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Sustainable finance: Taxonomy Regulation published in Official Journal

Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (Taxonomy Regulation), and amending Regulation (EU) 2019/2088 has been published in the Official Journal.

The Regulation will enter into force on 12 July 2020.

GDPR: EU Commission publishes implementation report

The EU Commission has published its first evaluation and review report on the General Data Protection Regulation (GDPR) following two years of application.

Broader than its mandate to review international transfers and the cooperation and consistency of mechanisms, the report notes the general view that the GDPR has successfully met its objectives of strengthening the protection of the individual's right to personal data protection and guaranteeing the free flow of personal data within the EU, and sets out the Commission's main findings, including:

- the need for further progress to improve the procedural efficiency and harmonisation of cross-border cases;
- addressing fragmentation created by different approaches to national implementation;
- unlocking the potential of the right to data portability, within a broader consideration of the role of data and data-related practices in the platform ecosystem;
- greater implementation of the GDPR by SMEs;
- monitoring on a continuous basis how the GDPR's principles apply to specific technologies, such as artificial intelligence, blockchain, Internet of Things and facial recognition;
- the need for more vigorous enforcement action against foreign operators active in the EU market; and
- a commitment to develop appropriate legal frameworks with international partners to avoid conflicts of law and support effective forms of cooperation.

The report also sets out a list of actions for Member States and supporting stakeholders, as well as those the Commission intends to undertake, aimed at improving the implementation and enforcement of the GDPR in the EU.

A Q&A document and factsheet have been published alongside the report.

The next report is due in four years.

EU Commission consults on accession to Hague Judgments Convention

The EU Commission has published a consultation on a possible future proposal for a Council Decision on accession to the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the Hague Judgments Convention).

Intended to complement the Convention of 30 June 2005 on Choice of Court Agreements (the Hague Choice of Court Convention), the Hague Judgments Convention, not yet in force, is broader in scope and sets out an international legal regime aimed at achieving greater predictability and certainty in relation to the circulation of the judgments of contracting states.

The consultation follows the EU Commission's adoption of an inception impact assessment dated 10 February, which sets out the following policy options:

- No accession, although this option is intended as a benchmark owing to the EU's active involvement in the Hague Judgments Convention negotiations;
- EU accession without any declarations;
- EU accession excluding certain matters reflecting the EU's policy objective of protecting weaker parties and/or falling under the exclusive jurisdiction of EU courts under the Brussels I Regulation (recast);
- EU accession excluding state entities; or
- EU accession excluding a combination of certain matters and state entities.

The Commission seeks feedback from stakeholders such as businesses and citizens involved in international trade and investment, public authorities and justice professionals, social partners organisations, trade, business and professional associations, as well as professional organisations representing lawyers and members of research or academic institutions.

The consultation closes on 5 October 2020. The Commission is expected to adopt a proposal for a Council Decision in Q4 2020.

EU Commission publishes opinion on application of financial sanctions

The EU Commission has issued an opinion clarifying how existing financial sanctions should be interpreted, as regards the freezing of assets, as part of its role to ensure the effective and uniform implementation of EU restrictive measures.

The opinion was requested by EU national competent authorities, which are responsible for implementing EU sanctions, and it concerns the sanctions imposed by means of Council Regulation (EU) No 269/2014 in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

Regulation 269/2014 imposes the freezing of all assets belonging to, owned, held or controlled by the listed natural and legal persons, and a prohibition to make funds or economic resources available to them. The opinion clarifies that:

- the assets of an entity controlled by a listed person must be frozen, even if the entity as such is not listed, but the controlled entity may obtain the lifting of the freeze on some or all of its assets if it provides evidence that they are in fact not controlled by the listed person;
- funds and economic resources cannot be made available to entities controlled by listed persons, except in specific cases foreseen as derogations in the sanctions regime; and
- the provision of labour or services to entities controlled by listed persons can amount to making economic resources indirectly available to listed persons, insofar as it enables the latter to ultimately obtain an economic benefit.

Recovery & resolution of CCPs: EU Council and Parliament reach political agreement

The EU Council Presidency and the EU Parliament have reached a political agreement on the proposed regulation on a framework for the recovery and resolution of central counterparties (CCPs).

The proposed regulation, building on the same principles as the recovery and resolution framework applying to banks, aims to provide national authorities with adequate tools to manage crises and to handle situations involving failures of key financial market infrastructures.

