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EU Commission consults on roadmap on enhancing convergence of insolvency laws

The EU Commission has launched a consultation on its proposed initiative to enhance the convergence of insolvency laws.

The initiative aims to address discrepancies in national substantive insolvency laws that were recognised as obstacles for the establishment of a well-functioning Capital Markets Union (CMU). In particular, the initiative aims to address aspects of insolvency proceedings that have been identified as barriers to crossborder investment.

According to the roadmap, the EU Commission may consider aligning features of insolvency regimes such as:

- prerequisites for when insolvency proceedings should be commenced (including a definition of insolvency and provisions on who is entitled to file for insolvency);
- conditions for determining avoidance actions and effects of claw-back rights;
- directors' duties related to handling imminent/actual insolvency proceedings;
- position of secured creditors in insolvency taking into account specific needs for the protection of other creditors;

- court capacity when it comes to expertise and necessary training of judges; and
- asset tracing which would be relevant, in particular in the context of avoidance actions.

Comments are due by 9 December 2020.

Banking Union: EU Commission publishes BRRD/SRMR/DGSD review roadmap

The EU Commission has published a roadmap for its review of the bank crisis management and deposit insurance framework set out in the Bank Recovery and Resolution Directive (BRRD), the Single Resolution Mechanism Regulation (SRMR) and the Deposit Guarantee Schemes Directive (DGSD).

The roadmap sets out the Commission's objectives for the review and policy options, including revising the legislative framework to:

- adjust the public interest assessment to ensure a sufficiently broad scope for bank resolution;
- create new tools for orderly liquidation inside resolution with funding appropriate for smaller and medium-sized banks; and
- ensure the availability and usability of tools for DSG interventions in insolvency as an alternative to paying out depositors.

Feedback on the roadmap will be accepted until 8 December 2020. A public consultation is planned for Q4 2020.

CRR: EU Commission adopts draft Delegated Regulation on deduction of software assets from CET1 items

The EU Commission had adopted a draft Delegated Regulation on the deduction of software assets from Common Equity Tier 1 (CET1) items under Article 36 of the Capital Requirements Regulation (CRR), amending the existing regulatory technical standards (RTS) on own funds requirements for institutions.

The draft Delegated Regulation introduces a new Article 13a, which specifies that the amount of software assets that shall be deducted from CET1 items shall be determined on the basis of the prudential accumulated amortisation and sets out the methodology for its calculation.

The Regulation will enter into force the day following its publication in the Official Journal.

MiFID2/MiFIR: ESMA consults on market data guidelines

The European Securities and Markets Authority (ESMA) has published a consultation paper on draft guidelines on market data obligations under MiFID2 and MiFIR.

The draft guidelines, which follow ESMA's 2019 report on market data and aim to ensure financial market participants have a uniform understanding of the requirement to provide market data on a reasonable commercial basis (RCB), cover:

- the provision of market data on the basis of costs;
- the obligation to provide market data on a non-discriminatory basis;

- the per-user fee obligation;
- the obligation to keep data unbundled;
- transparency obligations, including the standardised publication format, key terminology, cost disclosure and auditing practices;
- the obligation to make market data available free of charge 15 minutes after publication.

The consultation closes on 11 January 2021. ESMA expects to publish final guidelines by Q2 2021.

Brexit: ESMA updates statements addressing end of UK transition period

ESMA has updated three 2019 statements addressing reporting, operations and IT systems after 31 December 2020.

ESMA has updated its statements relating to:

- issues affecting European Market Infrastructure Regulation (EMIR) and Securities Financing Transactions Regulation (SFTR) reporting;
- the use of UK data in ESMA databases and performance of MiFID2 calculations; and
- ESMA's Data Operational Plan.

ESMA consults on marketing guidelines for funds

ESMA has launched a consultation on draft guidelines specifying requirements for marketing communications sent to investors promoting undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs). Under the Regulation on facilitating cross-border distribution of collective investment undertakings, ESMA must develop guidelines on requirements for marketing communications, taking into account the on-line aspects of such marketing communications.

