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Coronavirus: EU Council endorses Capital Markets Recovery Package

The EU Council has published final compromise texts and announced its formal endorsement of the Capital Markets Recovery Package, provisionally agreed with the EU Parliament last week.

The Package contains targeted 'quick fix' amendments to various rules aimed at facilitating the EU's economic recovery from the COVID-19 pandemic, including:

- amendments to MiFID2, including simplified information requirements, a targeted exemption allowing firms to bundle research and execution costs in relation to small and mid-cap issuers, and adapted position limits for certain commodity derivatives;
- amendments to the Prospectus Regulation introducing a short-form 'EU Recovery Prospectus' for capital increases of up to 150% of outstanding

capital within a 12 month period, which will apply until 31 December 2022; and

- amendments to the Securitisation Regulation and Capital Requirements Regulation (CRR), including extending the framework for simple, transparent and standardised (STS) securitisations to cover synthetic securitisations, and removing regulatory obstacles to the securitisation of non-performing exposures (NPEs).

Following the legal-linguistic revision of the text, the EU Parliament and Council are expected to formally adopt the amendments without further discussion in February 2021.

Recovery & resolution of CCPs: EU Parliament adopts proposed regulation

The EU Parliament has adopted the proposed regulation on a framework for the recovery and resolution of central counterparties (CCPs).

The adopted text reflects the political agreement reached between the Parliament and the EU Council in June 2020 and was adopted by the Council at first reading in November 2020.

CRR: EU Commission adopts RTS on assigning risk weights to specialised lending exposures

The EU Commission has adopted a Delegated Regulation setting out regulatory technical standards (RTS) under Article 153(9) of the CRR on assigning risk weights to specialised lending exposures.

The RTS specify how institutions should take into account the factors of financial strength, political and legal environment, transaction and/or asset characteristics, strength of the sponsor and developer, and security package when assigning risk weights to specialised lending exposures in respect of which an institution is not able to estimate probability of default (PD) or the institutions' PD estimates do not meet the requirements set out in the CRR. The RTS also specify how institutions should classify each specialised lending exposure in one of the four specified classes, project finance, real estate, object finance and commodities finance.

The Delegated Regulation will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

MiFID2: EU Commission adopts draft delegated regulation amending reporting thresholds for position reporting

The EU Commission has adopted a draft delegated act under MiFID2 amending the thresholds for weekly position reporting by trading venues.

Article 58(1) of MiFID2 requires trading venues to publish a weekly report with the aggregate positions held by different categories of persons in a commodity derivative, emission allowance or emission allowance derivative when both the number of position holders and the size of open position in a specific instrument exceed a minimum threshold in order to provide transparency to market stakeholders.

The applicable minimum thresholds were specified in Delegated Regulation (EU) 2017/565, however, since the application of MiFID2 in January 2018, the thresholds in respect of the size of open positions do not appear to have fully delivered on the objective of market transparency for stakeholders. As a result, the Commission has proposed to amend the thresholds.

PD3: EU Commission adopts Delegated Regulation on minimum information for takeover prospectus exemptions

The EU Commission has adopted a Delegated Regulation supplementing Regulation (EU) 2017/1129 (PD3) as regards the minimum information content of the document to be published for a prospectus exemption in connection with a takeover by means of an exchange offer, a merger or a division.

The Delegated Regulation sets out requirements relating to the following topics, among others:

- minimum information content for the exemption document;
- rules for incorporation by reference;
- rules applicable where the issuer of the equity securities has a complex financial history or has undertaken a significant financial commitment; and
- the applicable language regime.

The Delegated Regulation will enter into force on the twentieth day following that of its publication in the Official Journal.

EMIR: Delegated Regulation on changes to composition, functioning and management of colleges for CCPs published in Official Journal

Commission Delegated Regulation (EU) 2020/2154 amending Delegated Regulation 876/2013 supplementing the European Market Infrastructure Regulation (EMIR) as regards changes to the composition, functioning and management of colleges for CCPs has been published in the Official Journal.

Article 18(6) of EMIR, as amended by Regulation (EU) 2019/2099 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (EMIR 2.2), renewed the mandate for the European Securities and Markets Authority (ESMA), in cooperation with the European System of Central Banks (ESCB), to develop draft RTS specifying the conditions under which EU currencies are to be considered as the most relevant and the details of the practical arrangements for the functioning of CCP colleges.

In order to ensure EU-wide coherence of the processes within colleges, EMIR 2.2 mandates that the written agreements determining the practical arrangements for the functioning of colleges should be refined and more standardised.

ESMA's proposal includes amendments to Commission Delegated Regulation (EU) 876/2013 to facilitate a smooth adjustment of CCP colleges to the amended provisions.