The recovery and resolution will be based on a three-step approach:

- prevention and preparation – CCPs and resolution authorities will be required to draw up recovery and resolution plans on handling any form of financial distress which would exceed CCPs existing resources;
- recovery measures – CCPs can take recovery measures according to certain viability indicators and based on the prepared recovery plan. Furthermore, supervisory authorities will have the power to intervene at an early stage and take action e.g. requiring the CCP to undertake specific actions in its recovery plan or make changes to its business strategy or legal or operational structure; and
- resolution tools – in the case of a CCP failure, national authorities will have the possibility to resort to partial termination of the CCP's contracts, variation margin gains haircutting, the write-down of CCP capital and other resolution tools.

With limited exceptions, the new framework will start to apply 18 months after the date of entry into force of the regulation. Additionally, the co-legislators agreed that, considering the effect of the COVID-19 pandemic, it was appropriate to give one additional year for trading venues and CCPs offering trading and clearing of exchange-traded derivatives to start applying open access rules in MiFIR. The open access regime will now apply as of 4 July 2021.

The text will now be submitted to EU ambassadors for endorsement with a view to reaching an agreement in the form of a pre-negotiated Council position at first reading.

Brexit: EU Council adopts conclusions on EU-UK relations

The EU Council has adopted by written procedure the following conclusions on EU-UK relations, that it:

- takes note of the UK government's decision not to request and its intention to refuse an extension of the transition period foreseen in the Withdrawal Agreement, meaning that the transition period will end on 31 December 2020;
- recalls that, in its conclusions of 13 December 2019, the EU Council restated the EU's determination to have as close as possible a partnership with the UK in the future, in line with the Political Declaration establishing the key parameters of the envisaged partnership between the EU and UK;
- reconfirms its full support to the EU negotiator and reiterates its readiness to reach an agreement in accordance with the negotiating directives of 25 February 2020 while respecting the previously agreed guidelines of the EU Council, as well as statements and declarations, notably those of 25 November 2018;
- takes note of the limited progress achieved in the negotiations until now;
- welcomes the plans agreed by the chief negotiators to intensify the negotiation process and to create the most conducive conditions for reaching an agreement before the end of 2020;
- recalls that the Council shall be fully informed of any development of the negotiations, which shall be conducted by the Commission in continuous coordination and permanent dialogue with the Council, and following its guidance;
- will continue to closely follow the effective implementation of the Withdrawal Agreement, notably its part on citizens' rights, and of its three Protocols. It calls on the UK to come forward with meaningful and concrete steps regarding the Protocol on Ireland and Northern Ireland in particular; and
- calls on Member States, EU institutions and all stakeholders to increase their work on preparedness and readiness at all levels and for all outcomes, including that of no agreement.

ESMA publishes translations of MMF reporting guidelines

The European Securities and Markets Authority (ESMA) has published the official translations of its guidelines on standardised procedures and messaging protocols. The guidelines apply to competent authorities and money market funds (MMFs) and managers of MMFs within the meaning of the MMF Regulation, in relation to Article 37 of the MMF Regulation and the reporting template in the annex of the Implementing Regulation on reporting.

National competent authorities (NCAs) to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, within two months of the date of the publication of the translations.

CRR: EBA publishes revised final draft ITS on supervisory reporting

The European Banking Authority (EBA) has published revised final draft implementing technical standards (ITS) on supervisory reporting requirements for institutions under the Capital Requirements Regulation (CRR).

The proposed ITS cover information on institutions' compliance with the prudential requirements set out in the CRR and related technical standards as well as additional financial information required by supervisors to perform their supervisory tasks. As a result, the ITS on supervisory reporting must be updated whenever prudential or supervisory requirements change.

In 2019, the revised Capital Requirements Regulation (CRR2) and the Backstop Regulation made amendments to the CRR affecting supervisory reporting. In order to be in line with those amendments, a number of reporting modules had to be revised.

The EBA is proposing that these draft ITS on supervisory reporting will cover all supervisory reporting requirements for institutions under the CRR and replace Commission Implementing Regulation (EU) 680/2014.

The draft ITS have been submitted to the EU Commission for adoption. The first reference date for the application of these ITS is expected to be 30 June 2021.

CRR: EBA publishes final draft technical standards on Pillar 3 disclosures

The EBA has published final draft ITS on Pillar 3 disclosures by institutions under the CRR.

Under the CRR, the EBA is mandated to develop draft ITS specifying uniform disclosure formats that convey sufficiently comprehensive and comparable information to allow users to assess the risk profiles of institutions and their degree of compliance with the requirements laid down in the CRR. To facilitate comparison, the ITS aim to maintain consistency of disclosure formatted with international standards on disclosures.

