Baker McKenzie.

International: Ready or not, here it comes — LIBOR transition's endgame in the loan markets

IN BRIEF

The endgame of the LIBOR transition is imminent, if not already upon us. LIBOR will cease for all currencies other than USD on 31 December 2021. Ready or not, loan market participants need to deal with it.

Key takeaways:

1. LIBOR will cease for all currencies (other than USD) on 31 December 2021.

2. The Financial Standards Board (FSB)[1] and local regulators and working groups have recommended that market participants use robust alternative reference rates to LIBOR in new contracts wherever possible.

3. Most USD LIBOR tenors will continue until 30 June 2023, but this longer period is intended solely to allow legacy USD LIBOR transactions to roll off. US banks are restricted from originating new USD LIBOR loans after 31 December 2021. Other regulators, including in the UK, are similarly encouraging the entities they supervise to meet this same deadine.

4. Risk-free rates (RFRs) have been adopted in the jurisdiction of each LIBOR currency. These rates are overnight rates. For loan transactions, RFRs may be applied in arrears using compounding.

5. Forward term rates based on an RFR have been recommended for loan transactions in the US (Term SOFR) and in Japan (TORF). In no other LIBOR jurisdiction has a similar forward term rate based on an RFR been recommended for general use in loan transactions. Although the UK has two versions of a forward term rate (Term SONIA), it has been recommended for use only in specific limited circumstances.

6. The euro zone and Japan have followed a multiple rate approach. Their legacy non-LIBOR rates, EURIBOR and TIBOR,[2] respectively, will continue to exist following LIBOR cessation alongside the RFRs for such jurisdictions.

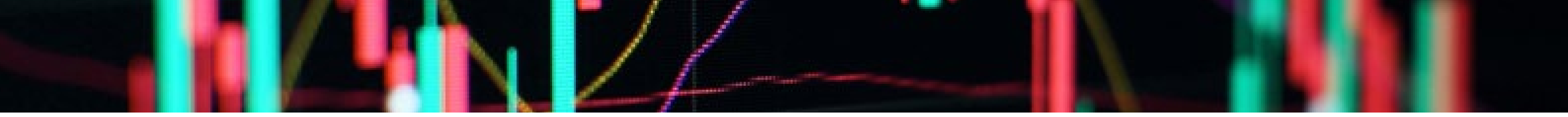
7. After LIBOR ceases, synthetic GBP and JPY LIBOR will be available for legacy contracts (but not new contracts) during 2022. These rates may be available until 2031, although there is no guarantee of availability after 2022.

8. Tough legacy issues remain. A New York state law is in effect to address such issues in contracts governed by New York law. The US and the UK have either enacted or considered further legislation to address tough legacy issues. The European Commission has designated statutory replacements for CHF LIBOR (SARON) and EONIA (€STR) in an attempt to address tough legacy issues.

9. Although credit-sensitive rates have been explored for use in place of RFRs in loan transactions, regulatory acceptance of them has been mixed.

10. Multicurrency facilities are likely to be more complicated than they were during LIBOR's heyday.

1. FSB, **Progress Report to the G20 on LIBOR Transition Issues** (6 July 2021). **2.** In Japan, Euroyen TIBOR will also continue to exist after 31 December 2021, but is expected to be discontinued after December 2024. JBA TIBOR Administration (JBATA), **Compliance with "IOSCO Principles for Financial Benchmarks (19 Principles)"** (29 March 2021). JBATA has announced plans to consult on the discontinuation of Euroyen TIBOR.



IN MORE DETAIL

LIBOR's endgame is imminent, if not already upon the financial markets and, ready or not, loan market participants need to deal with it. There are no more interim deadlines to meet ahead of the one big (and rapidly approaching) deadline of 31 December 2021. On that date, LIBOR will cease for all currencies except for USD.[3]

US regulators have advised US banks that any origination of new USD LIBOR loans after 31 December 2021 will create regulatory issues.[4] UK banks had to cease GBP LIBOR originations in bank lending by 31 March 2021.[5] The UK Financial Conduct Authority (FCA) has commenced a consultation on whether to prohibit FCA-supervised firms from using USD LIBOR in new deals after 31 December 2021.[6]

In this client alert, we will examine the state of play of LIBOR transition in the loan markets in each LIBOR jurisdiction in the short time left until the end of this year. We will also discuss the post-2021 environment for loan interest rates, including with respect to multicurrency facilities.

