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A response to the PRA's consultation on CP6/18

Credit risk mitigation: Eligibility of guarantees as unfunded credit protection

May 2018

Introduction

UK Finance is pleased to respond to the PRA's consultation on CP6/18 consultation on *Credit Risk Mitigation: Eligibility of guarantees as unfunded credit protection*[1.]

UK Finance represents nearly 300 of the leading firms providing finance, banking, markets and payments related services in or from the UK. UK Finance was created by combining most of the activities of the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association. Our members are large and small, national and regional, domestic and international, corporate and mutual, retail and wholesale, physical and virtual, banks and non-banks. Our members' customers are individuals, corporates, charities, clubs, associations and government bodies, served domestically and cross-border. These customers access a wide range of financial and advisory products and services, essential to their day-to-day activities. The interests of our members' customers are at the heart of our work.

CP6/18 is of interest to a wide range of our members, both UK based and those from overseas accessing the City's centre of excellence in export financing. It could also detrimentally impact the ability of our members to finance exports by British manufacturers by increasing the cost of credit protection.

Overview

As highlighted in the CP, credit risk mitigation (CRM) is used by our members for sound risk management reasons and, with the capital benefits provided in the Capital Requirements Regulation (CRR), enable more affordable and long-term lending to be provided by our members to the wider economy. For example, export finance products support the supply of goods by manufactures to overseas markets by mitigating payment and political risk for the manufacturer. We highlight below a number of examples where the proposals may have unintended consequences.

A financial institution's activities are restricted by regulatory capital charges in terms of concentration limits and extension of credit to clients. However, the amount of regulatory capital held against an exposure to an exporter can be reduced using guarantees or counter guarantees from export credit agencies (ECAs) and other suppliers of guarantees. Therefore, credit risk mitigation reduces unnecessary capital

[1] https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2018/cp618.pdf

consumption and enables firms to finance more export finance for exporting manufacturers at a competitive cost and without more restrictive criteria that a bank might impose on a standalone basis.

UK Finance supports the PRA's attempt to clarify when contracts or obligations can be treated as eligible guarantees for CRM under the CRR, but we believe that the proposals in the CP would unintentionally exclude a variety of valid risk-transfer arrangements from being defined as eligible for capital relief.

UK Finance is also concerned that the proposals set out in the CP may lead to the UK being super equivalent to the rest of the EU in its approach to CRM, which will likely have a detrimental effect on this important provision to the real economy, and London's status as a centre of excellence for trade and export finance.

Export Credit Agencies, Multilateral Financial Institutions and Development Finance Institutions

ECAs, Multilateral Financial Institutions (MFIs) and Development Finance Institutions (DFIs) are entities that are mandated by individual governments, or groups of governments to support trade and economic development through the provision of financial instruments that include guarantees and analogous insurance products.

Most OECD countries, and many non-OECD countries, have an ECA to support the export of capital goods and services from that country. MFIs and DFIs seek to support general and regional economic development. However, they all share the benefit that the guarantees and insurance products that they provide mitigate payment and political risk for both exporters and lending banks.

Assuming full protection, a lending bank substitutes the credit rating the borrower with that of the guarantor (i.e. the ECA, MFI or DFI) and holds regulatory capital accordingly. Credit risk mitigation reduces the regulatory capital consumption, which is reflected in a lower cost of finance for exporters and their customers.

Established market practice is that claims under ECA, MFI and DFI guarantees and insurance products are typically paid no earlier than 90 days after a payment default of the borrower.

Definition and treatment of ECAs, MFIs, DFIs

From the drafting of the consultation paper, and in the recent UKF meeting between members and the PRA, the PRA confirmed its position that guarantees issued by ECAs, MFIs and DFIs (individually a "Supporting Entity" and together the "Supporting Entities") were considered out of scope for the purposes of the "timeliness" test proposed in the CP. This was in recognition of the fact that the purpose of any guarantee offered by a Supporting Entity is to support trade and economic development through the provision of financial instruments that include guarantees and insurance products. Furthermore, such Supporting Entities present no systemic risk given that they are part of and / or are backed by their relevant central government and so essentially constitute sovereign risk.

Some of these Supporting Entities are already exempt from CRR by virtue of being MDBs listed under Article 117 (such as IFC, MIGA, African Development Bank) or PSEs captured under the EBA-held list of entities under 116(4). Others are exempt pursuant to Article 214(2)d which excludes entities that are structured as part of the central government (such as the UK and US ECAs).

However, there are a number of Supporting Entities, both European and third country, that may be structured in different ways outside of the central government for varying reasons, for example as a separate legal entity but backed by State loans, other forms of State funding or shareholdings structures (examples include the Italian and Korean ECAs). Consequently, it is less apparent whether these Supporting Entities can meet the guarantee requirements of the PSE definition and benefit from Article 116, notwithstanding that the relevant State will have put into place arrangements to ensure that the Supporting Entity is always able to meet its financial obligations to the market and operates within prescribed parameters. The effect of any such structure is akin to State endorsement and comprehensive financial support.