Following this new mandate, the EBA updated its strategy regarding its policy on institutions' Pillar 3 disclosures. The key goals of this strategy and the new ITS are to:

- optimise the Pillar 3 policy framework to provide a single comprehensive package, improving clarity for users of information;
- promote market discipline further by increasing the consistency and comparability of the information disclosed by institutions, and its alignment with the new regulatory changes introduced by the revised Capital Requirements Regulation (CRR2) and the revised Pillar 3 disclosure framework;
- facilitate access by users of information to institutions' key prudential data by introducing new key metrics templates;
- promote ease of implementation for institutions by facilitating their access to, and understanding of, all the disclosure templates and tables; and
- increase the efficiency of disclosures by institutions through the integration of quantitative disclosure data and supervisory reporting.

The draft ITS have been submitted to the EU Commission for adoption.

Basel Committee proposes amendment to non-performing loan securitisations capital rules

The Basel Committee on Banking Supervision (BCBS) has published a technical amendment on the capital treatment of securitisations of non-performing loans, which is intended to address a gap in the regulatory framework.

The proposal establishes a 100% risk weight for certain senior tranches of non-performing loan securitisations. The risk weight applicable to other positions is determined by the existing hierarchy of approaches, in conjunction with a 100% risk weight floor and a ban on the use of certain inputs for capital requirements. The amendment does not change the applicable capital requirements to securitisations of performing assets.

Comments are due by 23 August 2020.

IOSCO consults on AI/ML guidance for market intermediaries and asset managers

The International Organization of Securities Commissions (IOSCO) has launched a consultation on proposed guidance aimed at assisting its members in the regulation and supervision of the use of artificial intelligence (AI) and machine learning (ML) by market intermediaries and asset managers. In particular, IOSCO is seeking feedback on six proposed recommendations for regulators, namely that they:

- consider requiring firms to have designated senior management and a documented internal governance framework for the oversight of AI/ML;
- require firms to adequately and continuously test and monitor the algorithms to validate the results of an AI/ML technique;
- require firms to have adequate skills, expertise and experience in the AI/ML they use, and that their compliance and risk management functions have sufficient understanding of any algorithms provided by a third party to challenge them and conduct appropriate due diligence;
- require firms to understand their reliance on, and manage their relationship with, third party providers, including having in place service level agreements that clearly set out the scope of the outsourced functions and the responsibility of the service provider;
- consider what level of disclosure regarding the use of AI/ML should be required of firms; and
- consider requiring firms to ensure that the data underlying the AI/ML is of sufficient quality to prevent biases and is sufficiently broad to permit well-founded application.

Comments are due by 26 October 2020.

IOSCO publishes good practices on processes for deference

IOSCO has published a report identifying good practices on processes for deference for regulatory authorities.

Deference practices allow authorities to rely on one another to regulate and supervise global wholesale securities and derivatives markets, where many market participants operate on a cross-border basis. IOSCO's June 2019 report on market fragmentation and cross-border regulation found that deference between regulators, through the use of cross-border regulatory tools, had significantly increased in recent years. The 2019 report suggested that there may be benefit in identifying good and sound practices to make the processes for deference determinations more efficient.

Following a survey of IOSCO board member and observers, the EU Commission and members of the Committee on Payments and Market Infrastructures (CPMI), and deference assessments shared by its members, IOSCO has identified eleven good practices, which are set out in the annex to the report.

The good practices cover all phases of deference assessments and derive from a general consensus by members that the processes are typically:

- outcomes based;
- risk sensitive;
- transparent;
- cooperative; and
- sufficiently flexible.

Recovery of CCPs: CPMI and IOSCO report on CCP auctions

The Committee on Payments and Market Infrastructures (CPMI) and IOSCO have reported on the issues a CCP should consider when planning and conducting default management auctions and to identify practices that a CCP could consider in its development of, and improvements to, default management auction rules, governance arrangements and procedures to address those issues.

The report builds on a 2019 CPMI-IOSCO discussion paper that aimed to facilitate the sharing of existing practices and views on default management auctions, and to advance efforts to enhance auction practices and procedures.

The report reflects the current practices at one or more CCPs, and by facilitating the sharing of existing practices and views on default management auctions, aims to help advance industry efforts and foster dialogue on the key concepts, processes and operational aspects used by CCPs in planning and executing default management auctions.

To accompany the report, CPMI-IOSCO have issued an accompanying cover note discussing areas for further industry work. Broadly speaking these issues fall under the headings of:

- operational issues, such as methods of communication and formats for auction files;
- areas where there differing views among clearing members and other stakeholders, such as governance of a CCP's default management process and the use of traders in default management groups; and

- potential nascent and emerging practices that may require further coordination and harmonisation among the default management processes of multiple CCPs.

