Insights

LIBOR TRANSITION: HOW TO AVOID BEING SUED BY YOUR LEGACY COUNTERPARTIES?

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SUMMARY

LIBOR transition is one of the most significant challenges facing financial institutions today, but it is not just a regulatory issue. Here are some practical tips to help you mitigate the litigation and regulatory risks.

LIBOR, the most widely used interest rate benchmark in the world is coming to the end of its life. But vast numbers of financial contracts still reference it and are not fit for purpose in the post-LIBOR world. A potential new legislative regime and necessary contract negotiation may present a challenging period to many parties who could lose out following cessation of the rate.

Firms need to negotiate amendments to their contracts this year. They should approach those negotiations carefully in order to mitigate their litigation and regulatory risk:

1. **Start your LIBOR transition project now if you haven't already done so.** You do not want to leave those negotiations so late that you are seen as imposing solutions on your counterparties at the last minute.

2. **Do not use the negotiations as an opportunity to secure a better commercial deal.** One of your objectives in determining the most appropriate replacement benchmark should be to minimise economic value shift. You should record how you think your approach meets that objective.

3. **Align your approach with market standards as much as possible.**

4. **Try to adopt a consistent approach to the key issues for each product type across different counterparties and locations.**

5. **Adopt a clear and transparent communications strategy.** Make sure you highlight to clients all the key areas of the contract that are being amended. This is not necessarily just the interest rate

provision. For example, a move to a new benchmark may have a consequential impact on other key provisions such as financial covenants, prepayments and break costs.

6. **Do not assume advisory duties.** If your clients need legal or financial advice on their options they should seek that independently.
7. **Do not make statements or projections that could turn out to be wrong or misleading.** Whilst your objective may be to put the client in the same position in which it would have been had LIBOR continued, you cannot be sure that the amendments will have that effect.
8. **Develop a strategy for when counterparties refuse to agree.**

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