there restrictions on capital distributions?

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This FAQ is intended to provide financial institutions with an overview of the restrictions in place on capital distributions in various jurisdictions.

As the impact of the COVID-19 crisis continues to develop for banks and insurers, regulators are reminding firms to pay attention to capital maintenance and ensure that sufficient reserves remain available. At a European supervisory level, the European Banking Authority (“EBA”) has called for banks to temporarily suspend all discretionary dividend distributions and share buybacks aimed at remunerating shareholders. This call to action stems from the EBA’s concern that capital should be used “*for ensuring continuous financing to the economy*” during the crisis.

Likewise, the European Insurance and Occupational Pensions Authority (“EIOPA”) has issued the same request to (re)insurers. Both supervisors have also encouraged prudence and discretion when paying out variable remuneration to senior managers and risk-takers. Similarly, the European Systemic Risk Board (“ESRB”) issued a recommendation to supervisory authorities that they request banks, (re)insurers and central counterparties under their purview to comply with these restrictions.

These requests were echoed with force at the UK level and across some EU Member States, with a number of major European and UK banks and insurers in effect required to confirm their intention to comply. However, some market participants have expressed concern with this approach, particularly given the knock-on effect to pension funds and individual investors with cornerstone investments in insurance firms.

US regulators initially did not put formal restrictions in place. Regulators took steps to ensure that automatic limitations on capital distributions triggered where a bank lends into its capital buffers (as they have been encouraged to do) will apply more gradually. However, in connection with the release of stress test results in June 2020 that included additional sensitivity analysis in light of COVID-19, the Federal Reserve announced new limitations for large banks.

Are there restrictions on capital distributions?

Jurisdiction	Restrictions on capital distributions
United States	<p>During the third and fourth quarters of 2020, no share repurchases will be permitted by large banks. In addition, dividend payments by large banks will be limited to the amount paid in the second quarter and further limited based on recent earnings. As a result, a bank cannot increase its dividend and can pay dividends only if it has earned sufficient income. Large banks must also reevaluate their longer-term capital plans.</p> <p>Separately, regulators have acknowledged that banking organizations could face future restrictions on capital distributions if they lend into their capital buffers, as they have been encouraged to do, in an effort to make credit available to households and businesses affected by COVID-19. To incentivize such lending, the agencies have redefined “eligible retained income” as used in their capital rules, and the Federal Reserve has made a corresponding change to its total loss-absorbing capacity (the “TLAC”) rule. These rule changes maintain the automatic limitations on capital distributions under the capital and TLAC rules, but seek to make their application more gradual so that a banking organization is less likely to be subject to abrupt and restrictive distribution limitations following a period in which it lends into its buffers in response to the pandemic. Our alert discusses these changes.</p>
European Union	<p>In a recommendation, the ECB has asked banks not to pay dividends or buy back shares until at least September 2021. The Recommendation concerns dividends for 2019 and 2020, and has been extended to include interim dividends out of 2021 profits. EIOPA has also urged that (re)insurers temporarily suspend all discretionary dividend distributions and share buybacks aimed at remunerating shareholders. In June, the ESRB issued a recommendation to competent authorities that they request the banks, (re)insurers and central counterparties under their supervision to comply with these capital restrictions.</p> <p>See EBA statement, EIOPA statement and ESRB recommendation</p>
United Kingdom	<p>Yes, by way of non-legislative supervisory request.</p> <p>Banks: In March 2020, following a series of published letters to the UK’s largest systematically important UK deposit-takers (HSBC, Nationwide, Santander, Standard Chartered Bank, Barclays, RBS, Lloyds Banking Group), the PRA publicly welcomed the decisions by the boards of these banks to suspend dividends and buybacks on ordinary shares until the end of 2020, and to cancel payments of any outstanding 2019 dividends. However, following its assessment of the large UK banks’ capital positions and market conditions, the PRA announced in December 2020 that banks may recommence some distributions should their boards choose to do so, within an appropriately prudent framework.</p> <p>Insurers: The PRA has also written to UK insurers on the specific topic of profit distributions, reminding them to manage their financial resources prudently, and of a specific pre-existing supervisory expectation of the PRA to the effect that, when deciding on distributions, boards should satisfy themselves that each distribution is prudent and consistent with their risk appetite.</p> <p>See PRA statements / Insurers</p>
France	<p>According to clear direction from the ACPR, preservation of capital resources to support the economy and/or absorb losses should be given priority at this time over the distributions of dividends and share buybacks. Therefore, the ACPR invites credit institutions under its direct supervision, and financing companies, to ensure, at least until October 2020, that:</p>

Jurisdiction	Restrictions on capital distributions
	<ul style="list-style-type: none"> no dividends are paid and no irrevocable commitment to pay dividends is made for the years 2019 and 2020; and no share buybacks to remunerate shareholders take place. <p>The ACPR also invites insurance companies under its supervision, at least until October 2020, to ensure that no dividends are paid and to exercise moderation in the policies for awarding variable compensation.</p> <p>Credit institutions, insurance companies and financing companies that would not be in a position to defer the payment of dividends because they consider themselves legally obliged to do so, should immediately explain the reasons for this to the ACPR.</p>
Germany	<p>In line with the EBA guidance, the German Federal Financial Supervisory Authority (“BaFin”) expects that financial institutions should refrain from buying back shares and carefully consider dividend payments, profits and bonuses. However, it does not currently consider a blanket distribution ban for insurance companies and pension funds.</p> <p>See BaFin statement</p>
Italy	<p>The Bank of Italy has adopted the EBA’s guidance that no cash payouts and buybacks are carried out until October 1, 2020 and applied it to non-systemic banks. Equally, the Italian insurance supervisory authority (“IVASS”), in line with the EIOPA guidance, stated that Italian insurance companies should follow prudent dividend and other distribution policies.</p>
Spain	<p>No restrictions other than those recommended at the EU level. The Bank of Spain is aligned with, and has been a part of, EU recommendations but has not imposed specific legal restrictions in this respect.</p>
Sweden	<p>No legal restrictions have been imposed. However, the Swedish regulator has made statements to the effect that any relaxation of capital requirements for banks shall not be used to make capital distributions or share buybacks. The Swedish banks are generally following the ECB recommendation for banks not to declare dividends under the current circumstances. The Swedish regulator has additionally continued to make the same recommendation, and currently recommends the suspension of any dividend payments for the rest of the year. Additionally, participation in certain support schemes may potentially restrict capital distributions.</p>
Belgium	<p>No restrictions other than those recommended at the EU level.</p>
UAE	<p>No restrictions.</p>

Our FSR team has developed the [COVID-19 Regulatory and Legislative Dashboard](#) as a resource to help affected financial institutions, companies, governments and individuals navigate the local and cross-border complexities of the crisis and the policy response. Please refer to the Dashboard for our periodic updates and insights into the issues addressed in this FAQ.

Find out more about the business response to the Coronavirus outbreak: [Coronavirus: Managing business impact and legal risks](#).

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