

CLIFFORD CHANCE

INTERNATIONAL REGULATORY UPDATE 6 – 10 APRIL 2020

- EU Commission consults on its renewed sustainable finance strategy
- EU Commission consults on new digital finance strategy and fintech action plan
- EU Commission consults on retail payments strategy
- Benchmarks: EU Commission consults on equivalence decision for Japan
- EBA publishes reports on Basel III monitoring and liquidity measures
- ESMA publishes final guidance on performance fees in UCITS and certain AIFs
- Basel Committee reports on Basel III monitoring exercise
- FSB publishes first assessment on roadmap to enhance global cross-border payments
- FCA sets out priorities for 2020/21
- PRA publishes business plan and proposed fees for 2020/21
- BaFin to apply ESMA guidelines for stress test scenarios under Money Market Funds Regulation
- BaFin updates guidance note on guarantee business
- German Federal Government decides on amendment to Foreign Trade and Payments Act
- Polish Financial Supervision Authority sets out position on terms of operation of investment crowdfunding platforms
- FINMA publishes annual report
- JPX and TSE publish handbook for ESG disclosure
- ACRA issues advance notification on new requirements for Registers of Registrable Controllers

Clifford Chance's International Regulatory Update is a weekly digest of significant (non-Coronavirus-related) regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

To request a subscription to our Alerter: Finance Industry service, please email [Online Services](mailto:Online.Services@cliffordchance.com).

If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

[Caroline Dawson](mailto:Caroline.Dawson@cliffordchance.com) +44 207006 4355

[Owen Lysak](mailto:Owen.Lysak@cliffordchance.com) +44 207006 2904

[Gareth Old](mailto:Gareth.Old@cliffordchance.com) +1 212 878 8539

[Marc Benzler](mailto:Marc.Benzler@cliffordchance.com) +49 69 7199 3304

[Steven Gatti](mailto:Steven.Gatti@cliffordchance.com) +1 202 912 5095

[Lena Ng](mailto:Lena.Ng@cliffordchance.com) +65 6410 2215

[Mark Shipman](mailto:Mark.Shipman@cliffordchance.com) + 852 2826 8992

[Donna Wacker](mailto:Donna.Wacker@cliffordchance.com) +852 2826 3478

International Regulatory Update Editor

[Joachim Richter](mailto:Joachim.Richter@cliffordchance.com) +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

EU Commission consults on its renewed sustainable finance strategy

The EU Commission has published a [consultation paper](#) on its renewed sustainable finance strategy. The strategy is a key part of the European Green Deal and the EU Commission's efforts to ensure a sustainable and resilient economic recovery following the coronavirus outbreak.

The consultation, which builds on previous initiatives and reports in relation to sustainable finance, aims to collect views and opinions to feed into the EU Commission's work to help mobilise private investment in sustainable projects.

In particular, it requests feedback on how to:

- strengthen the foundations for sustainable finance;
- increase opportunities for citizens, financial institutions and corporates to enhance sustainability; and
- reduce and manage climate and environmental risks.

The Commission intends to adopt its renewed sustainable finance strategy in the second half of 2020.

The consultation closes on 15 July 2020.

EU Commission consults on new digital finance strategy and fintech action plan

The EU Commission has launched a [consultation](#) on its new digital finance strategy/fintech action plan, which it intends to publish in the third quarter of 2020. The consultation, which builds on earlier consultations on cryptoassets and digital operational resilience, seeks views on how the Commission can ensure that European consumers and the financial industry can benefit from digital transformation while still mitigating its potential risks. In particular, it requests feedback on how to:

- ensure that the financial services regulatory framework is technology neutral and innovation-friendly;
- remove the obstacles to the Single Market for digital financial services; and
- promote a well-regulated data-driven financial sector.

The feedback received will be used to develop the EU Commission's new digital finance strategy/fintech action plan, which will set out key areas of focus for public policy, as well as specific measures to be taken.

Comments are due by 26 June 2020.