ESMA is seeking views on its proposals in its draft guidelines relating to their scope, requirements relating to the identification of marketing communications, the description of risks and rewards in a prominent manner and fair, clear, and not-misleading marketing communications.

Comments to the consultation close on 8 February 2021. ESMA expects to issue final guidelines by 2 August 2021.

ESMA reports on sanctions imposed under AIFMD and UCITS

ESMA has published its third annual report on sanctions imposed in 2019 by national competent authorities (NCAs) under the UCITS Directive.

The report found that the number of NCAs issuing sanctions remained steady at 15, although the financial amount of penalties imposed decreased slightly based on a year on year comparison. ESMA also noted that there was variation in the extent to which NCAs made use of their sanctioning powers and that, for a majority, the number and amount of sanctions issued at a national level was relatively low.

ESMA has also published, for the first time, a report on sanctions imposed by NCAs under the Alternative Investment Fund Managers Directive (AIFMD),

covering 2018 and 2019. The number of NCAs issuing sanctions increased between the reporting periods, from 14 in 2018 to 17 in 2019. The number of financial penalties decreased substantially from 2018 to 2019, but the total amount imposed rose from EUR 4.5 million in 2018 to EUR 9 million in 2019 due to high cumulative sanctions issued by two NCAs. As with the measures under UCITS, ESMA noted that there was variation in the extent to which NCAs made use of their sanctioning powers and that, for a majority, the number and amount of sanctions issued at a national level was relatively low.

ESMA publishes report on liquidity risk in investment funds

ESMA has published a report on the preparedness of investment funds with significant exposures to corporate debt and real estate assets for potential future adverse liquidity and valuation shocks.

The report follows the May 2020 recommendation by the European Systemic Risk Board (ESRB), adopted in response to the COVID-19 pandemic, that ESMA coordinate with NCAs to conduct an enhanced scrutiny exercise of the preparedness of these two fund segments from a financial stability perspective.

The report broadly concludes that although funds managed overall to adequately maintain their activities when facing redemption pressures and/or episodes of valuation uncertainty, the following priority areas are required to enhance their preparedness, including:

- the ongoing supervision of the alignment of the funds' investment strategy, liquidity profile and redemption policy;
- the ongoing supervision of liquidity risk assessment, with particular attention paid to the obligation on management companies to take all factors into account that could impact liquidity or could trigger unwanted sales of assets;
- in the context of the AIFMD review and the call for a UCITS reporting framework, the introduction of additional specifications relating to fund liquidity profile reporting;
- also in the context of the AIFMD review, a harmonised legal framework to govern, and increase the availability and use of, liquidity management tools (LMTs) for fund managers, which should also include disclosure requirements; and
- further supervision of management companies' valuation processes in a context of valuation uncertainty.

ESMA notes that its coordination role has been reinforced in response to COVID-19 and that it will follow up with the NCAs in relation to the priority areas relating to ongoing and further supervision, and that the other two priority areas are more fit to be taken forward in the context of the AIFMD review.

ESMA identifies strategic supervisory priorities for NCAs

ESMA has identified, under its new convergence powers, two key strategic supervisory priorities to be addressed by NCAs. These priorities are intended to:

- avoid unfair and disproportionate fees charged by investment firms and fund managers; and
- improve the quality of transparency data reported under MiFIR.

The NCAs are expected to incorporate these priorities into their supervisory work programmes for 2021.

EMIR: ESMA reports on post-trade risk reduction services

ESMA has published a report on post-trade risk reduction (PTRR) services with regards to the clearing obligation under the European Market Infrastructure Regulation (EMIR).

Under EMIR, ESMA is mandated to report to the EU Commission on whether any trades that directly result from PTRR services should be exempted from the clearing obligation under Article 4(1) of EMIR. In the report, ESMA investigates the different types of PTRR services being offered, their purpose and whether there is a need for the new trades that these may generate to be exempted from the clearing obligation, and whether such an exemption could lead to the risk of some counterparties circumventing the clearing obligation.

