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SRB publishes bail-in guidance for banks

The Single Resolution Board (SRB) has published a set of documents providing operational guidance to banks on the implementation of the bail-in tool.

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The documents, which are not a new set of policies but rather seek to operationalise the SRB's expectations for banks document published in April 2020 with respect to bail-in, cover:

- operational guidance on bail-in playbooks; and
- bail-in data set instructions and explanatory note.

The SRB has also published Q&As on the guidance.

EBA consults on data inputs in risk-measurement model

The European Banking Authority (EBA) has launched a consultation on guidelines on criteria for the use of data inputs in the expected shortfall risk measure under the internal model approach (IMA).

The guidelines aim to clarify the conditions to be met by the data related to modellable risk factors, which institutions should use in their expected shortfall (ES) calculations. According to the EBA, the data used to compute the ES risk measure should be accurate, appropriate, frequently updated, and complete and overall consistent in its use in the ES risk measure.

Comments are due by 12 November 2020.

EBA consults on use of regtech solutions

The EBA has launched two questionnaires to gain feedback from financial institutions and ICT third party providers on their use of regulatory technology (regtech). The questionnaires seek to gather general information on all types of regtech solutions in use, as well as more detailed information on those solutions that deal with:

- anti-money laundering and counter terrorist financing, particularly the ongoing monitoring of business relationships or transactions;
- the assessment of creditworthiness,
- compliance with security requirements and standards, in particular those relating to information security, cybersecurity and payment services; and
- supervisory reporting.

The EBA intends to use the feedback to gain a better understanding of current regtech activity and the barriers and risks associated with it, inform future policy discussions and encourage the adoption and growth of regtech solutions across the EU.

Comments are due by 30 September 2020.

ECB reports on banks' ICAAP practices

The European Central Bank (ECB) has published its report on internal capital adequacy assessment process (ICAAP) practices. The ECB considers the ICAAP to be a key risk management instrument which allows banks to assess the risks they are exposed to in a structural manner, thus improving their resilience.

Following the ECB's publication of its expectations of banks' ICAAPs, the ECB Banking Supervision's horizontal function has conducted a structured analysis of ICAAP practices based on the ICAAP packages which a representative sample of significant institutions submitted in 2019. The report summaries the results observed from a sample of 37 banks and underlines areas where

banks' practices appear to be further developed and areas where additional work is warranted.

The ECB has identified three main areas for improvement:

- using good quality ICAAP data;
- the economic ICAAP perspective; and
- stress-testing.

The conclusions presented in the report were drawn prior to the outbreak of COVID-19. However, the ECB believes that the current crisis has emphasised the crucial importance of these areas of improvement for the continuity of banks and better ICAAP practices will strengthen banks' ability to successfully navigate through stressful times such as the current pandemic.

FSB publishes questionnaire on continuity of access to FMIs for firms in resolution

The Financial Stability Board (FSB) has published a template for the gathering of information on continuity of access to financial market infrastructures (FMIs) for firms in resolution.

The template, which takes the form of a questionnaire, seeks to assist authorities and firms in implementing the FSB Guidance on continuity of access published in 2017 and reduce the burden of information gathering and unnecessary duplication. All FMIs are therefore encouraged to complete and publish their responses to ensure all participants and resolution authorities have access to the same baseline information.

The questionnaire, which is not exhaustive, is composed of five parts covering:

- general information on the FMI and its legal structure;
- information on the rulebook or contractual provisions regarding termination;
- the phase prior to resolution, during signs of distress at the FMI participant;
- the resolution phase; and
- arrangements and operational processes to facilitate continued access in resolution.

The FSB intends for responses to be finalised, submitted and published through November and December 2020.

The FSB notes that the questionnaire is a living document, which will be evaluated in 2021.

IOSCO reports on liquidity provision in secondary markets for equity securities

The International Organization of Securities Commissions (IOSCO) has published a report reviewing the evolution of liquidity provision in equity security markets. Drawing on survey responses from regulatory authorities, trading venues and market intermediaries, the report identifies common themes with respect to the approaches taken to market making and liquidity provisions.

The report highlights the following themes that regulators could consider as key elements of market marking programs that may promote the provision of liquidity, strengthen investor confidence and foster fair and efficient markets:

- registration or the formal role given to market makers and the obligations imposed on them;
- balancing obligations and benefits;
- monitoring for compliance; and
- public disclosure about market making programs.

The report was prepared prior to the COVID-19 pandemic. IOSCO has indicated that it will consider additional work in due course that examines the effects of COVID-19 on various aspects of market structure.

Money Market Funds Regulation: BaFin applies updated ESMA guidelines on notifications under Article 37

The German Federal Financial Supervisory Authority (BaFin) has announced that it will apply the German translation of the European Securities and Markets Authority (ESMA) guidelines concerning notifications to competent authorities under Article 37 of Regulation (EU) 2017/1131 (Money Market Funds (MMF) Regulation (Leitlinien zu den Meldungen an die zuständigen Behörden nach Artikel 37 der Verordnung über Geldmarktfonds). The purpose of the guidelines is to establish consistent, efficient and effective supervisory practices, which is also achieved through the harmonised application of Article 37 and the corresponding Implementing Regulation (EU) 2018/708.