EU Commission consults on retail payments strategy

The EU Commission has published a [consultation paper](#) on its retail payments strategy, which seeks views on questions relating to the following key objectives:

- fast, convenient, safe, affordable and transparent pan-European payment instruments;
- an innovative, competitive and contestable European retail payments market;

- access to safe, efficient and interoperable retail payments systems and other support infrastructures; and
- improved cross-border payments, including remittances, facilitating the international role of the euro.

The Commission intends to publish its retail payments strategy in Q3 of 2020.

Comments are due by 26 June 2020.

Benchmarks: EU Commission consults on equivalence decision for Japan

The EU Commission has launched a [consultation](#) on a draft implementing decision recognising the equivalence of the legal and supervisory framework applicable to benchmarks in Japan under the Benchmarks Regulation (BMR).

Comments on the draft decision are due by 4 May 2020.

EBA publishes reports on Basel III monitoring and liquidity measures

The European Banking Authority (EBA) has published its 2020 [Basel III monitoring report](#) and 2020 [update](#) of the EBA Report on liquidity measures.

The Basel III monitoring report, based on data as of 30 June 2019, assesses the impact of the Basel III reforms, including the revisions of credit risk, operational risk and leverage ratio frameworks and the introduction of the aggregate output floor, new standards for market risk and credit valuation adjustments. The report shows that:

- European banks' minimum Tier 1 capital requirement would increase by 16.1% at the full implementation date (now 2028 due to the agreed one-year delay by the Basel Committee);
- the impact of risk-based reforms is 20.2%, of which the leading factors are the output floor (6.5%) and operational risk (5%); and
- the leverage ratio is the constraining (i.e. the highest) Tier 1 requirement for some banks, explaining why part of the increase in the risk-based metric (-4.1%) is not to be accounted for as an actual increase in the overall Tier 1 requirement.

To comply with the new framework under the more realistic scenario, EU banks would need EUR 21.1 billion of additional Tier 1 capital. The estimates are based on the assumption that Basel III requirements are implemented in full, relying on data prior to the COVID-19 pandemic.

The report on liquidity measures shows that the liquidity coverage ratio of EU banks stood at 147% on average in June 2019. Three banks monetised their liquidity buffers during the financial crisis which contributed to an aggregate gross shortfall of EUR 4.7 billion.

ESMA publishes final guidance on performance fees in UCITS and certain AIFs

The European Securities and Markets Authority (ESMA) has published its [final guidance](#) on performance fees in undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs).

ESMA's guidelines aim to harmonise the way fund managers charge performance fees to retail investors, as well as the circumstances in which performance fees can be paid. The common requirements will allow convergence in how national competent authorities (NCAs) supervise performance fees models and disclosure across the EU. The guidelines are applicable to both UCITS and certain types of AIFs and aim to promote a level playing field and a consistent level of protection for retail investors.

The guidelines will be translated into the official EU languages and published on the ESMA website, which will trigger a two-month period during which NCAs must notify ESMA whether they comply or intend to comply with the guidelines. The guidelines will apply from the end of this two-month period.

Basel Committee reports on Basel III monitoring exercise

The Basel Committee on Banking Supervision (BCBS) has published the [results](#) of its latest review of the implications of the Basel III standards for banks. The report is based on data as at 30 June 2019 for 174 banks, of which 105 were Group 1 banks, defined as internationally active banks with Tier 1 capital of more than EUR 3 billion and 69 were Group 2 banks, defined as those with Tier 1 capital of less than EUR 3 billion or which are not internationally active.

As agreed by the Group of Governors and Heads of Supervision, the implementation and phasing in of the final Basel III minimum capital requirements have been deferred to 1 January 2023 for implementation and 1 January 2028 for full phasing-in. The report finds that:

- the capital shortfalls at the end-June 2019 reporting date are EUR 16.6 billion for Group 1 banks at the target level with reduced estimation bias and EUR 20.3 billion with conservative estimation (in comparison with EUR 24.7 billion at end-December 2018); and
- the Tier 1 minimum required capital (MRC) would increase 2.5% for Group 1 banks following full phasing-in (as compared to 3.0% increase at end-December 2018).