ESMA's report concludes, amongst other things, that the benefits of allowing certain PTRR transaction to be exempted from the clearing obligation would reduce risk in the market, allow for legacy trades to be compressed, increase participation in PTRR services of counterparties less interested to participate today (due to complex structures) and reduce complexity in the market overall by using simpler trades for rebalancing. ESMA takes the view that, in the absence of compelling evidence or reasoning to the contrary, these positive effects outweigh the increased operational burden on market participants and regulators.

Brexit: EBA publishes press release on firms' readiness

The European Banking Authority (EBA) has published a press release reminding financial institutions to finalise the full execution of their contingency plans in preparation for the end of the transition period on 31 December 2020.

The EBA highlights the following:

- the finalisation of preparations and effective establishment in the EU as agreed with relevant competent authorities, including the need to have clearly articulated and appropriate booking arrangements, to meet outsourcing requirements, not to outsource activities to such an extent that they operate as 'empty shell' companies, to complete necessary actions regarding repapering of contracts with EU clients, and to comply with all applicable EU legislation and pay particular attention to prudential, consumer protection and AML/CFT requirements;
- issues relating to payments and payment services, including the revocation of issued eIDAS certificates to UK based-third party providers (TPPs) to prevent unauthorised access to payment accounts held at EU-based

account servicing payment service providers (ASPSPs), the application of the Wire Transfer Regulation (WTR) to the transfer of funds to and from the UK, and the application of SEPA rules to credit transfers (SCT) and direct debits (SDD) from and to non-EEA jurisdictions to SCT and SDD transactions with the UK; and

- to adequately and timely inform EU-based customers of any actions being taken for the end of the transition period affecting the availability and continuity of services.

FSB consults on regulatory and supervisory issues relating to outsourcing and third-party relationships

The Financial Stability Board (FSB) has launched a consultation on potential regulatory and supervisory issues posed by outsourcing and third-party relationships. It has published a discussion paper, which draws on findings from a survey of FSB members and presents an overview of the regulatory and supervisory issues. From the survey, the FSB has identified a number of challenges and concerns including:

- the increased reliance on third-party technologies due to the COVID-19 pandemic;
- the negotiation and exercise, particularly in a multi-jurisdictional context, of contractual agreements between financial institutions and third parties to grant the financial institution the appropriate rights to access, audit and obtain information from the third party;
- the management of sub-contractors and supply chains, particularly in the context of financial institutions' response to COVID-19; and
- the potential for systemic risk if several financial institutions receive services from the same third party.

The discussion paper also contains a series of questions aimed at gathering views to aid discussion of the regulatory and supervisory approach to managing the risks posed by outsourcing and third-parties. In particular, the FSB is inviting comments on:

- the key challenges in identifying, managing and mitigating the risks, and how to address them;
- the ways in which financial institutions, third-party service providers and supervisory authorities can collaborate to address the risks on a cross-border basis; and
- the lessons learnt from the COVID-19 pandemic regarding the management of risks.

Comments are due by 8 January 2021.

FSB publishes annual report on implementation and effects of G20 financial regulatory reforms

The FSB has published its 2020 report on the implementation and effects of the G20 financial regulatory reforms.

The report finds that the G20 reforms after the 2008 financial crisis have served the financial system well during the COVID-19 pandemic. Greater resilience of major banks at the core of the financial system has allowed the

system largely to absorb, rather than amplify, the macroeconomic shock. Monetary, fiscal and prudential responses by authorities sustained the supply of credit to the real economy and helped maintain global financial stability.

Given the COVID-19 pandemic, there has been limited additional progress implementing the G20 reforms. Regulatory adoption of several core Basel III elements has generally been timely to date, but there have been delays in implementing other Basel III standards.

Due to the extraordinary circumstances, the FSB and standard-setting bodies (SSBs) have extended the implementation deadlines for certain international reforms to provide additional capacity for firms and authorities to respond to the COVID-19 shock.

The FSB and SSBs intend to carry out further work to identify potential lessons learned for international standards as a result of the COVID-19 pandemic, which is the first major global test of the post-crisis financial system. The FSB and SSBs also intend to continue promoting approaches to deepen international cooperation, coordination and information-sharing, with the support of the G20.

FSB publishes 2020 G-SIB list

The FSB has published the 2020 list of global systemically important banks (G-SIBs) using end-2019 data and an assessment methodology designed by the Basel Committee on Banking Supervision (BCBS).