Alternative rates

In each LIBOR jurisdiction, regulators have adopted an official risk-free rate (RFR): SOFR for USD, SONIA for GBP, €STR for EUR, TONA for JPY and SARON for CHF. Each of these RFRs is an overnight rate. For many debt products, interest based on overnight RFRs may be calculated in arrears and may use compounding.

The extent of adoption of RFRs as LIBOR replacements differs by jurisdiction and by financial product. Many jurisdictions have adopted "RFR First" initiatives to drive growth in RFR swaps markets to make their RFRs more robust.

In some jurisdictions, participants in the syndicated lending market have expressed a desire to use forward term rates based on RFRs.

In the US, loan market participants are considering credit-sensitive rates (CSRs), which are forward term rates that reflect counterparty credit risk and may better account for bank funding costs.

The euro zone and Japan have followed a multiple rate approach. Under this approach, their legacy non-LIBOR rates, EURIBOR and TIBOR, respectively, will continue to exist following LIBOR cessation alongside the RFRs for such jurisdictions. EURIBOR and TIBOR are both forward term rates and CSRs.

US

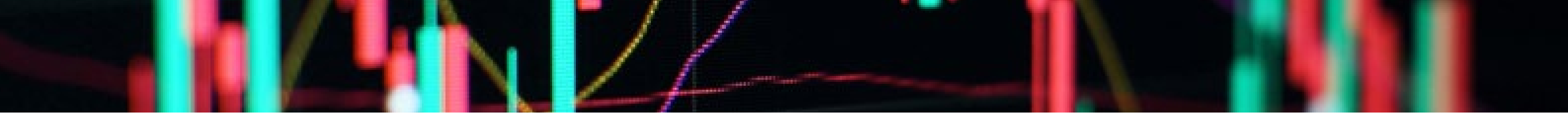
In the US, the Alternative Reference Rates Committee (ARRC) formally recommended Term SOFR, a forward term rate based on SOFR that is published by CME.[7] Among other things, this recommended Term SOFR is the first step in the ARRC's model hardwired LIBOR fallback provisions for syndicated loans, floating rate notes and securitizations. Japan is the only other LIBOR jurisdiction that has recommended a similar forward term rate based on its RFR for use in loan transactions.

The US Commodity Futures Trading Commission (CFTC) has begun a "SOFR First" initiative in an attempt to spur the growth of SOFR derivatives and futures markets.[8] This initiative is modelled after an earlier "SONIA First" project in the UK. ClarusFT reports that as of the beginning of September, SOFR trading accounted for 30% of the US interest rates derivatives market, which they said was a direct result of the SOFR First initiative.[9] The ARRC's recommendation of Term SOFR followed the commencement of the first phase of this multi-phase initiative in response to an increase in SOFR derivatives volume after such commencement.

Many USD derivatives and floating rate notes refer to SOFR or SOFR in arrears over a specified term. By contrast, and despite the existence of SOFR and Term SOFR, new USD LIBOR loan origination continues in the US even now, although we believe that the vast majority of recent USD loan originations contains robust LIBOR fallbacks. Securitizations of these loans also remain largely LIBOR-based.

As yet, there has been very limited use of SOFR and Term SOFR in new loan originations in the US. Due to USD LIBOR's extended publication until June 2023, LIBOR loans originated now with customary hardwired ARRC fallbacks would bear interest at LIBOR until LIBOR ceases. At that time, the loan will switch to Term SOFR plus the credit adjustment spread,[10] unless the borrower and the agent agree to switch earlier. At some point prior to June 2023, liquidity in USD LIBOR may decline, and if that happens, borrowers and lenders may want to move to SOFR or other alternative rates.