We therefore propose a clarification be made, either in the CP itself or in some other formal guidance to the market, in relation to Articles 214 and 215 which relate to those entities which are "*counter guaranteed by central government*". This clarification should allow for those Articles to be interpreted to include other forms of State support (as well as State guarantees). It would be incumbent on each bank to make this assessment and demonstrate the basis of such determination to the PRA's satisfaction, if required. Annex 1 to this response contains suggested amendments to the proposed changes to Supervisory Statement 17/13 to specifically remove Supporting Entities from scope.

It is worth noting that should the PRA recognise and address the issues identified in the following sections relating to the treatment of guarantees generally, the exclusion from the CP proposals relating to Supporting Entities would be unnecessary (although we still request the clarification requested in relation to the interpretation of Articles 214 and 215 as above to ensure that all State-backed Supporting Entities are captured).

ECA financing and privately provided Credit Insurance

ECAs in the UK and most of the EU have withdrawn from short-term cover, to concentrate their focus on longer-term duration projects; leaving private insurers (i.e. in respect of trade credit insurance) to provide cover for this market. Many ECA-backed projects have also grown to rely on direct private insurers (i.e. Non-Payment Insurance (NPI)) to cover the 15% down payment not covered by the ECA-backed loan (which covers up to a maximum of 85% of the loan required). ECAs are an important partner for banks and help provide longer tenor financing at a competitive cost of borrowing. This is because banks are able to effectively transfer the risk to the public-sector body providing cover, which allows banks to reduce their capital allocation and thus provide larger financing amounts within the same country limits. However, ECA capacity is not limitless and is restricted by their own self-imposed country limits under the OECD Arrangement guidelines. In addition, as previously mentioned, ECA support is often now unavailable for shorter term trade finance business in the UK/EU. This has led to more of a symbiotic partnership relationship with insurers who directly/indirectly support ECA capacity for the longer-term project finance and infrastructure transactions, and also separately provide cover for the short-term products in the UK/EU.

If the PRA's current proposals are implemented, banks may have to apply higher regulatory capital requirements to existing trade finance supported by ECA and NPI guarantees and other forms of CRM including counter-guarantees, risk participations, Stand-by Letters of Credit, credit insurance and surety bonds. The industry therefore requests clarification from the PRA how it views the eligibility requirements for CRM to apply to ECA provided guarantees. We also note that in the example of ECA's an approach of days, rather months, is inappropriate. We come to this wider point below, that timeliness cannot be defined indiscriminately across a very wide-ranging set of CRM techniques.

Privately provided credit insurance

Private credit insurance providers can be multi-line insurance companies or ECA affiliates when operating outside of OECD rules. Privately provided credit insurance operates substantially in parallel with the ECAs, either acting in a complimentary fashion as reinsurance, or in competition, however with additional diversification benefits.

The market has a robust, reliable and tested risk appetite, formidable capital strength and a long-lasting reputation of paying claims promptly. Data from a leading market broker shows 388 claims made over 35 years, of those claims only 5 were taken to arbitration, where 3 were subsequently paid and 2 denied.

The insurance market and its products have evolved over many years to deliver a risk management solution that is shown to perform as expected and is further supported by a legal and regulatory framework that protects policyholders' interests. This type of NPI is mainly purchased by banks for CRM purposes. The terms and conditions of an NPI policy meet the eligibility criteria of guarantees under the capital framework of the Basel Committee on Banking Supervision. These are also replicated in Article 213 and Article 215 in Sub-Section 2 unfunded credit protection and credit linked notes of CRR. The term 'Non-Payment' provisions for the events of defaults by borrowers are 'due to any reason', i.e. both commercial and/or political risks.

UK Finance suggests that PRA should consider the economic substance rather than the legal form in assessing the wide ranging eligible CRM products, an approach which is supported by the recent CRR EBA[2] report. UK Finance believes that the current risk transfer arrangements in place from privately provided credit insurance should remain eligible as guarantees to reduce a bank's risk weighted assets. In particular, due to the timeliness of payment proposals it seems that the PRA is indirectly trying to prevent the use of credit insurance. We do not support this as it would not be in line with the risk profile of the product and how it is designed to function and actually works in practice. As a result, the proposals would not be conducive to the continuing support by banks of the real economy.

Timeliness of Payment

Although UK Finance understands that it is the PRA's intention to exempt Supporting Entities as "public sector bodies" in paragraph 7.6 (b), we are concerned that the PRA's aim will not be achieved as the currently proposed drafting is too prescriptive:

- Not all Supporting Entities fall cleanly within CRR Article 214(2) which in turn is linked to CRR article 116. For example, some ECAs are operated by private sector institutions on behalf of their respective governments.
- It is not clear what falls under "public sector bodies". The CRR does not use the term "public sector bodies", but "Public Sector Entity" instead.
- It is unclear whether the reference to "provisional" payments is only with respect to mutual guarantee schemes or also applies to public sector bodies. ECAs, MFIs and DFIs, as a matter of practice do not typically make "provisional" payments, but pay out following a "waiting period" as described immediately below.