The 30 banks on the list remain the same as the 2019 list.

FSB member authorities apply requirements to G-SIBs relating to:

- higher capital buffers;
- Total Loss-Absorbing Capacity (TLAC);
- resolution planning and resolvability assessments; and
- high supervisory expectations for risk management functions, risk data aggregation capabilities, risk governance and internal controls.

The BCBS has published additional information to help enhance the understanding of G-SIB scores, including:

- the denominators of each of the 12 high-level indicators used to calculate banks' scores;
- the high-level indicators for each bank in the sample used to calculate these denominators; and
- the cutoff score used to identify the G-SIBs in the updated list and the thresholds used to allocate G-SIBs to buckets for the purpose of calculating the specific higher loss absorbency requirements.

The FSB intends to publish a new list of G-SIBs in November 2021.

Brexit: Equivalence SIs and directions made

Statutory Instruments (SIs) and directions relating to the UK Government's unilateral equivalence decisions in respect of EEA States announced on 10 November 2020 have been laid before Parliament and made according to the negative procedure.

The Central Counterparties (Equivalence) Regulations 2020 (SI 2020/1244) specify that the regulatory framework for central counterparties (CCPs) in each EEA state meet the relevant criteria for equivalence.

The Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) (No. 2) Regulations 2020 (SI 2020/1247) grants states of the EEA and Gibraltar approval as equivalent third countries.

Equivalence directions have also been made under the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/541) relating to:

- the Benchmarks Regulation;
- the Central Securities Depositories Regulation (CSDR);
- the Credit Rating Agencies Regulation;
- the Short Selling Regulation;
- the European Market Infrastructure Regulation (EMIR);
- the Capital Requirements Regulation (CRR); and
- the Solvency II Regulation.

The SIs and directions come into force immediately following the end of the transition period on 31 December 2020.

The UK Government has not ruled out further equivalence decisions. A policy paper on the decisions and a guidance document on the UK's equivalence framework have been published alongside the decisions.

Brexit: FCA updates guidance for EEA firms on FSCR and TPR

The FCA has added new guidance for EEA firms conducting business in the UK relating to the temporary permissions regime (TPR) and financial services contracts regime (FSCR).

The TPR and FSCR have been introduced by UK authorities to limit the impact of the end of passporting of financial products and services provided to UK-based customers by EEA firms. EEA firms that do not plan to take advantage of these regimes to continue to provide services and that plan to stop servicing UK-resident customers should notify the FCA.

The TPR will take effect at the end of the transition period on 31 December 2020 and allow EEA-based firms passporting into the UK to continue new and regulated business within the scope of their current permissions in the UK for a limited period, while they seek full FCA authorisation, if needed.

The FSCR will allow EEA passporting firms that do not enter the TPR to continue to service UK contracts entered into prior to the end of the transition period (or prior to when they enter the FSCR) in order to conduct an orderly exit from the UK market once the transition period has ended.

Future of UK financial services: Chancellor sets out measures on green finance and fintech

The Chancellor of the Exchequer, Rishi Sunak, has delivered a statement to the House of Commons on the future of financial services in the UK,

announcing measures relating to green finance and fintech, as well as measures relating to cross-border financial services.

In relation to green finance, the UK Government intends to make climate-related disclosures mandatory by 2025. An interim report on, and road map for, mandatory climate-related disclosures by the UK's Joint Government-Regulator TCFD Taskforce has been published alongside the statement. The UK Government also intends to implement a green taxonomy and to issue the UK's first sovereign green bond in 2021.

In relation to fintech, it intends to publish a consultation on stablecoins and notes the work by the Bank of England and HM Treasury considering the issuance of central bank digital currencies as a complement to cash.

In relation to cross-border financial services activity, the Chancellor announced an intention to launch a call for evidence on the UK's overseas regime, to consult on reforming the UK's investment funds regime and to set up a taskforce to make recommendations on the UK's listings regime. The Chancellor also made reference to the UK's equivalence decisions for the EU and EEA Member States.