3. **FCA announcement on future cessation and loss of representativeness of the LIBOR benchmarks** (5 March 2021). **4.** See **The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency, 30 November 2020 Statement on LIBOR Transition.** See also **SR 21-7: Assessing Supervised Institutions' Plans to Transition Away from the Use of the LIBOR** (issued 9 March 2021). **5.** The Working Group on Sterling Risk-Free Reference Rates, **Best Practice Guide for GBP Loans.** **6.** **CP21/29: Proposed decisions on the use of LIBOR (Articles 23C and 21A BMR) | FCA.** This would place the existing supervisory guidance to UK banks to follow the aforementioned US regulatory guidance on a statutory basis. **7.** **ARRC Formally Recommends Term SOFR** (29 July 2021). **8.** See **CFTC Market Risk Advisory Committee Adopts SOFR First Recommendation at Public Meeting** (13 July 2021). **9.** ClarusFT, **August 2021 – What Happened?** **10.** The credit adjustment spreads for the ARRC hardwired fallbacks were fixed by the FCA's 5 March 2021 LIBOR cessation announcements. See **ARRC Supplemental Recommendations of Hardwired Fallback Language for LIBOR Syndicated and Bilateral Business Loans** (25 March 2021). These credit adjustment spreads are the same as those used in the ISDA LIBOR fallbacks.



The ARRC recently recommended that lenders “act now to slow their use” of USD LIBOR to promote a “smooth end” to new USD LIBOR contracts by the end of the year.[11] In a recent speech,[12] Randal Quarles of the Federal Reserve stated that based on data from the second quarter of 2021, the Fed estimated that large firms had used alternative rates for less than 1% of floating rate corporate loans and 8% of derivatives. Mr. Quarles urged lenders to “pick up the pace,” and warned that Fed examiners would “expect to see supervised institutions accelerate their use of alternative rates.”

Perhaps SOFR loan origination will increase before year -end, following the ARRC’s Term SOFR recommendation and in recognition of the upcoming deadline to cease new USD LIBOR loan origination by 31 December.

As noted above, some market participants in the US have considered using CSRs in loan transactions. These notably include Ameribor (published by the American Financial Exchange) and BSBY (published by Bloomberg).

These CSRs have largely not been supported by regulators. Gary Gensler, chair of the US Securities and Exchange Commission (SEC), has questioned whether BSBY meets the IOSCO standards for financial benchmarks.[13] Janet Yellen, Treasury secretary, has expressed concern that alternative rates could replicate LIBOR’s shortcomings if they lacked sufficient transaction volumes.[14] IOSCO made an announcement where it noted that regulators were concerned that CSRs might be replicating LIBOR’s “inverted pyramid” problem and called on administrators of CSRs that have certified such rates as IOSCO-compliant to consider how such CSRs would continue to meet the IOSCO benchmark principles over time, particularly during periods of financial stress (and not simply as of a particular date).[15]Perhaps as a result of this regulatory criticism, swaps volumes in BSBY have been less than expected.[16]

Although the US Federal Reserve has not prohibited banks from using CSRs, it has told US banks that any alternative rates would need to be appropriate for the bank’s funding model and customer needs.[17] During a recent speech, Michael Held, general counsel of the Federal Reserve Bank of New York, told banks “If your firm is moving to a rate other than SOFR, that means extra work for you to make sure you’re demonstrably making a responsible decision. Because you are going to be asked about that decision.”[18]

As a different way to account for bank funding costs, SOFR Academy has proposed using Across-The-Curve Credit Spread Indexes (AXI), which are weighted averages of the credit spreads of unsecured bank funding transactions, as credit spreads to be added to SOFR (and Term SOFR).[19]

