

INTERNATIONAL REGULATORY UPDATE 16 – 20 MARCH 2020

- **EU Commission publishes roadmap for Benchmarks Regulation review**
- **CSMAD: EU Commission publishes report on implementation**
- **Brexit: EU Commission publishes draft agreement on new partnership**
- **Brexit: Trade Bill published**
- **BaFin consults on revised circular on duties and obligations of depositaries under section 1 chapter 3 of Investment Code**
- **CSSF issues circular letter extending deadline for online AML/CFT cross-sector survey for 2019**
- **MOF publishes draft rules and regulations under Foreign Exchange and Foreign Trade Act for public comments**
- **FSC announces 2020 policy plans to improve competitiveness and soundness of financial industry**
- **FSC unveils 2020 policy roadmap for capital markets**
- **Korean Government approves revision to Act on reporting and using specified financial transaction information on cryptoassets**
- **MAS responds to feedback received on second and third consultations on proposed framework for variable capital companies**
- **CFTC extends relief for initial margin requirements for uncleared swaps**
- **Recent Clifford Chance briefings: EU crypto framework, IBORs, and more. Follow this link to the briefings section.**

EU Commission publishes roadmap for Benchmarks Regulation review

The EU Commission has published a [roadmap](#) for its review of the EU Benchmarks Regulation ((EU) 2016/1011).

The EU Commission intends to amend the EU Benchmarks Regulation, largely due to the transition from IBOR rates to risk-free rates happening more quickly and on a more fundamental level than the EU Commission had anticipated.

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The roadmap identifies the main issues to be addresses as:

- equipping regulators to guide and accommodate the transition, avoiding contract frustration and financial instability;
- ensuring a level playing field, as the equivalence regime as drafted assumes that other jurisdictions would establish broad regulation for the provision and use of benchmarks, when a majority of third countries have opted for a designation approach, regulating only the most systemically relevant benchmarks; and
- making improvements to the efficiency and proportionality of the regime.

Comments are due by 15 April 2020. The EU Commission intends to publish a synopsis report explaining how the input will be taken on board and, if applicable, why certain suggestions cannot be taken up.

CSMAD: EU Commission publishes report on implementation

The EU Commission has published a [report](#) assessing the implementation of the Directive 2014/57/EU on criminal sanctions for insider dealing and market manipulation (CSMAD).

The Commission broadly finds that a majority of Member States have transposed the CSMAD completely and correctly, and that findings of non-conformity often concerned relatively minor issues. The Commission notes that it has taken all appropriate measures in relation to transposition issues in certain Member States, including infringement proceedings.

The Commission does not propose specific amendments but notes that application of the MAD could be improved, such as in the interpretation of ‘serious’ cases. The Commission intends to continue to assess Member States’ compliance.

Brexit: EU Commission publishes draft agreement on new partnership

The EU Commission has published a [draft text](#) of the agreement on the new partnership with the UK.

The draft text of the agreement translates the negotiating directives of 25 February 2020 into a legal text, covering all areas of the negotiations, including the regulatory framework and the supply of financial services.

In a [press release](#) dated 17 March on the suspension of negotiations in response to the coronavirus pandemic, the UK Government stated an intention to share UK draft texts of a free trade and other agreements.

The EU Parliament has published a [statement](#) by David McAllister, Chair of the Parliament’s UK Coordination Group, welcoming the EU Commission’s draft text.

Brexit: Trade Bill published

The UK Government has introduced the [Trade Bill](#) to Parliament.

The Bill sets out measures that are required for the continuation and development of the UK's trade policy at the end of the transition period, including:

- implementation powers for the UK Government and devolved authorities in relation to existing international trade agreements the UK is a party to by virtue of its status as an EU Member State and to the WTO's plurilateral Agreement on Government Procurement (GPA);
- provisions establishing a Trade Remedies Authority (TRA) to resolve international trade disputes, such as those relating to unfair trading practices and unforeseen surges in imports; and
- provisions relating to the collection and sharing of information relating to trade.

BaFin consults on revised circular on duties and obligations of depositaries under section 1 chapter 3 of Investment Code

The German Federal Financial Supervisory Authority (BaFin) has published a [draft](#) of its revised circular on the duties and obligations of depositaries under section 1 chapter 3 of the German Capital Investment Code (Kapitalanlagegesetzbuch) for consultation.