BaFin consults on regulations amending GroMiKV, SolvV and InstitutsVergV

The German Federal Financial Supervisory Authority (BaFin) has published a consultation on regulations to amend the Regulation Governing Large Exposures and Loans of EUR 1.5 Million or More (GroMiKV), the Solvency Regulation (SolvV) and the Remuneration Regulation for Institutions (InstitutsVergV).

The proposed adjustments seek to implement the new European legal requirements under the Capital Requirements Regulation (CRR2), the Capital Requirements Directive (CRD5) and the resulting amendments to the German Banking Act (KWG).

Participants may submit statements on these matters until 4 December 2020.

Brexit: Bank of Italy issues communication on information for clients of UK based financial institutions operating in Italy

The Bank of Italy has issued a communication inviting clients of UK institutions (banks, payment institutions and e-money institutions) to verify that they have received adequate and complete information on the effects of Brexit on existing contracts and, if this is not the case, to contact the relevant institution as soon as possible in order to obtain indications as to whether the existing contractual agreements can be maintained or not.

The transition period provided for in the Withdrawal Agreement ends on 31 December 2020. Once the United Kingdom's exit from the European Union is completed, UK institutions will no longer be able to operate in Italy on the basis of the principle of mutual recognition.

Therefore, after 31 December 2020, the provision of banking and financial services by these institutions will be considered abusive, unless carried out after having secured the appropriate license in Italy (where available).

In the absence of the above licenses, UK institutions have to cease their operations or transfer the existing contracts to another authorised institution.

The Bank of Italy therefore recommends that clients who intend to withdraw from contracts or transfer them to another authorised intermediary should do so promptly and in compliance with contractual and legal provisions (which may provide for special arrangements for the exercise of clients' rights), in order to avoid possible misunderstandings linked to the foreseeable concentration of requests close to the date of 31 December 2020.

Issued a communication

CSSF issues communiqué on the application of SFDR and related RTS

The Luxembourg financial sector supervisory authority (CSSF) has issued a communiqué concerning the application dates of the Sustainable Finance Disclosure Regulation (SFDR) and its related RTS.

In its communiqué, the CSSF reminds that the Level 1 SFDR lays down harmonised rules for financial market participants (including but not limited in Luxembourg to alternative investment fund managers (AIFMs), UCITS management companies, credit institutions or investment firms which provide portfolio management, and institutions for occupational retirement provision (IORP)) and financial advisers (including but not limited in Luxembourg to credit institutions, investment firms, AIFMs and UCITS management companies providing investment advice) on the transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their investment decision-making and/or investment advisory processes and the provision of sustainability-related information with respect to financial products.

The CSSF also stresses that the EU Commission has confirmed in its October 2020 letter to the ESAs that, despite the delay in the availability of the Level 2 RTS relating to the SFDR (initially set for 30 December 2020), the application dates as laid down by the SFDR are being maintained with effect from 2021.

Consequently, the financial market participants and financial advisers subject to the SFDR will therefore need to comply with the Level 1 SFDR's high level and principle-based requirements from 10 March 2021. The Level 2 RTS will then be issued and become applicable at a later stage.

Further points highlighted in the communiqué on the SFDR's application as set out by the Commission in its October 2020 letter include:

- no further RTS are foreseen for disclosure obligations on the integration of sustainability risks at product level, or sustainability risks policies and remuneration policies at entity level;
- with regard to the integration of sustainability risks in the investment decision-making process, financial market participants must, in accordance with the applicable sectoral legislation, already consider sustainability risks in their internal processes;
- in the context of financial products that promote environmental and social characteristics or have a sustainable investment as their objective and qualify under Articles 8 and 9 of the SFDR, in accordance with applicable sectoral legislation, product manufacturers must already describe in the product documentation how the levels of sustainability are achieved. This means that the manufacturers must comply with the disclosure principles set out in Articles 8 and 9 of the SFDR; and

- in relation to transparency of adverse sustainability impacts, numerous financial market participants currently comply with the non-financial reporting requirements under the Accounting Directive 2013/34/EU or adhere to international standards and might consider using that information. Even without the full Level 2 RTS, there are no impediments to financial market participants and financial advisers complying with the Level 1 requirements laid down in the SFDR.