UK

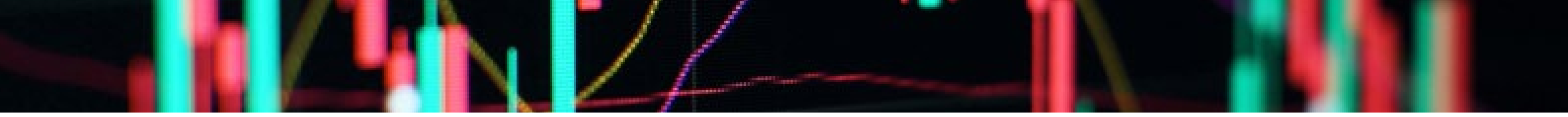
In the UK, new originations of loans, floating rate notes and derivatives have switched to using SONIA. Although versions of Term SONIA exist, UK regulators have put in place a limited use case of Term SONIA in the UK loan market, stating that use of compounded SONIA in arrears is appropriate for 90% of the English loan market.[20] This is despite the fact that Sterling derivatives trades, by some distance, show the highest volume of risk-free rate transactions as compared to LIBOR-based transactions of all the LIBOR currencies. The high volume of these transactions has bolstered the robustness of the Term SONIAs.

Unlike in the US, new loan originations have fully switched from GBP LIBOR to compounded SONIA at this point, and progress is accelerating during the final quarter of 2021 on the mammoth task of amending legacy GBP loans to reflect the new interest rate environment.

As market conventions around the use of SONIA have become well-established during 2021, these UK conventions have been widely seen in non-Sterling loans originated in the UK.

UK regulators have indicated that they too are of the view that credit-sensitive rates are not sufficiently robust and that such rates may not meet the IOSCO benchmark standards. These regulators have indicated that they will view the use of credit-sensitive rates very skeptically. The FCA has cautioned supervised firms that may be planning to use credit-sensitive rates to consider the risks carefully and to consult with the FCA before using them in UK-based business.[21]

11. **ARRC Recommends Acting Now to Slow USD LIBOR Use over the Next Six Weeks to be Well-Positioned to Meet Supervisory Guidance by Year-End** (14 October 2021). **12.** Randal Quarles, Vice Chair for Supervision, Federal Reserve, Speech at the Structured Finance Association Conference, **Goodbye to All That: The End of LIBOR** (5 October 2021). **13.** Gary Gensler, **Remarks Before the Alternative Reference Rates Committee’s SOFR Symposium** (20 September 2021). **14. Remarks by Secretary of the Treasury Janet L. Yellen to the Financial Stability Oversight Council on LIBOR Transition** (11 June 2021); see also **Minutes of June 11, 2021 FSOC Meeting**. **15.** IOSCO, **Statement on Credit Sensitive Rates** (8 September 2021). **16.** See Risk.net, **Regulatory attacks deal BSBY swaps a crippling blow** (12 October 2021). **17.** See **Interagency Statement on Reference Rates for Loans** (6 November 2020). **18.** See also **Statement of Michael J. Hsu, Acting Comptroller of the Currency before the Committee on Banking, Housing, and Urban Affairs, United States Senate** (3 August 2021) (“The OCC expects banks to demonstrate that their LIBOR replacement rates are robust and appropriate for their risk profile, nature of exposures, risk management capabilities, customer and funding needs, and operational capabilities. The agency supports the identification of the Secured Overnight Financing Rate (SOFR) as a sound replacement rate. OCC examiners will be closely evaluating the robustness of other rates that banks look to use.”) **19.** See, e.g., SOFR Academy, AXI Technical White Paper, available at **https://sofracademy.com/axi/**. **20.** The Working Group on Sterling Risk-Free Reference Rates, **Use Cases of Benchmark Rates: Compounded in Arrears, Term Rate and Further Alternatives** (January 2020). **21. Keynote speech by Edwin Schooling Latter, Director of Markets and Wholesale Policy at the FCA, delivered at UK Finance’s Commercial Finance Week** (5 July 2021).



The Financial Policy Committee of the Bank of England has stated that CSRs are not robust or suitable for widespread use as benchmarks, that they may not meet IOSCO standards, and that they have the potential to reintroduce many of the financial stability risks associated with LIBOR.[22]

Japan

Japan has taken a multiple rate approach to LIBOR transition. TIBOR will continue in effect after JPY LIBOR ceases. In addition to TIBOR, the Tokyo term risk-free rate (TORF), a forward term rate based on JPY overnight index swaps (OIS) referring to TONA, has been officially published by QUICK Corp. since 26 April 2021.[23] TORF is similar to LIBOR in that it is a forward term rate, but (as its name indicates) it is not a CSR. Where TIBOR, which historically has been higher than JPY LIBOR, is used as a fallback, the credit adjustment spread may be negative.

The Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks (the Committee) has stated that it expects TONA to be the main alternative benchmark for the JPY interest rate swaps market, but that market participants are not precluded from using other alternative benchmarks, including TORF and TIBOR.[24] TORF is the top priority in the JPY LIBOR fallbacks recommended by the Committee for loans and bonds.[25] Nonetheless, TORF has so far seen very limited use as a primary fallback or in new loan originations, in part due to the limited trading volume in JPY TONA swaps. However, in July 2021, the Committee began a "TONA First" initiative,[26] and JPY TONA swaps volume has recently seen a marked increase.[27] TIBOR swaps volumes have also increased recently.

Euro zone

In the euro zone, the EURIBOR and EONIA benchmarks are used far more frequently than EUR LIBOR, which only plays a minor role in interest rate benchmark transition in the EU.[28] EONIA will cease to be published on 3 January 2022. Following reforms to its calculation methodology to conform to the EU Benchmark Regulation (BMR), EURIBOR will continue in effect alongside €STR after EUR LIBOR ceases. The European Banking Authority (EBA) has stated that EU/EEA banks continue to have significant LIBOR and EONIA exposures.[29] The EBA estimated that EU/EEA banks hold loans referencing benchmark rates (other than RFRs) of EUR 5.2 trillion, of which approximately EUR 3.6 trillion are linked to EURIBOR, approximately EUR 1 trillion are linked to LIBOR (most of which are in USD LIBOR), and approximately EUR 0.2 trillion are linked to EONIA. The remainder of the loans constituting such EUR 5.2 trillion refers to other interest rates specific to particular currencies. The Working Group on Euro Risk-Free Rates has recommended an "€STR First" initiative to boost €STR swaps volumes.[30]

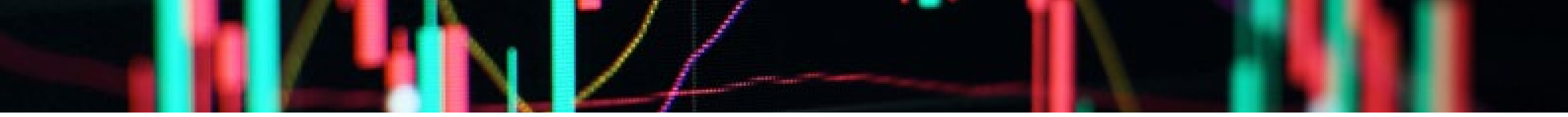
Switzerland

In July 2021, the FSB stated that cash market LIBOR transition in the Swiss market had advanced strongly, but progress in the Swiss derivatives market was less pronounced.[31] More recently, however, SARON derivatives volumes have been much higher.[32]

New originations in the Swiss loan market have generally switched to using compounded SARON as Swiss banks were urged to no longer use LIBOR in new contracts after 30 June 2021.[33] At the same time, legacy contracts have been amended over the last months, although FINMA has noted that the number of Swiss legacy syndicated loan contracts that do not contain robust fallback clauses has only been reduced by 28% since the beginning of 2021.[34] The National Working Group on Swiss Franc Reference Rates (NWG) and FINMA have urged market participants to address this.

Generally, two compounding methodologies are seen in the Swiss market: For syndicated CHF single currency credit facilities agreements in the English language governed by Swiss law, the NWG has published a form of Rate Switch Amendment Agreement, which was drafted by Baker McKenzie Zurich.[35] Although this form of Rate Switch Agreement is based on the recommended standard for the Swiss market (i.e., lookback with observation shift and lag as alternative, compounded SARON, and a floor for compounded SARON, if a floor is included), market participants often use the non-cumulative compounding LMA standard, particularly in loan transactions with an international syndicate or with multicurrency facilities.