The revision has been prompted by the entry into force of Delegated Regulation (EU) 2016/438 (UCITS V Level-2 Regulation). Apart from editorial changes, amendments were made regarding the following topics:

- requirements for the separate safekeeping of investment fund assets and those of the depositary at the level of the first sub-depositary;
- inclusion of the features of a three-point declaration that is expressly retained with respect to foreign sub-depositaries;
- extension of the legal obligations to be taken into account in the (sub-)depositary contracts;
- clarification that the depositary must also in the case of performance-based fees review their calculation in each individual case; and
- inclusion of a provision requiring that the depositary contract must specify in advance when the capital management company may request to be compensated for expenses by the depositary for providing information.

BaFin will accept comments until 15 April 2020.

CSSF issues circular letter extending deadline for online AML/CFT cross-sector survey for 2019

The Luxembourg supervisory authority of the financial sector (CSSF) has issued a [circular letter](#) noting that, as announced in its previous circular letter of [31 January 2020](#), the annual AML/CFT online survey for the year 2019, which collects standardised key information concerning money laundering and terrorist financing risks to which professionals subject to CSSF supervision are exposed and the implementation of related risk mitigation and targeted financial sanctions measures, was launched on 3 February 2020 and that answers had to be submitted by 15 March 2020 at the latest through the CSSF eDesk portal.

As for the circular letter issued in January, the new circular letter is addressed to the board of directors and management board of the following Luxembourg-based professionals: credit institutions, investment firms, payment institutions and electronic money institutions, specialised professionals of the financial sector, investment fund managers (including also registered AIFMs and self-managed UCITS/internally managed AIFs and investment funds which have not designated an investment fund manager). It is also addressed to Luxembourg branches of the above professionals with their registered office in the EU or in a third country.

In its circular letter, the CSSF extends the deadline for the submission of the 2019 survey through the CSSF eDesk portal until close of business on 10 April 2020 so as to take into account potential delays that may have occurred regarding the timely submission by the concerned professionals of the 2019 survey due to the implementation of the relevant online registration and submission processes with the CSSF eDesk portal and, on an exceptional basis, due to the COVID-19 pandemic.

However, the CSSF also draws the attention of the professionals concerned, and of their directors and employees, to their legal obligation under the Luxembourg law of 12 November 2004 on the fight against money laundering and terrorist financing (AML/CFT Law) to cooperate fully with the Luxembourg authorities responsible for combating money laundering and terrorist financing. In this context, the CSSF reminds them that administrative sanctions and other administrative measures may be imposed by the CSSF with respect to these professionals subject to its supervision if they do not comply with their professional obligations under the AML/CFT Law, including the above legal cooperation obligation.

MOF publishes draft rules and regulations under Foreign Exchange and Foreign Trade Act for public comments

The Ministry of Finance (MOF) has [published](#) draft subordinate legislation to the Foreign Exchange and Foreign Trade Act of Japan and is seeking public [comments](#). The amended FEFTA was enacted in November 2019 to strengthen foreign direct investment control from the perspective of national security and interests, and the draft FEFTA subordinate legislation fills in the details of the amended FEFTA to achieve its proper implementation.

The MOF has also prepared an English translation of the overview and the ‘how to submit your comments’ guide for foreign investors, to reduce the language barrier to submitting comments, although the draft FEFTA subordinate legislation itself has not been translated into English. The comments submission period will end on 12 April 2020.

FSC announces 2020 policy plans to improve competitiveness and soundness of financial industry

The Financial Services Commission (FSC) has [announced](#) its policy plans to improve the competitiveness and soundness of the financial industry. The key initiatives under the plans are intended to focus on:

- boosting the competitiveness of the financial industry – the FSC will lower entry barriers to encourage innovative firms to enter the markets and work to modify regulations in business operation to create a more dynamic business environment;

- facilitating corporate financing – the FSC will work to channel more financing opportunities for corporates by providing incentives for corporate loans, introducing the sectoral countercyclical capital buffer, implementing the Basel III capital requirements early to ease the compliance burdens of banks for corporate lending, and encouraging banks and insurance companies to invest in fintechs and innovative start-ups;
- promoting corporate responsibility to ensure consumer trust in the financial industry – the FSC will work on measures to enhance corporate responsibility for financial companies and ensure that the financial industry can further advance with trust from consumers; and
- strengthening the management of financial soundness – the FSC will consider both global standards as well as domestic industry characteristics while working to improve the financial soundness of banks.