Should the PRA's intended exemption for Supporting Entities not achieve its aim, UK Finance believes that the PRA's proposed interpretation of the requirement under CRR Articles 213(1)(c)(iii) and 215(1)(a) for the guarantor to pay out "in a timely manner" to be generally too prescriptive. Article 215(1)(a) states that the requirement is that the "lending institution has the right to pursue, in a timely manner...". This right to "pursue" in a timely manner reflects how Supporting Entity guarantees operate in practice once the claim under the guarantee (rather than under the related borrowing) has become due.

Although the periods may differ between Supporting Entities, the "life cycle" of each claim process is similar and typically consists of (1) a loss prevention period, (2) a claim settlement period and (3) a payment period. Annex 2 of this response contain example "life cycles" for ECAs, MFIs and DFIs.

The process reflects the desire of both lenders and the Supporting Entities to allow time to seek to resolve the underlying default without being forced to collapse the financing, which would lead to the export contract being cancelled or unfulfilled with a potential negative impact on an exporter and its supply chain.

It is both impractical and inflexible to require all guarantee to pay out "within days" given there are varied features for different CRM products and their associated market practice. Therefore, UK Finance recommends that the PRA amends its proposed guidance in the CP to allow flexibility in determining what 'timely manner' means in each particular context; consistent with EBA interpretation[3].

Furthermore, the CP is not clear at which point in this life cycle the clock should start running for the timeliness of payment as there will be a significant difference in the elapsed period if taken variously from the point of initial default of the client, the reporting of a credit event, or the point where all supporting documentation has been provided to the insurer's satisfaction.

Timeliness varies depending on the type of products and can reflect some requirements specific to the sector in which the protection provider operates.

[2] https://www.eba.europa.eu/documents/10180/2087449/EBA+Report+on+CRM+framework.pdf
[3] http://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2015_2306

For instance, Compensation from an Insurer under an NPI policy is subject to Waiting Period typically ranging from 90 days to 180 days. The Waiting Period is the period from the date of underlying loss until the date of claim payment indemnifying for such loss. During this period, the Insurer will seek to validate the loss; likewise, it allows the Insured to look at avenues that would mitigate the need to crystallise the loss e.g. administrative payment delays, loan rescheduling / restructuring or by exercising its right of subrogation. As such, the Waiting Period is also considered to serve as the Insurer's risk mitigation tool to lower insurance risk, thus reducing the capital burden of the Insurer. At the end of the Waiting Period, or even during the Waiting Period, in all cases, Compensation is paid to the Insured irrespective of potential recovery from the borrower (Article 215, 2. (a)). In practice this has worked well historically and UKF members are worried that a change to 'days rather than weeks or months' could create uncertainty and reduce support to the real economy.

Further, given the CRR applies EU-wide, it is important that the interpretation remains consistent across the EU in order to maintain a level playing field, without which the UK market's continuation as an expert provider of specialist insurance services could be damaged.

It should be noted that Supporting Entities and private insurers can all be involved in providing guarantees to finance the same project or series of export contracts. Sometimes this can be along-side, sometimes it can involve other ECAs or private insurers reinsuring the lead guarantor. Inconsistency in treatment will have unintended consequences for international projects (and therefore contractors and sub-contractors) which have multiple parties involved from different jurisdictions.

Hence, we would like the PRA to consider that the focus should not be on how quickly payment is received, but whether or not there has been an effective transfer of risk, recognising that banks are best placed to make this assessment.

In summary, it is proposed that a flexible approach based on market practice for the individual protection should be adopted. To the extent that a precise day count formulation is required, which we would not support, then this should also accurately reflect current market practice to avoid inadvertently excluding existing appropriate credit risk mitigation products.

Independent legal opinions

The industry is worried that the proposals change the PRA expectations in relation to legal opinions under CRR. Currently, in respect of both funded and unfunded CRM, banks have significant flexibility on how they demonstrate that their contracts are enforceable. Opinions can either be obtained from external counsel, or rather by an internal legal review supplemented by external opinion where appropriate and relevant, subject matter expert individual experience and market practice.

There is no requirement in the CRR for opinion comfort in respect of the CRR eligibility criteria themselves, particularly as a large number relate to matters of fact rather than matters of law. As a matter of practice, banks rely on transaction-level enforceability as well as in certain cases opinions issued by internal lawyers, which cover the question of enforceability, but do not detail the CRR criteria as allowed in reference to an EBA Q&A[4] where consideration is on "independent, written and reasoned".