22. Bank of England, **Financial Stability Report - July 2021**. **23.** See **Tokyo Term Risk Free Rate (TORF). 24. Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks Minutes for the March 26, 2021 Meeting (by written resolution). 25.** Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks, **Final Report on the Results of the Second Public Consultation on the Appropriate Choice and Usage of Japanese Yen Interest Rate Benchmarks** (November 2020). **26.** Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks, **Transition of Quoting Conventions in the JPY interest rate swaps market ("TONA First"). 27.** See Risk.net, **Japan dealers hail 'Tona First' success** (22 October 2021); and **RFR trading is now at 50% in CHF and JPY! | (clarusft.com)** (15 September 2021). **28**. FSB, **Progress Report to the G20 on LIBOR Transition Issues** (6 July 2021). **29.** European Banking Authority, **Benchmark Rate Transition Risks: Analysis of the EU/EEA Banking Sector's Exposures Linked to Benchmark Rates and Transition Risks Relating to Interbank Offered Rates** (14 October 2021). **30.** Working Group on Euro Risk-Free Rates, **Recommendations from the Working Group on Euro Risk-Free Rates on the switch to risk free rates in the interdealer market** (recommending that interdealer brokers change RFR swap trading conventions from EONIA to €STR from 18 October 2021). **31.** FSB, **Progress Report to the G20 on LIBOR Transition Issues** (6 July 2021). **32. RFR trading is now at 50% in CHF and JPY! | (clarusft.com)** (15 September 2021). **33**. **FINMA Guidance 10/2020, LIBOR transition roadmap** (4 December 2020). **34. FINMA Guidance 03/2021, LIBOR transition: progress and best practices** (16 September 2021). **35.** See **Executive summary of the 7 May 2020 meeting of the National Working Group on Swiss Franc Reference Rates;** see also the NWG's **Form of Rate Switch Amendment Agreement.**



Tough legacy

Lawmakers have been proposing, and in some cases enacting into law, legislation to address "tough legacy" debt contracts. These are debt contracts where achieving agreement for implementing a LIBOR alternative would be time-consuming, burdensome or otherwise difficult.

US

In the US, New York state (the law of which governs many debt contracts, if not the majority of them by dollar volume) passed a law[36] that had been recommended by the ARRC and that is intended to address tough legacy issues for debt contracts governed by New York law. This law applies where the parties do not include their own LIBOR fallback. The law: (i) substitutes SOFR for LIBOR upon LIBOR cessation in any contract that does not contain its own LIBOR fallback; (ii) prohibits any party from refusing performance of a contract or declaring a breach of contract as a result of LIBOR discontinuation or the use of the benchmark replacement recommended by the ARRC; (iii) establishes SOFR as a commercially reasonable substitute for LIBOR: and (iv) provides a safe harbor from litigation for the use of SOFR.

Federal legislation[37] that would effectively extend many of the protections of the New York law to all US-law-governed contracts has been introduced in the US. Additionally, the proposed federal legislation would amend Section 316(b) of the Trust Indenture Act to provide that any right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security shall not be deemed to be impaired or affected by any substitution of SOFR for LIBOR effected pursuant to the legislation. The legislation has only passed out of committee in the House of Representatives and would need to be considered by the Senate and by the full House before it could become law.

UK

In order to allow some tough legacy contracts to roll off in the UK, the FCA will compel ICE Benchmark Administration (IBA) to publish a synthetic GBP LIBOR during 2022 for one-month, three-month and six-month periods, for use in legacy contracts, not in new contracts.[38] The publication period can be extended on an annual basis up until the end of 2031 (although there is no guarantee that it will be). The methodology for this synthetic LIBOR adds the relevant fixed spread adjustment that applies as part of ISDA's LIBOR fallbacks to ICE Term SONIA Reference Rates provided by IBA. The FCA has also begun a consultation on whether to permit this synthetic GBP LIBOR to be used in all contracts other than cleared derivatives.[39]

The UK passed the Financial Services Act 2021, which gave the FCA additional powers to conduct an "orderly wind down" of LIBOR. Currently, Parliament has seen a new bill introduced in the House of Lords, The Critical Benchmarks (References and Administrators' Liability) Bill 2021,[40] which provides legal certainty that references in contracts to LIBOR would be read to mean synthetic LIBOR after the end of this year. As of this writing, the UK has no law or pending legislation that provides parties to contracts with a litigation safe harbor for the use of synthetic LIBOR.