Pursuant to Article 37 of the MMF Regulation, the MMF manager reports to its supervisory authority at least annually certain information on the nature and characteristics of the MMF, portfolio indicators and stress test results. The guidelines provide guidance on how to report this information, including applicable data fields, and provide examples. The guidelines also provide assistance with regard to the content of the fields of the reporting template in the Annex to the Implementing Regulation for MMF and MMF managers.

BaFin consults on draft circulars concerning institutions for occupational retirement provision

BaFin has launched a consultation on two draft circulars concerning institutions for occupational retirement provision. The draft circulars are addressed to all institutions for occupational retirement provision that are subject to supervision by the BaFin.

The consultation relates to the circular 'Minimum Regulatory Requirements for the Business Organisation of Institutions for Occupational Retirement Provision (MaGo for EbAV)' (Aufsichtsrechtliche Mindestanforderungen an die Geschäftsorganisation von Einrichtungen der betrieblichen Altersversorgung (MaGo für EbAV)) and the circular 'Minimum Regulatory Requirements for the Own Risk Assessment (ERB) of Institutions for Occupational Retirement Provision' (Aufsichtsrechtliche Mindestanforderungen an die eigene Risikobeurteilung (ERB) von Einrichtungen der betrieblichen Altersversorgung).

The MaGo for EbAV is intended to provide institutions for occupational retirement provision with guidance on the interpretation of the relevant

business organisation requirements under sections 23 et seq. in conjunction with sections 234a et seq. of the Insurance Supervision Act (Versicherungsaufsichtsgesetz, VAG).

The draft circular on own risk assessment (ERB) is intended to provide guidance on the interpretation of the regulations on own risk assessment according to section 234d VAG, for pension funds in conjunction with section 237 VAG.

The consultation ends on 27 September 2020.

Germany publishes draft law on digital bonds

The German Federal Ministries of Justice and Finance have published a draft law introducing digital bonds, which aims to digitalise corporate financing in the capital market. Amongst other things, the draft law provides for the following:

- a new framework for issuing bearer bonds in electronic format, removing the requirement for a paper-based certificate;
- issuance will be by way of registration of the digital securities in a register that can (i) either be a central register operated by a regulated CSD or (ii) a blockchain-based, decentralised register operated by the issuer or a third-party registrar appointed by the issuer;
- operators of securities registers have to obtain a licence from BaFin and will be subject to BaFin's supervision;
- traditional securities can be exchanged for digital securities and vice versa; and
- the draft law modifies civil law requirements to implement electronic securities.

APRA plans to recommence prudential policy program and issuing of new licences

The Australian Prudential Regulation Authority (APRA) has announced the recommencement of public consultations on select policy reforms and a phased resumption of the issuing of new licenses.

APRA had earlier decided to suspend the majority of its planned policy and supervision initiatives and issuance of new licences in response to the impact of COVID-19 to enable the regulated entities to allocate time and resources to manage their own operational challenges in response to the crisis, as well as supporting their customers through this period of economic uncertainty.

The high-priority prudential policy reforms planned to recommence in 2020 through a process of public consultation are:

- the cross-industry prudential standard for remuneration;
- authorised deposit-taking institution (ADI) capital reforms incorporating APRA's framework, Basel III and measures to improve transparency, comparability and flexibility;
- insurance capital reforms to incorporate changes in the accounting framework; and
- the prudential standard for insurance in superannuation, and updated guidance on the sole purpose test.

Aligned with its policy agenda, APRA will also restart consultation on a limited number of its data collections, including the recommencement of its superannuation data transformation project.

In addition, APRA's recommencement of assessing and issuing new banking, insurance and superannuation licences will occur in two phases, with phase one starting in September 2020 and phase two in March 2021. During phase one, licences will only be issued to applicants that are subsidiaries of foreign entities with significant financial resources and a strong operational track record in a similar business. However, APRA will also accept new licence applications from any entity from September 2020.

APRA expects that, in phase two, new licences may be issued to any entity that meets the relevant prudential requirements. During this phase, APRA will also review the pathways to an ADI licence, including the restricted ADI licensing framework that was launched in 2018, to incorporate experiences to date, while continuing to support competition in the sector.

APRA has indicated that it will also review its policy program for 2021 in light of the current environment and with a view to continuing to support the financial sector as it responds to the impact of COVID-19.

NAFMII issues self-disciplinary punishment rules for market participants in inter-bank bond market

The National Association of Financial Market Institutional Investors (NAFMII) has issued the 'Self-disciplinary Punishment Rules for the Inter-bank Bond Market', which provide that NAFMII may launch investigations and/or impose penalties for non-compliance with its rules on market participants in the China inter-bank bond market.

The disciplinary rules apply to:

- NAFMII members;
- institutions that have voluntarily become subject to NAFMII's supervision; and
- the personnel of these two types of institutions.