The industry is therefore concerned that the current drafting proposals makes requirements so prescriptive and onerous that they in practice will reduce the ability for banks to manage their legal risks appropriately.

Legally effective and enforceable

UK Finance would welcome clarification that the PRA's intention is not to go beyond the existing requirements of the CRR. UK Finance is of the view that the PRA's expectation that an independent legal opinion considers the "eligibility criteria", indeed does go beyond the requirements of the CRR and would impose an additional burden in terms of both due diligence and associated costs. Law firms limit their opinions to matter of law, while some of the "eligibility criteria" are actually factual matters, which are

[4] http://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2013_23

assessed by business, risk and regulatory experts within an institution. It is not appropriate for such matters of fact to be assessed by an independent law firm.

The extension of the existing requirement would negatively impact exporters – particularly SME exporters – as costs of obtaining the independent legal opinion, which will be situation specific, will either be passed on or financing not offered if the requirement on a transactional level is to increase the complexity of analysis for legal opinions.

The CRR article 194 (1) mandates that credit protection arrangement should be "legally effective and enforceable in all relevant jurisdictions" and it also mandates that an 'independent, written and reasoned legal opinion' shall be available upon request to establish the satisfaction of these conditions. Indeed, requesting a legal opinion assessing this aspect of CRR article 194 (1) compliance is a standard practice (whether internal or external). However, we think that expecting that the legal opinion to also cover the practical ease of enforcement goes beyond the regulation as this and similar issues may be better assessed by the bank itself and this assessment will be in compliance with CRR 194(2).

We are also concerned about the potential widening of the scope of relevant jurisdictions without clear guidance. This could lead to complex assessments in three or more jurisdictions in relation to multiple participants.

Clearly defined and incontrovertible

In paragraph 2.5 of the CP, the PRA interprets 'incontrovertible' to mean that 'the wording of the guarantee should be clear and unambiguous, and leave no practical scope for the guarantor to dispute, contest, and challenge or otherwise seek to be released from, or reduce, their liability.' This interpretation could be understood to override the condition contained in Article 213(1)(c) of the CRR that the guarantee should 'not contain any clauses, the fulfilment of which is outside the direct control of the lender…'. Guarantees issued by Supporting Entities often contain some degree of conditionality. However, these conditions are under the control of the lending bank and not related to payment risk. Common examples of these conditions would be to notify the guarantor of risk events and not to, without the guarantor's prior written consent, either make amendments to the loan documentation or accelerate the loan. UK Finance therefore requests that the PRA re-examines its interpretation of 'incontrovertible' in this context, aligning it with the CRR requirements.

Clauses that will render the guarantee ineligible for CRM

We assume that certain market standard exclusions clauses such as 'nuclear events' do not necessarily render an unfunded guarantee as ineligible for CRM. We ask for confirmation that such market standard exclusions clauses such as 'nuclear events' do not necessarily render an unfunded guarantee as ineligible for CRM. Firms should be allowed to assess whether and how certain remote and non-credit events may impact their credit risk mitigation – whether or not, for instance, a particular country or region contains material nuclear power generation capacity. To that end we agree that 'incontrovertibility' should be achieved in respect of the practical scope for one guarantor to 'dispute, contest or challenge their liability'.

Pillar 2

We think that the possibility for additional capital under Pillar 2 for residual risks arising from the use of unfunded guarantees requires further clarification. The proposal could lead to unintended consequences where a bank may incur an additional Pillar 2 charge even though it may not be recognising any capital relief. We request PRA to provide further guidance about the additional risks and supervisory concerns, to allow the bank to better understand the application of capital requirements in a transparent and consistent manner. If it was the PRA's intention to clarify that Pillar 2 could capture the benefits of CRM techniques that are ineligible for Pillar 1 purposes, then this should be clarified in the policy paper.

Level playing field

We think that the introduction of very prescriptive guidance will unhelpfully distort the level playing field, as the PRA proposals do not appear to be shared by regulators in other jurisdictions.

Exclusion of certain types of payments and limited coverage

It is not uncommon that MFI (and some ECA) guarantees contain standard exclusion clauses. Some lenders may look at the “remoteness” of the risk when considering such exclusion clauses and adjust the value of the guarantee, where appropriate, to reflect the limited coverage as permitted by Article 215(1)(c) of the CRR. However, the PRA's proposed interpretation of Article 215(1)(c) of the CRR appears to prevent this approach, as the proposal states that "limited coverage" refers to a quantifiable portion of the exposure and that exclusion of "certain types of payment" refers to different sums that an obligor may be required to pay such as principal, interest or margin payments. With this narrower interpretation a number of MFI and ECA guarantees could more likely be viewed as being ineligible. UK Finance therefore requests that the PRA re-examines its interpretation of Article 215(1)(c). As with all Supporting Entities guarantees, if they are unavailable, the consequence is more often than not that an export or an infrastructure project fails (or does not commence) due to lack of financing.