The FCA has estimated that at the end of 2021, there will be in excess of GBP 472 billion worth of exposure to GBP LIBOR under around 235,900 contracts and that, while some may contain robust fallbacks and others may actively convert before GBP LIBOR ceases, a "material proportion" will remain outstanding.[41]

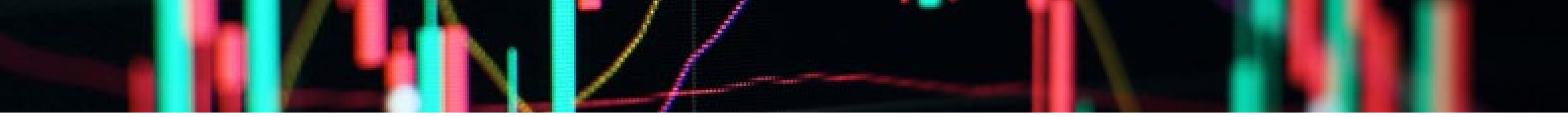
Japan

The FCA will also compel the IBA to publish a synthetic JPY LIBOR during 2022 for one-month, three-month and six-month periods, for use in legacy contracts, not in new contracts.[42] The methodology for this synthetic LIBOR adds the relevant fixed spread adjustment that applies as part of ISDA's LIBOR fallbacks to TORF. The FCA has also begun a consultation on whether to permit this synthetic JPY LIBOR to be used in all contracts other than cleared derivatives.[43]

Japan's Financial Services Agency and the Bank of Japan issued a joint statement in March 2021, stating that synthetic JPY LIBOR should only be a "safety net" and should only be used for legacy contracts that cannot feasibly be transitioned away from JPY LIBOR after "proceeding thoroughly" with active transition measures.[44]

The Committee recently commenced a consultation on the treatment of tough legacy contracts in Japan, which among other things asks questions about the contemplated use of synthetic JPY LIBOR.[45]

36. Available **here.** **37.** See **here.** **38. Further arrangements for the orderly wind-down of LIBOR at end-2021 | FCA.** **39. CP21/29: Proposed decisions on the use of LIBOR (Articles 23C and 21A BMR) | FCA.** The FCA notes that clearinghouses are expected to transition all cleared GBP, JPY, CHF and EUR LIBOR contracts to risk-free rates by the end of 2021. **40.** See **here.** **41. FCA's Article 21(3) Benchmarks Regulation - Notice of First Decision dated 10 September 2021** at para 2.2. **42. Further arrangements for the orderly wind-down of LIBOR at end-2021 | FCA.** **43. CP21/29: Proposed decisions on the use of LIBOR (Articles 23C and 21A BMR) | FCA.** The FCA notes that clearing houses are expected to transition all cleared GBP, JPY, CHF and EUR LIBOR contracts to risk-free rates by the end of 2021. **44.** Japan Financial Services Agency and the Bank of Japan, **Response to the announcement on the end date of LIBOR panel publication and the announcement on the intention to consult on the publication of synthetic yen LIBOR** (8 March 2021). **45.** The Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks, **Public Consultation on the Treatment of Tough Legacy Contracts in Japan** (September 2021).



The Committee indicated that the scope of use of synthetic JPY LIBOR was expected to be relatively limited in Japan due to progress made in LIBOR transition in the Japanese market. Further, the Committee encouraged the adoption of synthetic JPY LIBOR in legacy contracts by means of negotiation between the parties in accordance with the Committee's Roadmap to Prepare for the Discontinuation of Japanese Yen LIBOR,[46] rather than by governmental action. The Committee stated that it was unable to identify any specific contracts or instruments that could not "practicably be transitioned away from JPY LIBOR by actions or agreements between the contract counterparties themselves."

Euro zone

The European Commission (EC) has adopted amendments to the BMR[47] that allow the EC to designate statutory successors to affected benchmarks, including LIBOR.[48] These statutory successors would apply if an EU-law contract containing a benchmark lacks a fallback upon cessation.