Brexit: UK Government issues statement on future financial services legislation

The UK Parliament has published a written ministerial statement made by Rishi Sunak, Chancellor of the Exchequer, setting out the Government's approach to addressing financial services regulatory reforms before the end of the transition period on 31 December 2020.

Intended to provide clarity on the UK's legislative plans in relation to prudential requirements, capital markets and managing future risks, the statement includes commitments to:

- introduce a new prudential regime for investment firms and updated rules for credit institutions in line with the intended outcomes of the EU's Investment Firms Regulation and Directive (IFR/D) and second Capital Requirements Regulation (CRR2);
- transpose the fifth Capital Requirements Directive (CRD5), and the elements of the second Bank Recovery and Resolution Directive (BRRD2) which come into force prior to the end of the transition period;
- consult on those elements of BRRD2 which come into force after the transition period and are not being transposed, in particular the minimum requirements for own funds and eligible liabilities (MREL) framework;
- review areas of Solvency II such as risk margin, the matching adjustment, the operation of internal models and reporting requirements for insurers;
- not transpose the EU's Central Securities Depositories Regulation (CSDR) nor the reporting obligation for non-financial counterparties (NFCs) under the EU's Securities Financing Transactions Regulation (SFTR);
- consider, with the financial services industry, the future approach to the UK's settlement discipline framework; and
- set out further detail on amendments to the Benchmarks Regulation, the Market Abuse Regulation (MAR), to the functioning of the UK's packaged retail investment and insurance products (PRIIPs) regime, and to complete the implementation of the European Market infrastructure Regulation (Refit).

The statement also notes that HMT has published a written ministerial statement on LIBOR transition, which sets out the Government's approach to 'tough legacy' contracts that cannot transition before end-2021, including an intention to use the Financial Services Bill to introduce amendments to the EU's Benchmarks Regulation as amended by the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (SI 2019/657), to ensure that FCA powers are sufficient to manage an orderly transition from LIBOR.

HM Treasury provides update on legislative progress of prudential standards within Financial Services Bill

HM Treasury has published a policy statement providing an update on its proposed approach to legislating the package of prudential standards in the

Financial Services Bill. In the March 2020 Budget, the Government set out its intention to update the prudential regime for banks to enable the implementation of Basel 3.1, a UK version of the CRR2 and a new prudential regime for investment firms (IFPR).

HM Treasury intends to delegate responsibility for the implementation of firm requirements to regulators, subject to an enhanced accountability framework, so that the majority of the updated banking regime will be implemented in Prudential Regulatory Authority (PRA) rules, and the majority of the IFPR will be implemented by FCA rules.

This accountability framework is intended to enable greater scrutiny of the regulators' decision-making by enhancing transparency for Parliament, industry and the public. To achieve this, HM Treasury will legislate to create additional requirements for the regulators to consider specifically when using their rule-making powers to introduce and maintain these regimes. This accountability framework will include additional requirements to ensure that the wider objectives of the Government and Parliament are taken into account. As regards Basel implementation, the PRA will also need to ensure that the impact on sustainable lending to the UK economy is sufficiently considered.

Recognising that UK credit institutions and investment firms may have been preparing for the introduction of the EU's CRR2, IFR and IFD, the Treasury will endeavour to introduce the IFPR and updated prudential standards for credit institutions (those contained in CRR2 for the EU) by Summer 2021, although this will be subject to the Bill's passage through Parliament.

The Treasury will work towards a UK implementation date of Basel 3.1 standards that is consistent with the one year delay announced by the BCBS in March 2020.

UK Government to amend Benchmarks Regulation and extend FCA's powers

The UK Government has published a written statement (HCWS307) announcing that it intends to bring forward legislation to amend the Benchmarks Regulation to give the FCA enhanced powers to help manage and direct an orderly wind-down of critical benchmarks such as LIBOR, and, in particular, help deal with the problem of tough legacy contracts that cannot transition from LIBOR.