Conversion/Grandfathering

As a general observation, if the PRA’s proposals lead to a change in how institutions currently treat guarantees, UK Finance would request that the PRA permit conversion/grandfathering of existing guarantees entered into in good faith in order to mitigate the potential negative impact on capital and/or lending.

In the event the PRA decides to proceed with its proposed clarifications despite the above points, we would request that longer term transactions receive grandfathering/conversion treatment until their expected and/or documented due date as at the update of the Supervisory Statement. Furthermore, a transitional period of at least a year should be allowed in the case that the PRA clarifications gold-plate CRR requirements and necessitate implementation by banks and/or renegotiation of the current documentation and a consequent change in market practice.

We would be delighted to discuss our response further with the PRA, involving subject matter experts from our member banks if that would be helpful.

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Annex 1: Suggested amendments to the proposed changes to Supervisory Statement 17/13

7.1 This chapter is relevant to any contract or other documented obligation which purport to be guarantees for the purpose of achieving unfunded credit protection under CRR Part Three, Title II, Chapter 4 (Credit risk mitigation). It is also relevant for other parts of the CRR and any other legislation that cross-refers to CRR Part Three, Title II, Chapter 4. This includes, for example, CRR Part Four (Large Exposures) and CRR Part Three, Title II, Chapter 5 (Securitisation) and the double default framework for the internal ratings-based approach (IRB) in CRR Articles 153(3), 202 and 217. It is not relevant for insurers seeking guidance on the eligibility criteria for guarantees in Article 215 of Commission Delegated Regulation (EU) 2015/35. ***In addition, entities undertaking activity as the Export Credit Agency of a national government, Multilateral Financial Institutions and Development Finance Institutions are excluded from the scope of this chapter, as long as a bank can demonstrate to the PRA that it has satisfied itself that the level of support can be reasonably identified as a guarantee or counter-guarantee or similar under the CRR.***

Legally effective and enforceable

7.3 CRR Articles 194(1), 213(1)(d) and 213(3) require that the guarantee must be legally effective and enforceable in all relevant jurisdictions. The PRA expects that, at a minimum, this will require the firm to satisfy itself that the guarantee is enforceable under its governing law, and in the jurisdiction where the guarantor is incorporated, but could well include other jurisdictions where enforcement action may be taken. The practical ease of enforcement should also be considered. ~~***CRR Article 194(1) requires that the guarantee be supported by an independent, written and reasoned legal opinion. As part of considering the guarantee's effectiveness, the PRA expects the independent legal opinion to consider the eligibility criteria.***~~

Clearly defined and incontrovertible

7.4 CRR Article 213(1)(b) requires that the extent of the guarantee must be clearly defined and incontrovertible. The PRA interprets 'incontrovertible' to mean that the wording of the guarantee should be clear and unambiguous, and leave no practical scope for the guarantor to dispute, contest, challenge or otherwise seek to be released from, or reduce, their liability. When satisfying themselves that a guarantee is 'incontrovertible', firms should consider the terms of the guarantee itself ***(i.e. that the guarantee does not contain any clauses, the fulfilment of which is outside the direct control of the lender)****, the remedies available under the law that applies to that guarantee, and whether there are scenarios in which the guarantor could in practice successfully seek to reduce or be released from liability under the guarantee.*

Pay out in a timely manner

7.6 CRR Article 215(1)(a) requires that the guarantor ***can be pursued*** *'in a timely manner'. The PRA considers this requirement means that* ***that pursuit can commence without delay on establishment of a claim under the guarantee****.* ***There should be no known impediment related to the protection that would result in pursuit or subsequent pay-out being delayed past market norms for the specific protection being used.*** *The only exceptions to this timeliness requirement described in this chapter (that pay out must occur without delay, i.e. within days) are as follows:*

(a) for guarantees covering residential mortgage loans, where the CRR specifically provides that the protection may pay out within 24 months (CRR Article 215(1)(a));

(b) where provisional payments are made under guarantees provided by mutual guarantee schemes or by public sector bodies (CRR Article 215(2)); and

(c) where CRR Part Three, Title II, Chapter 4 (Credit risk mitigation) is applied in respect of a securitisation position in the different context of CRR Part Three, Title II, Chapter 5 (Securitisation).

In addition, entities undertaking activity as the Export Credit Agency of a national government, Multilateral Financial Institutions and Development Finance Institutions are excluded from the scope of this chapter, as long as a bank can demonstrate to the PRA that it has satisfied itself that the level of support can be reasonably identified as a guarantee or counter-guarantee or similar under the CRR[5].