The EC has adopted a resolution designating €STR as a replacement for EONIA,[49] but has not made a designation (or a draft resolution) of a replacement rate for EUR LIBOR. The EONIA resolution will go into effect on 3 January 2022.

Switzerland

FINMA has stated that approximately CHF 40 billion of contracts without robust fallback clauses remain in the Swiss market, with the majority denominated in CHF.[50] FINMA has also stated that it would continue to monitor the further winding down of the tough legacy volume and potential legal risks for the most affected banks and securities firms.

Although Swiss law does not provide for a statutory replacement of CHF LIBOR rates, the EC has adopted a resolution designating compounded SARON, with a credit spread adjustment, as the replacement for the CHF LIBOR in contracts and financial instruments as referred to in Article 23a of the BMR.[51] The resolution will go into effect on 1 January 2022. This resolution will not be binding under Swiss law.

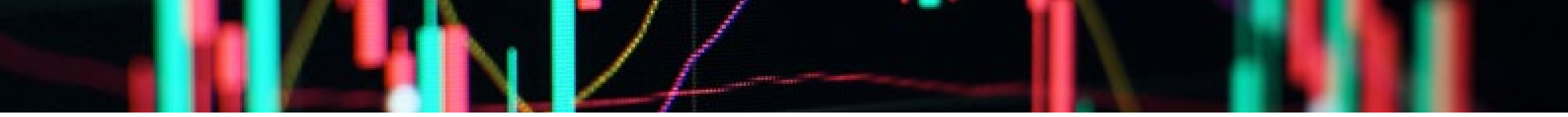
Multicurrency facilities

Multicurrency facility agreements have proved particularly difficult to shepherd through LIBOR transition, in part because market consensus for each currency has either been lacking or only recently been arrived at. The FSB has also stated that multicurrency facilities have been slower to adopt RFRs than single-currency facilities and, where multicurrency facilities are concerned, "there has at times been a tendency to move at the pace of the slowest member of the syndicate."[52]

Even now, when consensus on market conventions has become more settled, there are significant differences in rates between currencies and in conventions that markets in particular jurisdictions are using. The US loan market looks likely to go in the direction of Term SOFR, while the UK has gone in the direction of compounded SONIA in arrears. The Swiss market has gone with two methodologies of compounding SARON. The EUR and JPY markets have retained legacy non-LIBOR term rates to go along with their RFRs, with Japan also seeing a new risk-free term rate, TORF. In the US, there is some evidence that US banks may be using "daily simple" calculations (rather than compounding) in multicurrency facilities for currencies where there is no forward term rate.[53] All of these differences can of course be reflected in loan documentation, although such documentation will be a bit longer and more involved than old-style multicurrency LIBOR agreements.

Please visit Baker McKenzie's LIBOR Transition Hub for further information concerning the LIBOR transition.

46. A copy of the Roadmap, as of September 2021, is attached as Appendix 1 to the consultation. **47.** **Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016.** **48.** **Regulation (EU) 2021/168 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) 2016/1011.** **49.** EC, **Commission Implementing Regulation (EU) 2021/1848 of 21 October 2021 on the designation of a replacement for the benchmark Euro overnight index average.** **50**. **FINMA Guidance 03/2021, LIBOR transition: progress and best practices** (16 September 2021). **51.** EC, **Commission Implementing Regulation (EU) 2021/1847 of 14 October 2021 on the designation of a statutory replacement for certain settings of CHF LIBOR.** **52.** FSB, **Progress Report to the G20 on LIBOR Transition Issues** (6 July 2021). **53.** This is the approach suggested by the LSTA in their **Simple RFR Multicurrency Concept Document.**



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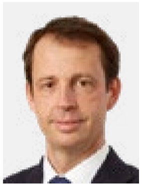

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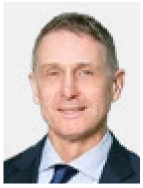

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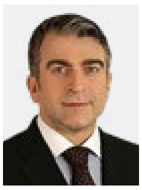

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