Dutch Financial Markets Amendment Act 2022 now open for consultation

The Dutch Government has launched a consultation on the draft Financial Markets Amendment Act 2022, which will amend the Financial Supervision Act (Wft) to introduce the possibility for payment service providers, electronic money institutions and investment firms to use a 'trust-like' account to segregate clients' assets and money from their own assets. This segregated assets account offers an alternative to the existing methods in the Wft for safeguarding client funds held by these financial institutions, such as a tripartite agreement with a non-affiliated bank or a foundation holding the client's money.

The consultation is open for comments until 18 December 2020.

Dutch bill implementing CRDV and CRR2 adopted by House of Representatives

The Dutch House of Representatives has adopted a bill implementing CRD5 and CRR2. The Senate is expected to adopt the proposal on 1 December 2020 and it is expected to enter into force by 28 December 2020 at the latest.

Polish Financial Supervision Authority reviews adequacy of buffer index of other institutions of systemic importance

On the basis of the provisions of the Act on Macro-prudential Supervision over the Financial System and on Crisis Management in the Financial System of 5 August 2015, the Polish Financial Supervision Authority has, having considered the opinion of the Financial Stability Committee, confirmed that ten banks were identified as other institutions of systemic importance. On these grounds, the Polish Financial Supervision Authority has also decided to change or maintain the relevant capital buffers.

Circular on advertising investment products and services published in Official Gazette

Circular 2/2020 of 28 October of the Spanish Securities Market Commission (Comisión Nacional del Mercado de Valores) (CNMV), on the regulation and control of advertising investment products and services, has been published in the Spanish Official Gazette.

The circular defines which activities are deemed to be 'advertising' and sets out requirements for the content and format of advertising messages. It also establishes rules for internal controls and procedures to be implemented by entities, advertising registration obligations, and the regime applicable in the event that entities decide to voluntarily adhere to self-regulatory systems for advertising activities. This regime is considered equivalent to compliance with the principles and criteria contained in the circular with regard to the content

and format of advertising message. It also governs the possibility of ceasing or rectifying certain advertising activities if requested by the CNMV.

The circular applies to:

- all entities supervised by the CNMV that conduct advertising activities on investment products and services;
- all entities operating in Spain on a cross-border basis; and
- any entities which are not subject to the supervision of the CNMV but which carry out on their own initiative or engage third parties to carry out advertising activities aimed at investors residing in Spain.

The circular enters into force three months after its publication in the Spanish Official Gazette, except for the advertising registrations obligations, which enter into force six months after the publication by the Bank of Spain of the technical specifications stated in the second final provision of the Bank of Spain Circular 4/2020 of 26 June on the advertising of banking products and services.

Bank of Spain consults on amendments to circulars on Central Credit Register and banking service transparency and responsible lending

The Bank of Spain has launched a public consultation on a draft circular amending Circular 1/2013 on the Central Credit Register and Circular 5/2012 on banking service transparency and responsible lending.

The objective of the draft circular is to adapt Circular 1/2013 and Circular 5/2012 to the changes introduced in the regulation of the Central Credit Register (CCR) and the official reference rates, respectively, by Order ETD/699/2004, of 24 July, regulating revolving credit and amending Order ECO/697/2004, of 11 March, Order EHA/1718/2010, of 11 June, and Order EHA/2899/2011, of 28 October

The draft circular will enter into force on 27 January 2021, save for section f of Rule One, which modifies section 7 of Rule Sixteen of Circular 1/2014, of 24 May, of the Bank of Spain on the CCR, which will enter into force on 2 January 2021.

The draft circular will be subject to public consultation until 19 November 2020.

FINMA consults on transparency obligations for climate risks

FINMA has proposed amending its circulars 'Disclosure – banks' and 'Disclosure – insurers' in order to increase transparency regarding the impact of climate change on the financial system.

Financial institutions have until now adopted varying levels of transparency with regard to climate-related financial risks. In order to create more transparency, FINMA is proposing to specify the disclosure requirements pertaining to these risks for large financial market players.