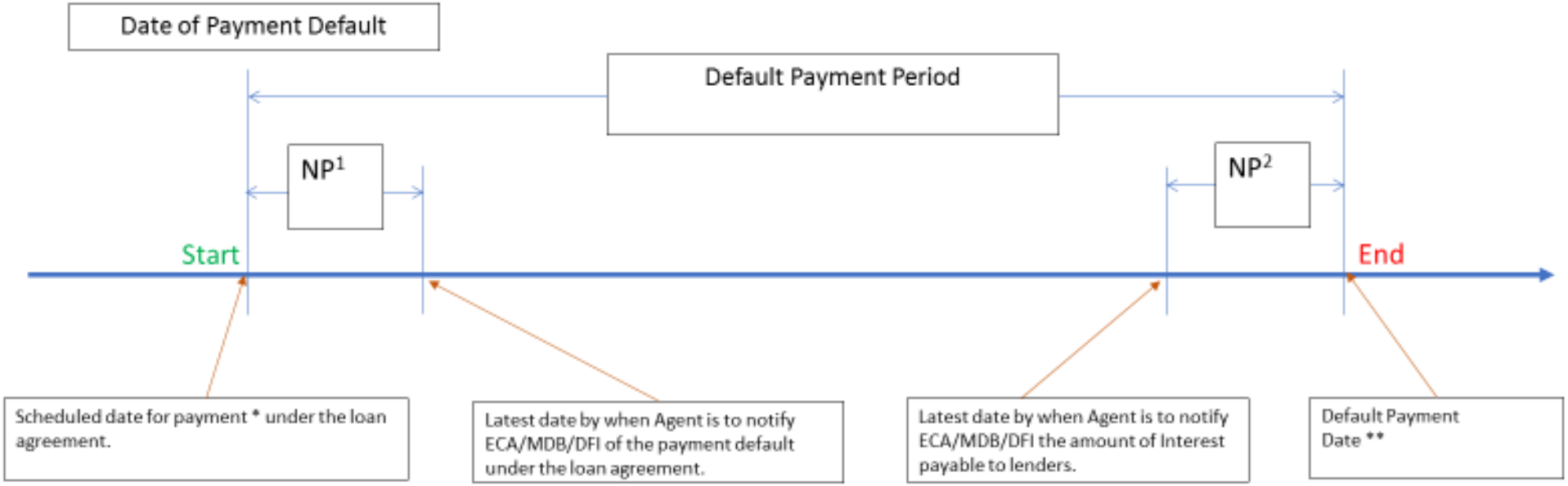
Conversion

7.11 Guarantees entered into for a period of up to [3] years following the date of this chapter becoming applicable are exempt from the requirements of this consultation. For the avoidance of doubt this exemption applies to the entire period of the financing to which such Guarantee relates (as may be extended from time to time).

[5] Note that this suggestion will not be required if the Supporting Entities are already excluded from the SS per the suggested amendment to SS17/13 paragraph 7.1 above.