FSC unveils 2020 policy roadmap for capital markets

The FSC has unveiled its 2020 [policy roadmap](#) for capital markets. The policy roadmap is intended to make capital markets play a more active role in financing innovative companies.

The FSC's policy plans are mainly focused on:

- providing funds tailored to the growth cycle of start-ups and scale-ups;
- stimulating the initial public offering markets; and
- securing a transparent and advanced infrastructure for capital markets.

The FSC has indicated that the Korean Government will take steps to improve the capital markets infrastructure in order to help support businesses throughout their growth cycle.

The implementation schedules to the policy plans have been set out in the announcement.

Korean Government approves revision to Act on reporting and using specified financial transaction information on cryptoassets

The FSC has announced that the [revision](#) to the Act on reporting and using specified financial transaction information on cryptoassets, which was introduced in November 2019, has been approved by the Korean Government.

The revision Act is intended to place Korea's legal framework on cryptoassets more in line with international standards issued by the Financial Action Task Force (FATF) and strengthen its anti-money laundering and countering the financing of terrorism regime.

The revision Act imposes anti-money laundering requirements on cryptoasset business operators and stipulates requirements with which financial institutions must comply in transactions with cryptoasset business operators. Under the revision, the Korea Financial Intelligence Unit (KoFIU) will oversee the supervision and may delegate the authority of inspection to the Financial Supervisory Service (FSS).

The FSC has indicated that the revision Act will take effect one year after its promulgation to give cryptoasset business operators and financial institutions

time to adapt and prepare for the new regulatory regime. The revision Act will also give existing cryptoasset business operators a six-month transition period to report to KoFIU after it takes effect.

MAS responds to feedback received on second and third consultations on proposed framework for variable capital companies

The Monetary Authority of Singapore (MAS) has published its [responses](#) to the feedback it received on its second and third consultations on the proposed framework for variable capital companies (VCCs), held in April 2019 and July 2019 respectively.

The response paper sets out the MAS' responses to the feedback received for the VCCs (Revision of Defective Financial Statements, or Consolidated Financial Statements or Balance Sheet Regulations) 2020, the VCCs (Prescribed Accounting Standards) Regulations 2020, amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (SFR (CIS)) and the Code on Collective Investment Schemes (CIS Code), and the VCCs (Winding Up) Rules.

Amongst other things the MAS has clarified its proposals as follow:

- regarding the application of sections 100 and 104 of the VCC Act to revised financial statements, a written notification of the intention to revise a previously issued audited financial statement will not be prescribed, in order to maintain parity with the existing regulations for companies incorporated under the Companies Act;
- a custodian who is already an approved trustee will not be required to hold a capital markets services licence for providing custodial services. The operational requirements for VCC custodians under the new Division 2A of the SFR(CIS) will be applicable only in respect of VCCs or sub-funds of VCCs that are 'Authorised Schemes';
- a VCC custodian will be allowed to delegate its custody function to a third party subject to requirements set out in the CIS Code;
- a VCC custodian will be required to report breaches of any legal or regulatory requirements by the VCC or its manager within three business days from the time when the VCC custodian becomes aware of the breach, in the course of undertaking its duties or obligations. Moreover, the MAS expects a VCC custodian to monitor a VCC's compliance with the investment guidelines and borrowing limits in the CIS Code;
- a VCC custodian can only take into custody property that has been deposited with it by the VCC, and not all assets can be held in custody by the VCC custodian. The VCC custodian may also not reuse scheme property without the VCC's prior consent. Further, VCC custodians will be allowed to hold the scheme's property together with the property of their other clients in an omnibus account, if the VCC custodian has effective safeguards to ensure that the scheme's property is properly recorded and accounted for, and regular reconciliations are performed;
- the general duties of VCC directors will be the same for all directors, regardless of whether the director is independent. However, an independent director of a VCC will additionally be expected to provide

objective oversight and judgment, and check-and-balance to non-independent directors in the best interests of participants;