Non-NAFMII members that have filed a NAFMII Master Agreement or NAFMII Repo Master Agreement with NAFMII shall be deemed as having voluntarily become subject to NAFMII's supervision, which will include a number of international market participants that otherwise have no dealings with NAFMII.

HKMA issues circular regarding investor protection measures

Following its March 2020 circular entitled 'Circular Issued by the Securities and Futures Commission (SFC) on Reminder of important obligations to ensure suitability and timely dissemination of information to clients', as well as its April 2020 circular entitled 'Circular to issuers of SFC-authorised paper gold schemes', the Hong Kong Monetary Authority (HKMA) has issued a circular to remind authorised institutions of some important investor protection measures amid the volatile markets.

In view of the recent price volatility of various markets and investment products as well as the operational challenges brought about by the COVID-19 pandemic, the HKMA has reminded authorised institutions to remain

vigilant, continue to treat customers fairly and act in the best interest of their customers in the sale of investment products, in line with the Code of Banking Practice and the Treat Customers Fairly Charter. Authorised institutions have also been advised to exercise extra care when handling leveraged transactions where the customer could have potential losses exceeding the invested amount.

Further, the HKMA requires registered institutions to observe the relevant requirements promulgated by it and the SFC when making a solicitation or recommendation on investment products regulated by the Securities and Futures Ordinance.

The HKMA has indicated that it will continue to monitor authorised institutions' compliance with the regulatory requirements as part of its on-going supervision.

HKMA publishes circulars on financial sanctions imposed by foreign governments

In light of the unprecedented circumstances caused by sanctions recently imposed by foreign governments on certain persons in Mainland China and Hong Kong, HKMA has issued circulars to explain its expectations of authorised institutions and stored value facility (SVF) licensees to ensure that a distinction is made between targeted financial sanctions applicable under Hong Kong law and unilateral sanctions imposed by foreign governments.

Under Hong Kong's targeted financial sanctions regime, Hong Kong fully implements targeted financial sanctions in compliance with United Nations Security Council Resolutions, which are implemented in Hong Kong via the United Nations (UN) Sanctions Ordinance and the UN (Anti-Terrorism Measures) Ordinance. The HKMA has emphasised that unilateral sanctions imposed by foreign governments are not part of the international targeted financial sanctions regime, have no legal status in Hong Kong, and create no obligation for authorised institutions and SVF licensees under Hong Kong law.

The HKMA expects authorised institutions and SVF licensees to establish and implement policies for their Hong Kong businesses that are informed by a thorough assessment of any legal, business and commercial risks involved and based on a balanced approach. Boards and senior management of authorised institutions and SVF licensees have also been advised to have particular regard to the treat customers fairly principles in assessing whether to continue to provide services to an individual or entity designated under a unilateral sanction which does not create an obligation under Hong Kong law.

SFC publishes statement on financial sanctions imposed by foreign governments

The SFC has issued a statement on sanctions imposed by the United States Government against individuals in Hong Kong and Mainland China on 7 August 2020. The SFC has indicated that it is closely monitoring the impact that the sanctions may have on the operation of intermediaries, the interests of investors and financial stability and orderliness of the markets in Hong Kong. In considering the implications of the sanctions, the SFC expects intermediaries to carefully assess any legal, business and commercial risks that they may be exposed to, as well as any response to the sanctions to be necessary, fair, and have regard to the best interests of their clients and the integrity of the market.

SFC updates guidance materials to alleviate administrative burden regarding new fund applications and post-authorisation matters

The SFC has updated the following checklist, confirmation, frequently asked questions (FAQs) and guide to alleviate administrative burden in respect of new fund applications and post-authorisation matters:

- FAQs on application procedures for authorisation of unit trusts and mutual funds under the revamped process;
- FAQs on revamped post authorisation process of SFC-authorised unit trusts and mutual funds;
- FAQs on post authorisation compliance issues of SFC-authorised unit trusts and mutual funds;
- FAQs on leveraged and inverse products;
- guide on practices and procedures for application for authorisation of unit trusts and mutual funds;
- information checklist for application for authorisation of unit trusts and mutual funds under the revamped process; and
- confirmation of fulfilment of approval/authorisation condition(s).

In particular, updates have been made to set out requirements in relation to the acceptance of documents by soft copy, un-signed documents and fee arrangements for new fund applications.

RECENT CLIFFORD CHANCE BRIEFING

AMLD5 – expansion of the UK trust registration service – final regulations published

On 15 July 2020, the Government published the regulations implementing the expanded trust registration requirement under the EU Fifth Anti-Money Laundering Directive (AMLD5). The Money Laundering and Terrorist Financing Regulations 2020 are a significant departure from the draft regulations published as part of the technical consultation on implementation and will be well received by those operating in the UK wholesale financial and capital markets. A key feature of the regulations is a new suite of exemptions, many of which are aimed at financial and capital markets transactions.

This briefing considers the regulations and what they mean for these transactions. This briefing paper forms part of a series on the expanded trust registration requirement under AMLD5.

https://www.cliffordchance.com/briefings/2020/08/almd5--expansion-of-the-uk-trust-registration-service---final-re.html

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