Annex 2: Life cycle

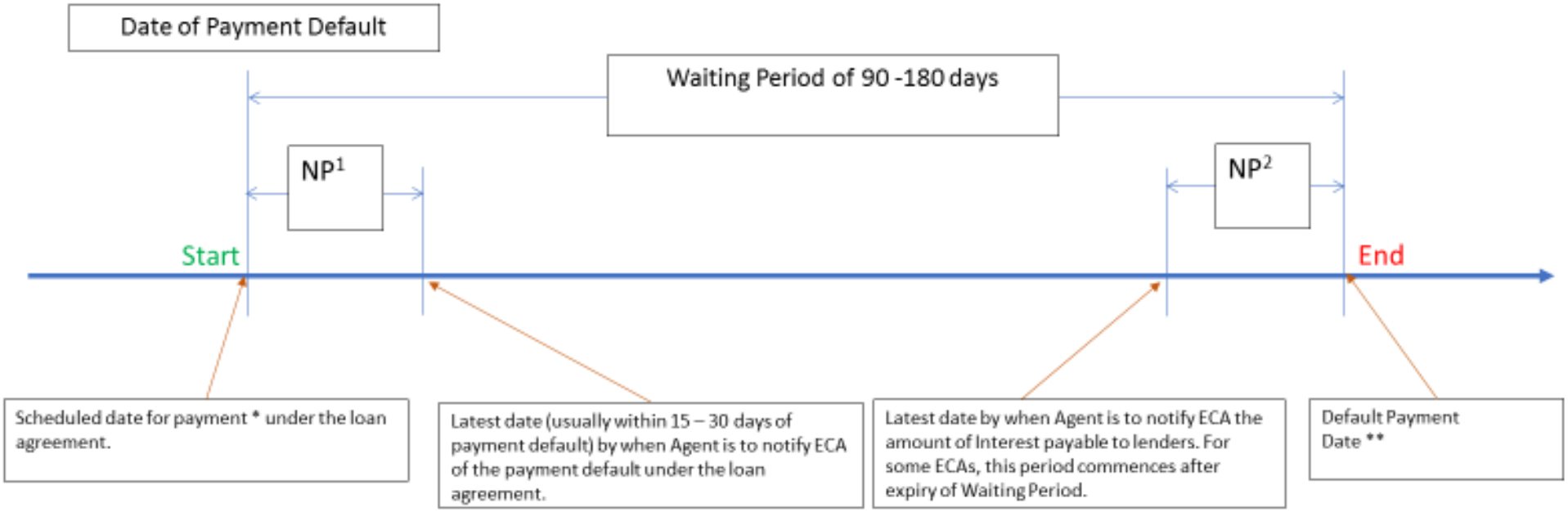
Generic



1. The ECA/MDB/DFI is not party to the loan Agreement. Hence ECA/MBD/DFI needs to be informed by the Agent as and when a payment default occurs.
2. The ECA/MDB/DFI expect Agent/lenders to be monitoring the loan closely at all times. Hence make it necessary for the Agent to inform about a payment default at the earliest.
3. As an additional safeguard/incentive, ECA/MBD/DFI will mandatorily require the Agent to lodge a claim within a certain period of the payment default (i.e. NP^1). the Agent may request extra time to lodge a claim. This extra time may be required for lenders to analyse the circumstances leading to the payment default and whether, if at all, it should result in an acceleration of the entire loan.
4. A reasonable Default Payment Period is required so that during that period if the Borrower remedies the default or makes partial payment(s) then to that extent the payout by the ECA/MDF/DFI will be reduced.

1 and 2 Notification Period(s) when Agent has to inform ECA.
* Implies any payment i.e. repayment of principal or Interest thereupon or a combination of both.
** On Default Payment Date ECA/MDB/DFI will pay the lenders

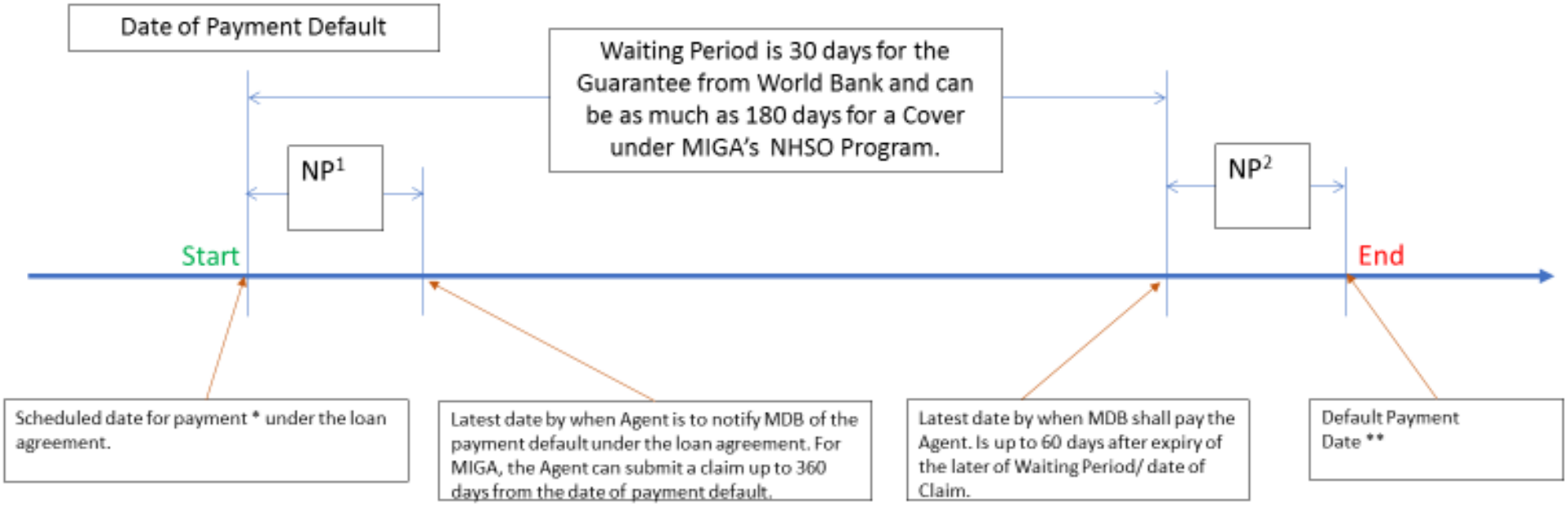
ECAs



1. The ECA is not typically a party to the loan Agreement. Hence ECA needs to be informed by the Agent as and when a payment default occurs.
2. The ECA expect Agent/lenders to be monitoring the loan closely at all times. Hence make it necessary for the Agent to inform about a payment default at the earliest.
3. As an additional safeguard/incentive, ECA will mandatorily require the Agent to lodge a claim within a certain period of the payment default (i.e. NP^1). the Agent may request extra time to lodge a claim. This extra time may be required for lenders to analyse the circumstances leading to the payment default and whether, if at all, it should result in an acceleration of the entire loan.
4. A reasonable Waiting Period is required so that during that period if the Borrower remedies the default or makes partial payment(s) then to that extent the payout by the ECA will be reduced.