The monitoring exercises also collect data on Basel III's liquidity requirements. The average liquidity coverage ratio (LCR) was stable at 136% for Group 1 banks and 177% for Group 2 banks, while the average net stable funding ratio (NSFR) remained stable at 116 for Group 1 banks and 120 for Group 2 banks.

In order to increase operational capacity for banks and supervisors to respond to the immediate financial stability priorities following the COVID-19 pandemic, the Committee has decided not to collect Basel III monitoring data for the end-June 2020 and will not publish a report in spring 2021. The next Basel III monitoring exercise aims to report on end-December 2019 and be published in autumn 2020.

FSB publishes first assessment on roadmap to enhance global cross-border payments

The Financial Stability Board (FSB) has published the [Stage 1 report](#) of its project to develop a roadmap to enhance cross-border payments, which is a G20 priority during the Saudi Arabian Presidency. The report provides an assessment of existing arrangements and challenges for global-cross border payments.

According to the report, faster, cheaper, more transparent and more inclusive cross-border payment services, including remittances, would have widespread benefits for citizens and economies worldwide, supporting economic growth, international trade, global development and financial inclusion. In order to enhance cross-border payments, frictions in the existing processes need to be addressed, including:

- fragmented data standards or lack of interoperability;
- complexities in meeting compliance requirements, including for anti-money laundering and countering the financing of terrorism (AML/CFT), and data protection purposes;
- different operating hours across different time zones; and
- outdated legacy technology platforms.

Although financial and technical innovations are creating opportunities to make payments more efficient, the FSB notes that the use of new technologies and business models in cross-border payments also involves challenges and risks. The roadmap will therefore need to encompass a variety of approaches and time horizons. Building blocks which are shorter-term actions should benefit several different types of existing arrangements, while more medium-term actions may propose actions that should eventually improve the structure of the system.

The report concludes with preliminary thoughts on areas for consideration, such as practical steps and indicative timeframes and includes questions on a range of topics, falling into the following four broad categories:

- operational improvement of payment infrastructures;
- standardisation of data and market practice;
- legal, regulatory and oversight framework; and
- progress monitoring and information sharing.

The FSB is due to deliver Stage 2 of the project (Building Blocks) in an update to the G20 in July 2020, and Stage 3 (Roadmap) will be combined with Stages 1 and 2 in a final report to be submitted in October 2020.

FCA sets out priorities for 2020/21

The Financial Conduct Authority (FCA) has published its 2020/21 [Business Plan](#). In response to the coronavirus, the FCA aims to ensure that financial services businesses give people the support they need, that people avoid scams, and that financial services businesses and markets know what is expected of them.

Throughout the pandemic, the FCA aims to:

- protect the most vulnerable, through the provision of financial services and help;
- tackle scams;
- ensure fair treatment for consumers and small firms;
- keep markets working well and remain orderly; and
- mitigate firm failures and the impact on consumers.

Its medium-term plans aim to ensure that consumers can rely on safe and accessible payments, and that they avoid unaffordable debt, make effective investment decisions and are offered fair value products in a digital age.

According to the Business Plan, the FCA is focusing on transforming its operations, including looking at data and intelligence collection, analysis and management, firm supervision, and removal of unacceptable firms from the regulated sector. To do this, the FCA intends to build its capacity by investing in skills, systems, people and technology.

In conjunction with the Business Plan, the FCA has published a [consultation paper](#) on the 2020/21 rates proposals for FCA regulated fees and levies, as part of its annual fees consultation.

Comments on the consultation paper are due by 19 May 2020.

PRA publishes business plan and proposed fees for 2020/21

The Prudential Regulation Authority (PRA) has published its [business plan](#) for 2020/21, which sets out the PRA's workplan for each of its strategic goals for 2020/21 and provides an overview of the PRA's budget for the period 1 March 2020 – 28 February 2021. The PRA's strategic goals include:

- robust prudential standards and supervision;
- adapting to market changes and horizon scanning;
- ensuring firms are financially resilient;
- developing its supervision of operational resilience;
- recovery and resolution;
- facilitating effective competition;
- delivering a smooth transition following the UK's withdrawal from the EU; and
- operating effectively and efficiently.