The objective is to achieve a proportionate and principles-based disclosure obligation. Institutions in categories 1 and 2, that is, systemically important banks and large insurance companies, are required to make their climate-related financial risks transparent. The regulatory approach is based on the

internationally recognised recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). A number of banks and insurance companies have already undertaken to disclose their climate-related financial risks in accordance with the principles of the TCFD.

FINMA conducted a preliminary consultation last summer to collect suggestions for a new disclosure practice and engaged in dialogue with representatives of the banking, insurance and asset management sectors, various non-governmental organisations, academia and authorities, among others. It also consulted interested administrative bodies. During these consultations, a number of parties requested the mandatory disclosure not only of qualitative, but also quantitative information. This information is of particular relevance for investors. FINMA will incorporate this request into its consultation draft and thereby raise the issue for debate. The consultation on the amended circulars will last until 19 January 2021.

Banking Regulation and Supervision Agency issues decision regarding FX swap restrictions

The Banking Regulation and Supervision Agency (BRSA) has announced that the total notional principal amount of local banks' FX swap, option, future, forward and other similar derivative transactions with foreign counterparties, under which the Turkish bank will pay TRY and receive FX at the maturity date, may not exceed:

- 20% of the bank's regulatory capital for transactions with a maturity of one year or less;
- 5% of the bank's regulatory capital for transactions with a maturity of 30 days or less; and
- 2% of the bank's regulatory capital for transactions with a maturity of seven days or less.

The above caps have now been amended as per a new BRSA decision dated 11 November 2020 as a step forward in the normalisation process. Accordingly, on and from 11 November 2020, the total notional principal amount of local banks' FX swap, option, future, forward and other similar derivative transactions with foreign counterparties, under which the Turkish bank will pay TRY and receive FX at the maturity date, may not exceed:

- 30% of the bank's regulatory capital for transactions with a maturity of one year or less;
- 10% of the bank's regulatory capital for transactions with a maturity of 30 days or less; and
- 5% of the bank's regulatory capital for transactions with a maturity of seven days or less.

MAS consults on notice regarding identity verification by financial institutions

The Monetary Authority of Singapore (MAS) has launched a public consultation on the proposed draft Notice on Identity Verification with a view to strengthening the level of authentication controls to be implemented by financial institutions and addressing the risks arising from the theft and misuse of an individual's personal particulars.

Under the Notice, the MAS proposes that, where a relevant entity seeks to verify the identity of an individual (which includes an individual authorised to act on behalf of an entity) for non-face-to-face contact, the entity must do so using at least one of certain types of information. The relevant entity is also expected to demonstrate reasonable care to ensure that any third party that it appoints to act on its behalf complies with the rules under the Notice, as if the third party is the relevant entity.

The MAS proposes that the effective date of the Notice will be 6 months from the date of its issuance. The MAS also seeks comments on whether the transition period is adequate for financial institutions to implement the frameworks, processes and controls to comply with the requirements.

Comments on the consultation are due by 9 December 2020.

Coronavirus: ASIC further extends financial reporting deadlines and amends 'no action' position for AGMs

The Australian Securities and Investments Commission (ASIC) has announced that it will extend the deadline for both listed and unlisted entities to lodge financial reports under Chapters 2M and 7 of the Corporations Act by an additional one month in respect of certain balance dates up to and including 7 January 2021.

The extended deadlines for lodgement of financial reports are intended to assist those entities whose reporting processes take additional time due to current remote work arrangements, travel restrictions and other impacts of COVID-19. However, the listed entities will be required to inform the market when they rely on the extended period for lodgement as well as to explain the reasons for relying on the extended deadlines.

ASIC has also adopted an amended 'no action' position where public companies do not hold their annual general meetings (AGMs) within five months after the end of financial years that end from 31 December 2019 to 7 January 2021 but do so up to seven months after year end. The no action position also allows additional time for distribution of financial reports to members prior to the AGM for those companies that have relied on ASIC's extension of time for lodgement of financial reports.

ASIC has indicated that it will continue to monitor how market conditions and COVID-19 developments affect financial reporting and AGM obligations for balance dates after 7 January 2021.