In the forthcoming Financial Services Bill, the UK Government intends to amend and strengthen the existing regulatory framework for benchmarks, rather than directly impose legal changes on LIBOR-referencing contracts that are governed by UK law. The UK Government plans to:

- introduce amendments to the Benchmarks Regulation 2016/1011 as amended by the Benchmarks (Amendment) (EU Exit) Regulations 2018, to ensure that FCA powers are sufficient to manage an orderly transition from LIBOR;
- extend the circumstances in which the FCA may require an administrator to change the methodology of a critical benchmark, to stabilise certain LIBOR rates during a wind-down period so that limited use in legacy contracts could continue;

- strengthen existing law to prohibit use of an individual critical benchmark where its representativeness will not be restored, whilst giving the regulator the ability to specify limited continued use in legacy contracts; and
- refine ancillary areas of the UK's regulatory framework for benchmarks to ensure its effectiveness in managing the orderly wind-down of a critical benchmark, including that administrators have adequate plans in place for such situations.

The UK Government notes that regulatory action to change the LIBOR methodology may not be feasible in all circumstances, such as where the inputs necessary for an alternative methodology are not available in the relevant currency.

The UK Government also states that market participants should continue to focus on active transition, as this is the only way for parties to have certainty about contractual continuity and control over their contractual terms when LIBOR ceases or is no longer representative. Work to substitute existing LIBOR references, or adopt sufficiently robust fallbacks, including through market standard documents, should continue.

The FCA has also published a statement on the proposed legislation and what the changes to its powers are intended to achieve. The FCA intends to publish statements of policy on its approach to potential use of these powers following further engagement with stakeholders in the UK and internationally.

HM Treasury consults on transposition of BRRD2

HM Treasury has launched a consultation on the steps that the Government proposes to take to transpose BRRD2 into national law. BRRD2 amends the original BRRD to update the EU's resolution policy and minimum requirements for own funds and eligible liabilities (MREL) framework.

HM Treasury is consulting on the Government's proposals for instances where EU Member States are given the discretion to make decisions on certain aspects of BRRD2, as well as on its approach to the provisions that the UK is not required to transpose as their transposition dates fall after the end of the EU exit transition period. Among other things, the Treasury is proposing that the Government will not transpose Article 1(17), which revises the framework for MREL requirements. Other provisions consulted upon include:

- the introduction of the concepts of 'resolution entities' and 'resolution groups';
- the power for the resolution authority to prohibit certain distributions, where the entity fails to meet its combined buffer requirement, when considered in addition to its MREL requirements;
- the power for the resolution authority to suspend any contractual payment or delivery obligations after a firm is deemed failing or likely to fail, but before its entry into resolution;
- restrictions on the selling of subordinated eligible liabilities to retail clients;
- amendments to the requirements on the contractual recognition of bail-in, to address circumstances in which it would be legally or otherwise impractical to include a contractual term; and
- a requirement for entities to include in financial contracts governed by third country law a term by which the parties recognise that the financial

contract may be subject to the exercise of powers by the resolution authority to suspend or restrict obligations.

Comments are due by 11 August 2020.

Investment firms: FCA consults on rules for UK prudential regime

The FCA has issued a discussion paper (DP20/2) as part of its work to introduce a UK prudential regime for investment firms.

In December 2019, the EU IFR and IFD were published in the Official Journal. Investment firms and competent authorities in EU Member States will be required to comply with them from 26 June 2021.

The UK Government intends to legislate to introduce a new prudential regime for UK investment firms. DP20/2 aims to make stakeholders aware of how the FCA may approach writing the rules for this domestic regime.

The DP sets out the requirements the IFR/IFD places on EU firms and competent authorities and, where relevant, the FCA's initial views on the intention and implication of the regime and its interpretation of it.

The FCA notes that the IFR/IFD represent a significant change to how MiFID investment firms will be prudentially regulated. The major changes described in DP20/2 include:

- an update to the initial capital required for authorisation;
- changes to the rules on the definition of capital;
- new own funds requirements;
- new rules on prudential consolidation, group risk and concentration risk;
- applying liquidity requirements to all investment firms;
- a new approach for investment firm's internal risk and prudential assessments, and the supervision of those requirements;
- new requirements on remuneration policies; and
- changes to reporting and disclosure requirements.

The FCA encourages investment firms and other interested stakeholders to respond to the points in the discussion paper by 25 September 2020 so that it can develop its approach before consulting on any necessary rules.

Swiss Federal Council adopts dispatch on partial revision of Banking Act

The Swiss Federal Council has adopted its dispatch on the proposed partial revision of the Banking Act.

The proposed amendments aims to strengthen depositor and customer protection and promote system stability.

Currently, the Banking Act regulates only the main features of the restructuring procedure for banks; details are set out in the FINMA Banking Insolvency Ordinance. In order to strengthen legal certainty, the Federal Council wants to enshrine at the legislative level those measures (e.g. a bail-in) which impinge on the rights of the bank's owners and creditors. An adjustment to the Mortgage Bond Act should also strengthen the functioning of the Swiss mortgage bond system in the event of a member bank's insolvency or bankruptcy.