The PRA has also launched a [consultation](#) (CP4/20) setting out proposals for the PRA's fees for 2020/21. The proposals would make amendments to the Fees Part of the PRA Rulebook (Appendix 1 and 2), and supervisory statement (SS3/16) 'Fees: PRA approach and application' (Appendix 3). The proposals include:

- the fee rates to meet the PRA's 2020/21 Annual Funding Requirement (AFR);
- updating the hourly rates for special project fees for restructuring to reflect current PRA costs;
- simplifying the variation of permission regulatory transaction fees;
- setting out how the PRA intends to distribute a surplus from the 2019/20 AFR; and
- how the PRA intends to distribute the retained penalties for 2019/20.

The proposed implementation date for the proposals in CP4/20 is 7 July 2020. Comments are due by 15 May 2020.

BaFin to apply ESMA guidelines for stress test scenarios under Money Market Funds Regulation

The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) has announced that it will apply the German translation of the [guidelines](#) for stress test scenarios for money market funds, which were published by ESMA in early March.

The purpose of these guidelines is to ensure the common, uniform and consistent application of the provisions of Article 28 of the Money Market Funds (MMF) Regulation. In particular, these guidelines establish common reference parameters for the scenarios on which the stress tests are based, as set out in Article 28 (7) of the MMF Regulation.

BaFin updates guidance note on guarantee business

BaFin has published an updated [guidance note](#) on guarantee business.

The updated version defines the features of licensable guarantee business pursuant to section 1(1) sentence 2 no. 8 of the German Banking Act (Kreditwesengesetz, KWG) in more detail than the previous version dated 8 January 2008.

Among other things, the note provides guidance on whether undertakings supporting their suppliers in possible liquidity bottlenecks by providing guarantees and sureties to their creditors require a licence pursuant to section 32(1) sentence 1 KWG.

This issue is becoming increasingly important in the context of the coronavirus pandemic, where undertakings are seeking to protect themselves from the consequences of the interruption of vertical value chains, and any resulting production stops and loan defaults.

German Federal Government decides on amendment to Foreign Trade and Payments Act

The German Federal Government (Bundesregierung) has published a [draft law](#) to amend the German Foreign Trade Act (Außenwirtschaftsgesetz, AWG), thereby initiating the parliamentary procedure.

The Federal Minister for Economic Affairs and Energy, Peter Altmaier, stated that reforming the rules on investment screening would enable foreign investments to be examined even more comprehensively and proactively, especially in sectors relevant to German and European security interests. In particular, the amendment aligns the provisions of the AWG with the EU Screening Regulation which took effect in April 2019 to create a framework for the review of foreign direct investment in the EU. The required determination as to whether a foreign direct investment is 'likely to affect' (rather than pose an actual threat to) security or public order will allow the Federal Government to screen foreign investments more proactively.

A stronger focus of the screening will be on the impact investments have in other EU Member States and on EU programmes and projects. In addition, each investment requiring notification will be provisionally suspended for the duration of the screening in order to prevent creating a *fait accompli* and thus undermining the objectives of the review.

A 'National Contact Point' is also being set up at the Federal Ministry for Economic Affairs and Energy (Bundesministerium für Wirtschaft und Energie,

BMW) for the cooperation mechanism created by the EU Screening Regulation. The EU-wide exchange of information and coordinated cooperation between the Member States and the EU Commission are intended to increase transparency and ensure better protection against critical corporate takeovers.

The amendment of the AWG is the first step in revising the German investment screening rules. The BMWi will submit additional proposals to amend the German Foreign Trade Regulation (Außenwirtschaftsverordnung) in due course.

Polish Financial Supervision Authority sets out position on terms of operation of investment crowdfunding platforms

The Polish Financial Supervision Authority (KNF) has [published](#) its standpoint on investment crowdfunding. The standpoint is intended to set out and explain the content of provisions of law applicable to the activities of crowdfunding platforms and issuers using their services, and also to indicate the standards that, in the KNF's opinion, entities running crowdfunding platforms and issuers using them should apply in their activities.