ASIC consults on proposed use of product intervention powers for continuing credit contracts

ASIC has launched a public consultation on the proposed use of its product intervention powers to address significant detriment in relation to continuing credit contracts.

The consultation has been launched following ASIC's earlier consultation (CP 330) published on 9 July 2020 outlining ASIC's proposal to make an industry wide product intervention order to address concerns of ongoing significant detriment in relation to continuing credit contracts that involved unreasonably high costs, in excess of the cost caps in the continuing credit exemption in section 6(5) of the National Credit Code.

In response to the feedback on CP 330, ASIC has now made changes to the draft product intervention order with a view to provide certain exclusions for Buy Now Pay Later arrangements and for fees charged by licensed providers of non-cash payment facilities that are associated with continuing credit providers. ASIC has proposed to insert these exclusions on the basis that the significant detriment described in CP 330, does not, on the evidence currently available, arise from these products.

The specific details of the proposed changes have been set out in the addendum to CP 330 and the updated draft product intervention order.

Comments on the consultation are due by 24 November 2020.

RECENT CLIFFORD CHANCE BRIEFINGS

Security token offerings – the shape of regulation across Asia-Pacific

Security token offerings or STOs, the issuance of digital tokens using blockchain or distributed ledger technology, are increasingly being seen as an alternative to mainstream debt and equity fundraisings. An evolution of the (supposedly) unregulated initial coin offerings or ICOs, STOs are typically structured to sit within securities law frameworks. This means much greater certainty for both fundraisers and investors, resulting in enhanced liquidity.

This briefing paper considers how STOs are structured, as well as some of the benefits and challenges, and explores the evolving regulatory landscape for STOs across key financial centres in Asia-Pacific.

https://www.cliffordchance.com/briefings/2020/11/security-token-offerings---the-shape-of-regulation-across-asia-p.html

Lex COVID 2.0 – further emergency amendments to Czech insolvency law

In the spring of 2020, Act No. 191/2020 Sb. (also referred to as 'Lex COVID') was enacted in the form of emergency legislation as an improvised legislative response to the COVID-19 outbreak. Yet the proposal to amend the Act, tabled by the Czech Government in the Chamber of Deputies as Bill 1060 in late October, gives rise to certain concerns over both its contents and the fact that the Government drafted and tabled the Bill without subjecting it to any public consultation, despite having had six months in which to do so. On 10 November 2020, the amendment was passed into law by the Chamber of Deputies – once again in the form of emergency legislation – despite partial objections raised by the Senate.

This briefing paper outlines the amendments from the perspective of lending and other financial markets.

https://www.cliffordchance.com/briefings/2020/11/lex-covid-2-0--further-emergency-amendments-to-czech-insolvency-.html

DOJ challenges Visa's acquisition of Plaid – a statement on fintech, monopolization, and nascent competition

On 5 November 2020, the Antitrust Division of the Department of Justice filed a complaint to block Visa's proposed acquisition of Plaid. At a time of

increased antitrust scrutiny for tech companies, this lawsuit illustrates the DOJ's interest in financial technology – fintech, protection of nascent competition and maintenance of monopoly claims, and stresses the importance of innovation. This briefing paper discusses the DOJ's complaint.

https://www.cliffordchance.com/briefings/2020/11/DOJ-Challenges-Visas-Acquisition-of-Plaid-a-Statement-on-Fintech-Monopolization-and-Nascent-Competition.html

Interim guidance provided by revenue procedure facilitates LIBOR transition

The Internal Revenue Service (IRS) recently issued Revenue Procedure 2020-44, which is intended to facilitate the market's transition from the London Interbank Offered Rate and other interbank offered rates to alternative reference rates through the adoption of fallback language developed by the Alternative Reference Rates Committee or the International Swaps and Derivatives Association. This revenue procedure is effective for modifications to contracts occurring on or after 9 October 2020 and before 1 January 2023. US taxpayers, however, may rely on Revenue Procedure 2020-44 for modifications to contracts occurring before 9 October 2020.

This briefing paper discusses Revenue Procedure 2020-44.

https://www.cliffordchance.com/briefings/2020/11/Interim-Guidance-Provided-by-Revenue-Procedure-Facilitates-LIBOR-Transition.html