- to provide greater clarity on what constitutes 'business relationships involving the VCC', the MAS will amend 'Chapter 2A' of the CIS Code to align with the definition of 'business relationship' in the existing MAS-administered legislation relating to independent directors;
- the disclosure requirements on cross sub-fund investments under the CIS Code will not be extended to unit trusts; and
- the MAS will proceed with the VCCs (Winding Up) Rules as originally proposed, but will only publish them at a later date (targeted second quarter of 2020). The MAS also notes that the insolvency and winding up regime for VCCs will be aligned with the applicable regime for other corporate structures under the Insolvency, Restructuring and Dissolution Act.

Consequential amendments were also made to the Notice on Cancellation Period for Units in Authorised Collective Investment Schemes (SFA 04/13-N01) on 16 March 2020.

CFTC extends relief for initial margin requirements for uncleared swaps

The Commodity Futures Trading Commission (CFTC) has voted unanimously to finalize a one-year extension of the initial margin compliance deadline for market participants with the smallest uncleared swaps portfolios. In a related [statement](#), Chairman Heath P. Tarbert commented that at present the CFTC's initial margin requirements apply to the biggest 40 swap dealers, which comprise approximately 97% of the US portion of the global market. Plans for dealing with the remaining 3% of the US market would have expanded the number of in-scope entities from 40 to over 700 and required documenting and operationalizing nearly 7,000 initial margin relationships. In recognition of the operational complexity of this undertaking, the CFTC has decided to extend the compliance deadline by one year for entities with the smallest uncleared swaps portfolios.

RECENT CLIFFORD CHANCE BRIEFINGS

Crypto consultation – the European Commission's proposal for an EU crypto framework

The European Commission launched a public consultation aiming to establish a European framework for regulating cryptoassets in December 2019. The consultation is the first step towards establishing a regulatory framework designed to facilitate the deployment of the new technologies 'within safe and ethical boundaries', i.e. ensuring that potential risks are adequately monitored and mitigated. The cryptoasset consultation is running in parallel with a consultation on digital operational resilience, which together mark the first steps towards a new Digital Finance Strategy for the EU.

This briefing discusses the cryptoasset consultation.

<https://www.cliffordchance.com/briefings/2020/03/crypto-consultation---the-european-commission-s-proposal-for-an-.html>

UK Pension Schemes Bill – potential consequences for lending transactions

The Pension Schemes Bill is currently making its way through Parliament. The bill introduces significant changes to the UK's existing legislative framework in respect of defined benefit pension schemes. One of the key changes is the introduction of a new criminal offence for anyone engaging in conduct that detrimentally affects in a material way the likelihood of accrued scheme benefits being received. While new defined benefit pension schemes are increasingly rare in the UK, the potential consequences are severe in relation to legacy schemes. The threshold for detrimental conduct is low and the net is cast widely to any person who engages in such conduct.

This briefing considers how the proposed changes may impact lending transactions.

<https://www.cliffordchance.com/briefings/2020/03/uk-pensions-schemes-bill--potential-consequences-for-lending-tra.html>

IBORs and the transition to risk free rates in the Singapore Debt Capital Markets

The impending end of the London Interbank Offered Rate, 'LIBOR', has been a discussion point for financial markets participants ever since the Wheatley Review, and thereafter, a speech by Andrew Bailey, Chief Executive of the UK's Financial Conduct Authority (FCA) on 27 July 2017 which famously heralded its demise. Market participants need to prepare for the likelihood that LIBOR will cease to exist by the end of 2021. Even if LIBOR continues to be available into 2022, the FCA may determine that it is no longer representative of its underlying market. Since 2014, the message from international regulators has been clear: with respect to the risks presented by the end of LIBOR, there needs to be a move from LIBOR to near 'risk-free rates' (RFRs) which are anchored in active and liquid underlying markets.

This briefing examines the impact of the transition from LIBOR to RFRs with a specific focus on the Singapore and Singapore dollar debt capital markets, and outlining what issuers and their advisers will need to consider as we approach the deadline for the end of LIBOR.

<https://www.cliffordchance.com/briefings/2020/03/ibors-and-the-transition-to-risk-free-rates-in-the-singapore-deb.html>

C L I F F O R D C H A N C E

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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