Moreover, in order to better protect depositors, banks will no longer be required to secure half of their obligatory deposit insurance contributions in the form of additional liquidity, but by depositing securities or Swiss francs in cash with a custodian. The period for paying out deposit insurance funds will also be shortened. They should reach the bankruptcy liquidator within seven days instead of the current 20 days. Once the bankruptcy liquidator has received bank clients' payment instructions, clients will receive their secured deposits within seven days.

Finally, the Federal Council is proposing to amend the Intermediated Securities Act. Custodians of intermediated securities should be obliged to segregate their own holdings from those of clients. If the custody chain leads abroad, the last Swiss custodian has to take measures to protect the intermediated securities placed with the foreign custodian. Clients should also be better informed about these procedures.

Parliament is expected to address the bill for the first time in the second half of 2020. The bill is not expected to come into force until the start of 2022 at earliest.

FINMA sets out its role in addressing climate risks in financial sector

The Swiss Financial Market Supervisory Authority (FINMA) has welcomed the Federal Council's initiative to examine the subject of sustainability and climate risks for the financial sector in further depth and has set out some of its key activities in this area.

FINMA is involved in work being carried out by the federal authorities on sustainability in the financial economy and is supporting the analysis being conducted by the working group on sustainable finance headed by the State Secretariat for International Financial Matters (SIF).

As part of its supervisory remit, it is also seeking to address risks caused by climate change for prudentially supervised institutions and their customers. Climate change entails physical risks for market participants, particularly for insurance companies, for example in the form of rising natural catastrophes and their associated costs. However, financial institutions can also be indirectly affected by so-called transition risks as a result of action taken on climate policy. For example, illiquid assets in affected industrial sectors can be exposed to increased valuation risks in the balance sheets of financial institutions. FINMA has taken steps to ensure that financial institutions are managing these risks appropriately. Among other things, it is, in collaboration with the Swiss National Bank and academics, currently analysing the transition risks for two major banks as part of a pilot project.

From a consumer protection perspective, FINMA is also addressing the risks of greenwashing in the provision of financial services and the distribution of financial products.

At the regulatory level, FINMA is reviewing approaches for improved disclosure of financial climate risks by major financial institutions, in an effort to improve transparency and market discipline.

ASIC reports on decisions to cut red tape during period October 2019 to March 2020

The Australian Securities and Investments Commission (ASIC) has released a report titled 'Report 664: Overview of decisions on relief applications (October 2019 to March 2020)'. The report is intended to:

- outline some of ASIC's decisions on relief applications during the period from 1 October 2019 to 31 March 2020 (report period) as well as highlight ASIC's efforts to reduce red-tape and achieve a practical, positive outcome for companies seeking regulatory flexibility, without harming stakeholders;
- include summaries of selected individual relief decisions, publications and legislative instruments that relate to COVID-19. These relief decisions and publications concern disclosure, financial reporting, AGMs and registered office closure;
- list a number of publications issued by ASIC during the report period that may be relevant to prospective applicants for relief; and
- provide examples where ASIC has exercised, or refused to exercise, its exemption and modification powers under the Corporations Act.

According to the report, ASIC granted relief from provisions of the Corporations Act or the National Credit Act in relation to 619 applications during the report period. ASIC has indicated that it will continue to take a facilitative approach, where appropriate, to the provision of individual and class relief to assist business in dealing with the challenges associated with the COVID-19 pandemic and the associated containment measures.

SFC publishes Annual Report 2019-20

The Securities and Futures Commission (SFC) has published its Annual Report 2019-20, which sets out its priorities to ensure the integrity and overall soundness of Hong Kong's securities and futures markets in the face of unprecedented challenges, particularly stemming from the COVID-19 outbreak.

The report recaps the SFC's efforts to promote regulatory compliance and ensure markets operate efficiently and fairly amidst increased volatility and a challenging business environment. These include stepping up the SFC's supervisory work and regular stress tests to monitor firms' financial resilience as well as conducting special inspections to ensure compliance with its requirements. The report also reviews the progress of the SFC's front-loaded approach which over the past few years has helped it address misconduct and market irregularities through pre-emptive, timely regulatory intervention.

Other highlights during the year include the introduction of a regulatory framework for licensing virtual asset trading platforms and a proposed new type of regulated activity for trustees and custodians of SFC-authorised collective investment schemes. Moreover, together with Hong Kong Exchanges and Clearing Limited and the Federation of Share Registrars, the SFC concluded a joint consultation on a proposed operational model for an uncertificated, or paperless, securities market.