FINMA publishes annual report

The Swiss Financial Market Supervisory Authority (FINMA) has published its [annual report](#). Key activities conducted during 2019 include:

- a focus on risk-oriented supervision, particularly on how firms are coping with the risks arising from low or negative interest, specifically in the real estate market, cyber attacks, Brexit and the transition from LIBOR. In addition, ten years after the financial crisis, FINMA confirmed that the emergency plans for the systemically relevant functions of the two major Swiss banks are now effective. It also considered how the topics of sustainability and risks posed by climate change are to be dealt with under supervisory law;
- 1,185 investigations and 30 enforcement proceedings (compared to 1,086 and 42 in 2018 respectively). FINMA's enforcement division looked closely at initial coin offerings (ICOs) in Switzerland in 2019 and carried out investigations into approximately 60 ICOs, of which more than half could be concluded. It identified a breach of the Anti-Money Laundering Act (AMLA) at more than ten ICOs and brought charges against the responsible people. Eight further cases resulted in entries being made on FINMA's warning list due to suspected illegal conduct and enforcement proceedings were opened against three companies; and
- various initiatives aimed at strengthening transparency, including the launch of a new forward-looking publication, the Risk Monitor, to keep the public informed about the prioritisation of the risks faced by the financial sector. A wide-ranging report on the progress that has been achieved in recovery and resolution planning by the systemically important banks was also issued at the start of 2020. In addition, FINMA is providing statistical information from the previous year as well as databases with enforcement rulings and court decisions relating to its enforcement proceedings on its website.

JPX and TSE publish handbook for ESG disclosure

The Japan Exchange Group (JPX) and the Tokyo Stock Exchange (TSE) have published a '[Practical Handbook for ESG Disclosure](#)' to support listed companies who are choosing to work on environmental, social, governance (ESG) disclosure, linking their company's mid- to long-term corporate value improvement to its sustainable growth.

The Handbook sets out the issues that listed companies face when starting ESG activities and disclosure and splits them into the following four steps that companies can use as needed:

- ESG issues and ESG investment;
- connecting ESG issues to strategy;
- oversight and implementation; and
- information disclosure and engagement.

The Handbook also incorporates investors' points of view (such as deciding what is material and linking ESG to company strategy), in order to encourage disclosure of information useful to investors for making investment decisions. Moreover, by including real-life examples of disclosure and referring to existing disclosure frameworks and standards, the Handbook is intended to provide a practical guide which will enable companies to begin concrete work on ESG disclosure.

ACRA issues advance notification on new requirements for Registers of Registrable Controllers

The Accounting and Corporate Regulatory Authority (ACRA) has [announced](#) that it will be implementing a new requirement for all companies, foreign companies and limited liability partnerships (LLP) (business entities), unless exempted, to lodge information on their Registers of Registrable Controllers (RORC) from May 2020. The new requirement is in addition to the existing requirements for business entities to maintain a RORC at their registered office address.

Amongst other things, the ACRA has provided the following clarifications with regard to the new requirement:

- the RORC information lodged with the ACRA will be accessible to public agencies in Singapore such as law enforcement agencies. However, members of the public will not be able to access the RORC information or purchase any extracts of these lodgements;
- business entities will be required to maintain a RORC at the registered office address, and update any changes to the RORC information prior to updating the same information with the ACRA within two business days;
- business entities may engage a Registered Filing Agent (RFA) to lodge the RORC information with the ACRA on their behalf;
- RFAs can only perform transactions, including lodging of RORC information, for entities which are in the client list submitted to the ACRA. Moreover, RFAs will be required to ensure that they have been authorised by their clients to lodge and update the RORC information on their behalf;
- RFAs maintaining the RORC information of their clients at their registered office will be required to update the RORC maintained at the registered

office, before updating the same information with the ACRA within two business days;

- the RORC information to be lodged with the ACRA will be the same as the existing RORC requirements under Part 2 of the Companies (Register of Controllers and Nominee Directors) Regulations 2017 and paragraph 3 of the Limited Liability Partnerships (Register of Controllers) Regulations 2017; and
- there are no fees payable for lodging the RORC information with the ACRA.

The ACRA's announcement also covers a set of frequently asked questions, which provide more guidance with regard to the new requirement.

CLIFFORD CHANCE

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.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2020

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.