1 and 2 Notification Period(s) when Agent has to inform ECA.
* implies any payment i.e. repayment of principal or Interest thereupon or a combination of both.
** On Default Payment Date ECA will pay the lenders

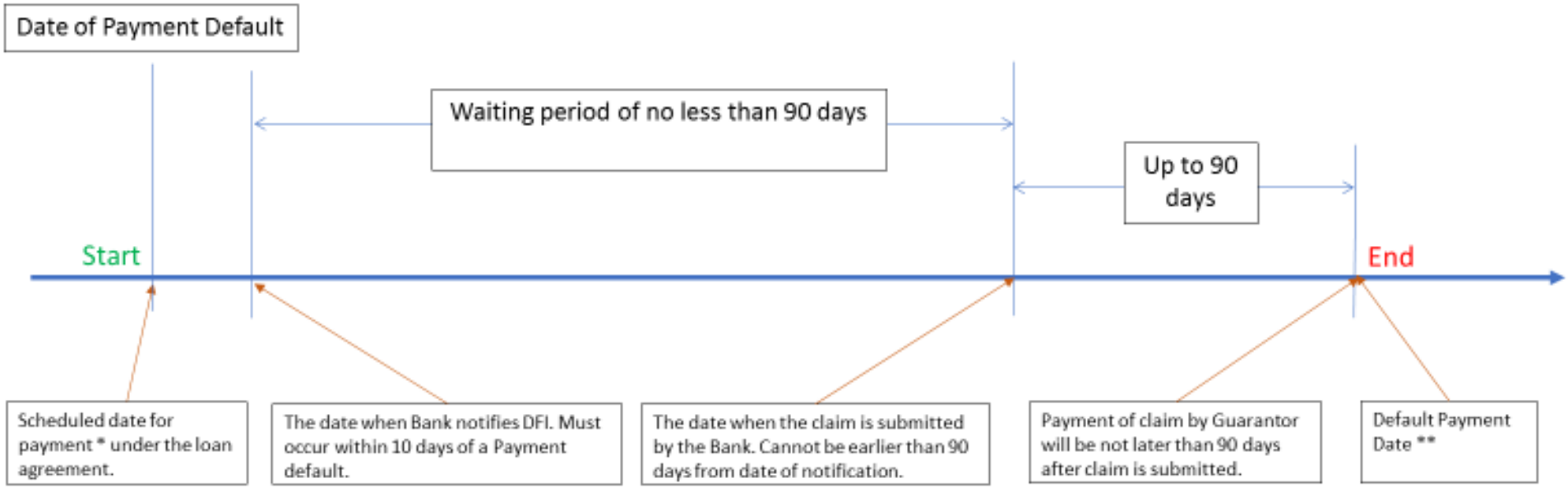
MDBs (such as World Bank, MIGA)



1. The MDB is not party to the loan Agreement. Hence MBD needs to be informed by the Agent as and when a payment default occurs.
2. The MDB expect Agent/lenders to be monitoring the loan closely at all times. Hence make it necessary for the Agent to inform about a payment default at the earliest.
3. As an additional safeguard/incentive, MDB will mandatorily require the Agent to lodge a claim within a certain period of the payment default (i.e. NP[1]). the Agent may request extra time to lodge a claim. This extra time may be required for lenders to analyse the circumstances leading to the payment default and whether, if at all, it should result in an acceleration of the entire loan.
4. A reasonable Default Payment Period is required so that during that period if the Borrower remedies the default or makes partial payment(s) then to that extent the payout by the MDB will be reduced. In addition this waiting period enables the MDB to explain to the Borrower the consequences of payment default which has been demonstrated to result in the payment default being remedied.

1 and 2 Notification Period(s) when Agent has to inform MDB.
* implies any payment i.e. repayment of principal or interest thereupon or a combination of both.
** On Default Payment Date MDB will pay the lenders

DFIs (such as USAID, Guarantco)



1. The DFI is not party to the loan Agreement. Hence DFI needs to be informed by the Agent as and when a payment default occurs.
2. The DFI expect Agent/lenders to be monitoring the loan closely at all times. Hence make it necessary for the Agent to inform about a payment default at the earliest.
3. As an additional safeguard/incentive, DFI will mandatorily require the Agent to not lodge a claim within a certain period of the payment default. This minimum time may be required for lenders to analyse the circumstances leading to the payment default and whether, if at all, it should result in an acceleration of the entire loan.
4. Once a claim is submitted, then the DFI requires 90 days in order to determine the claim as well make the payment of the Claim.

** On Default Payment Date DFI will pay the lenders