Further, the report features the SFC's initiatives to develop Hong Kong as a hub for green and sustainable finance, including a survey report on integrating environmental, social and governance factors and climate risks in asset management.

ACRA, MAS and SGX update guidance on conduct of general meetings during safe management period

Following Singapore's move into phase two of its re-opening on 19 June 2020, the Accounting and Corporate Regulatory Authority (ACRA), the Monetary Authority of Singapore (MAS) and Singapore Exchange Regulation (SGX RegCo) have updated their joint guidance and checklist issued on 13 April 2020 (April 2020 Joint Guidance), to guide the conduct of general meetings during safe management period.

The April 2020 Joint Guidance has been updated mainly to clarify that issuers (and the issuers' service provider(s), if any) that are permitted to operate may conduct on-site operations which are necessary to support the conduct of their general meetings, subject to compliance with safe management measures, and they will no longer need to submit a notification to the Ministry of Trade and Industry for a time-limited exemption to have temporary operations in the same physical location for the purpose of holding a general meeting.

The regulators consider that in early stages of re-opening, activities where large numbers of people are likely to come into close contact for a prolonged period in enclosed spaces should be avoided. In view of this, the regulators have advised issuers conducting their general meetings on or before 30 September 2020 to continue to conduct their meetings in accordance with the alternative arrangements set out in the April 2020 Joint Guidance.

Federal agencies finalize rule amending swap margin rule

The Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Farm Credit Administration (FCA) and the Federal Housing Finance Agency (FHFA) have published a final rule revising the agencies' regulations that require swap dealers and security-based swap dealers under the agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (swap margin rule). Among other things, the rule:

- supports relief by allowing legacy swaps to be amended to replace existing interest rate provisions based on certain interbank offered rates (IBORs) and other interest rate benchmarks;
- modifies the swap margin rule's requirements for inter-affiliate swaps;
- allows for an additional initial margin compliance period for certain smaller counterparties, and clarify the existing trading documentation requirements in the swap margin rule; and
- modifies the swap margin rule to permit amendments caused by certain routine life-cycle activities that covered swap entities may conduct for legacy swaps without triggering margin requirements.

It comes into effect sixty days after publication in the Federal Register.

The federal agencies are also seeking comment on an interim final rule that extends the compliance date of the initial margin requirements of the swap margin rules to 1 September 2021 for swap entities and counterparties with average annual notional swap portfolios of USD 50 billion to USD 750 billion, and to 1 September 2022 for counterparties with average annual notional swap portfolios of USD 8 billion to USD 50 billion. Comments can be submitted on or before sixty days after publication in the Federal Register.

Financial regulatory agencies finalize rule amending covered funds restrictions in Volcker Rule

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Commodity Futures Trading Commission, and the Securities and Exchange Commission have published a final rule amending the regulations which implement the Volcker Rule's general prohibition on banking entities investing in or sponsoring hedge funds or private equity funds (covered funds).

The final rule is broadly similar to the version consulted upon in January 2020. It is intended to streamline the covered funds provisions within the rule, address the extraterritorial treatment of certain foreign funds and permit banking entities to offer financial services and engage in other activities that do not raise concerns under the Volcker Rule. Specific amendments include:

- exempting the activities of certain funds that are organized outside of the United States and offered to foreign investors (qualifying foreign excluded funds) from the proprietary trading and covered fund restrictions of the Volcker Rule;
- permitting banks to acquire or retain ownership interests in venture capital funds, or pools of investment for small businesses and start-ups; and
- granting banks more freedom to invest or sponsor credit funds that make loans, invest in debt securities, or extend credit.

The rule comes into effect on 1 October 2020.

RECENT CLIFFORD CHANCE BRIEFINGS

EU proposals for new powers to address foreign subsidies

The European Commission has published a White Paper with proposals for a new legal framework to address subsidies granted by non-EU governments that distort markets in the EU. Its main components comprise general powers to impose remedies to address distortive foreign subsidies, specific powers to prohibit subsidised acquisitions of EU businesses and changes to the EU public procurement rules to allow foreign subsidies to be addressed in individual public tenders.

If adopted, the proposals would create significant new risks and compliance costs for foreign State owned entities and other foreign investors with links to non-EU public bodies.

This briefing paper discusses the proposals.

https://www.cliffordchance.com/briefings/2020/06/eu-proposals-for-new-powers-to-address-foreign-subsidies.html

The WTO's interim appeal arbitration arrangement – a bridge over troubled waters?

