

Credit protection mechanisms and obtaining legal opinions

Questionnaire – task force

I. Reminder: The duty to provide a legal opinion for credit risk protections received

European Regulation n° 575/2013 « CRR » dated 26th June 2013, included in the « Capital Requirement Directive IV package », relating to prudential requirements, and which shall enter into force on 1st January 2014 requires credit institutions to be able to provide the supervisor with a legal opinion to support the use of a credit protection accepted to mitigate credit risk as part of capital requirement calculation.

It should be noted that under the previous regime (CRD) when the CRR regulation came into force, the credit protection received were required to be subject to a legal check of their effectiveness and their enforceability, but provision of a formal legal opinion was not a requirement.

Thus, article 194 of the Regulation provides in particular:

“1. The technique used to provide the credit protection together with the actions and steps taken and procedures and policies implemented by the lending institution shall be such as to result in credit protection arrangements which are legally effective and enforceable in all relevant jurisdictions.

The lending institution shall provide, upon request of the competent authority, the most recent version of the independent, written and reasoned legal opinion or opinions that it used to establish whether its credit protection arrangement or arrangements meet the condition laid down in the first subparagraph.

2. The lending institution shall take all appropriate steps to ensure the effectiveness of the credit protection arrangement and to address the risks related to that arrangement.”

II. QUESTIONNAIRE

- **Does your credit institution distinguish, for the purpose of article 194 CRR between Credit Protection Arrangements received from 1st January 2014 (date on which this provision comes into force) from those received prior to that date ?**

- **For CPAs obtained before the entry into force of the CRR Regulation, are they subject to a formal legal opinion only at the request of the prudential supervisor or according to specific thresholds ?**

- **When your credit institution enters into plain vanilla and purely domestic transactions (for which the bank uses internal templates), does it require a legal opinion for each transaction ?**

- **When your credit institution enters into transactions of a similar nature, subject to the law of a single country and using identical CPA techniques, does it rely upon generic legal opinions ?**

- **If your credit institution rely on the comfort brought by a generic legal opinion:**
 - o When the standard guarantee deed is altered or modified significantly, do these modifications assessed by a lawyer, either in-house or external.
 - o Do you consider that such a review, formalised and archived, is satisfactory for the purpose of article 194 CRR ?

- **Which type of Non-standard CPAs require *ad hoc* legal opinions ?**
 - o CPA deed which is non-standard or includes features which are different from those for which the entity holds a generic legal opinion ?
 - o CPA deed not provided by your entity, i.e. by the client, its counsel, by an entity taking part in the transaction or by a legal advisor involved in the transaction ?
 - o CPA originating from a country which is not covered by a legal opinions previously obtained (e.g. mortgage on a property located in a country for which the subject entity does not hold a legal opinion, etc.) ?
 - o Others ?

- **May legal opinion also be provided by an internal source ?**
 - o If so, under which conditions (seniority, independence from the business line...)?

- **Have you already put in place formal instructions (at Group level) to meet this requirement ?**