On 30 April 2020, the EU and 19 other World Trade Organization (WTO) members announced the terms of an interim arrangement enabling appeals of WTO panel decisions to be decided in the absence of a functioning WTO Appellate Body.

The arrangement, dubbed the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), aims to provide a temporary solution to practical and systemic issues arising as a consequence of the failure by WTO members to reach consensus on the appointment of new Appellate Body members.

This briefing paper discusses the arrangement.

https://www.cliffordchance.com/briefings/2020/06/the-wto-s-interim-appeal-arbitration-arrangement---a-bridge-over.html

Dutch UBO register soon effective

On 23 June 2020, the Upper House of the Dutch Parliament adopted the bill creating a register for ultimate beneficial owners ('UBOs') implementing Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the EU Directive).

The EU Directive had to be implemented on 10 January 2020. The legislative proceedings in the Upper House of Parliament have now finished, and it is expected that the Law will enter into effect on 1 July 2020.

This briefing paper discusses the Dutch Law.

https://www.cliffordchance.com/briefings/2020/06/dutch-ubo-register-soon-effective--.html

Dubai Court of Cassation decision on validity of murabaha contracts

This briefing paper considers the decision of the Dubai Court of Cassation in Appeal Numbers 898 and 927 of 2019, and the impact of this decision on the validity of murabaha financing contracts in the UAE.

https://www.cliffordchance.com/briefings/2020/06/dubai-court-of-cassation-decision-on-validity-of-murabaha-contra.html

Chile – Upcoming hospital public-private partnership program

After delays due to the COVID-19 crisis, the Chilean Ministry of Public Works has announced that a group of hospital projects in the Maule region, the first of ten hospital group projects to be tendered and developed under Chile's new hospital infrastructure concession program, will be awarded by the end of the second quarter of 2020. The program encompasses the construction and supply of medical and non-medical equipment for a total of 18 hospitals with an overall capex of approximately USD 2 billion. The program has been divided into ten groups of one or more hospitals which will be tendered separately over the next few years. Each hospital group will be tendered as a package, and there is no limit to a sponsor being awarded more than one group of hospitals; a circumstance which could allow for portfolio financings, including bond financings.

This briefing paper discusses the hospital program.

https://www.cliffordchance.com/briefings/2020/06/chile-upcoming-hospital-public-private-partnership-program.html

United States Trade Representative invites comments on proposals for additional duties on USD 3.1 billion of EU and UK exports

Since October 2019 the US has imposed additional duties on imports from the EU and UK in connection with the WTO Dispute Settlement Body's finding that EU subsidies to Airbus breached WTO rules.

On 23 June 2020, the Office of the US Trade Representative (USTR) published a request for comment, which contains proposals for additional duties on an estimated USD 3.1 billion of EU and UK exports, including duties of up to 100% on certain products. EU and UK enterprises exporting to the US, and impacted US businesses, have until 26 July 2020 to comment on USTR's most recent tariff proposals.

This briefing paper discusses the tariff proposals.

https://www.cliffordchance.com/briefings/2020/06/united-states-trade-representative-invites-comments-on-proposals.html

Private funds crack into defined contribution plans

The United States Department of Labor published an information letter on 3 June 2020 that makes clear that defined contribution individual account ERISA retirement plans could include investment products that themselves include private equity investments.

This briefing paper discusses the letter.

https://www.cliffordchance.com/briefings/2020/06/private-funds-crack-into-defined-contribution-plans.html

Congress fails to reauthorize ACPERA significantly increasing civil liability for companies receiving criminal leniency for US antitrust violations

The Antitrust Criminal Penalty Enhancement & Reform Act (ACPERA) expired on 22 June 2020. The law offered the prospect of reduced civil liability for companies that had successfully sought and received leniency from criminal prosecution from the Department of Justice's Antitrust Division.

In recent years, ACPERA critics have argued that the law should be reformed because its unclear standards fail to adequately incentivize companies to self-report cartel conduct. Ultimately legislators could not marshal enough support to renew the law before its 22 June expiration date. Congress may later decide to reauthorize or reform the law, including extending benefits retroactively. But until then, the threat of civil liability of up to three times the total damages caused by the entire conspiracy could discourage companies from promptly self-reporting cartel conduct to the Antitrust Division. The erosion of ACPERA's protections underscores the need for companies to implement and update effective compliance programs to prevent cartel conduct by their employees.

This briefing paper discusses ACPERA.

https://www.cliffordchance.com/briefings/2020/06/congress-fails-to-reauthorize-acpera-significantly-increasing-ci.html