The Delegated Regulation will enter into force on 7 January 2022.

AIFMD Review: EU Commission consults on roadmap

The EU Commission is consulting on its impact assessment on the risks and opportunities related to the review of the Alternative Investment Fund Managers Directive (AIFMD) and a planned legislative proposal to amend the AIFMD.

In June 2020 the EU Commission published its report on the application and the scope of the AIFMD, its impact on investors, alternative investment funds (AIFs), alternative investment fund managers (AIFMs) in the EU and in third countries, followed by a consultation in October 2020 on potential changes to the AIFMD to improve the overall functioning and competitiveness of the EU AIF industry as part of its Capital Markets Union (CMU) project.

The Commission's initiative is intended to address the issues identified in the AIFMD report, to improve the effectiveness of the AIFMD and contribute to the CMU project in line with current and future sustainable finance strategies integrating further ESG-related sustainability considerations in the decision-making process of the financial sector.

Comments on the impact assessment are due by 7 January 2021.

Coronavirus: EU Commission sets out action plan to address NPLs in aftermath of pandemic

The EU Commission has published a communication addressed to the EU Parliament, the Council and the European Central Bank (ECB) on tackling non-performing loans (NPLs) in the aftermath of the coronavirus (COVID-19) pandemic.

The Commission considers that further measures are needed to address a possible accumulation of NPLs in the medium term as a result of the COVID-19 pandemic and proposes a number of actions, including the following, amongst others:

- measures to improve the quality and comparability of, and infrastructure for, data, including among others establishing a central EU data hub to act as a data repository for the NPL market;
- developing guidance for NPL sellers with the European Banking Authority (EBA), to include recommendations on what constitutes a 'best execution' sales process for secondary market transactions;
- developing measures with the EBA to address regulatory impediments to banks' NPL purchases in the secondary markets, including in relation to the regulatory treatment of purchased defaulted assets and the risk weights banks must apply when calculating capital requirements; and
- exploring the possible benefits of establishing an EU network of national asset management companies (AMCs).
- The Commission calls for the completion of the legislative process for a number of existing proposals, including:
- the proposal for a Directive on credit servicers, credit purchasers and the recovery of collateral adopted in March 2018;
- proposed amendments to the securitisation framework for banks' NPEs; and

- the proposal for minimum harmonisation rules on accelerated extrajudicial collateral enforcement.

The Commission further notes that it will establish an NPL advisory panel of relevant industry stakeholders and consumer organisations in order to advise the Commission on future proposals. The communication also includes discussion of State aid considerations for a number of measures in relation to NPLs.

EBA consults on draft guidelines on remuneration policies and internal governance for investment firms

The EBA has issued two consultations on its draft guidelines on sound remuneration and internal governance as mandated under the Investment Firm Directive (IFD).

The EBA is required to develop guidelines on remuneration policies for all staff as part of an investment firm's internal governance arrangements, remuneration policies for identified staff and guidelines that facilitate the implementation of waivers by Member States. Remuneration policies must be gender neutral and respect the principle of equal pay for male and female workers.

To ensure a level playing field and cross-sectoral consistency the draft guidelines are aligned with the guidelines on remuneration policies under the Capital Requirements Directive (CRD).

The second set of draft guidelines on internal governance specify the governance provisions that Class 2 investment firms should comply with, taking into account the proportionality principle. The governance framework aims to ensure that investment firms have a clear organisational structure, effectively manage their risks and have adequate internal control mechanisms in place.

Both consultations run until 17 March 2021.

CRD4: EBA consults on amended ITS for internal benchmarking models

The EBA has published a consultation paper setting out proposed amendments to Commission Implementing Regulation (EU) 2016/2070 on the benchmarking of credit risk, market risk and IFRS9 models.

The fourth Capital Requirements Directive (CRD4) requires competent authorities to conduct an annual benchmarking assessment for the quality of internal approaches used for calculating own funds requirements.

The EBA's proposed amendments are intended to incorporate new elements for the 2022 exercise, in particular as follows:

- expanding the market risk framework in order to allow the collection of additional information, and sensitivities measures in particular;
- amendments to the credit risk framework in order to understand the level of conservatism incorporated in risk estimates; and
- amendments to the IFRS9 templates in order to collect information on additional parameters and to reflect a staggered approach as communicated in the EBA's July 2019 IFRS9 roadmap.

Comments are due by 15 February 2021.

CRR: EBA consults on draft RTS on calculating risk-weighted exposures for collective investment undertakings with unavailable inputs

The EBA has published a consultation paper (EBA/CP/2020/25) on draft RTS specifying how to calculate collective investment undertakings (CIUs)' risk-weighted exposure amounts under the mandate-based approach (MBA), where one or more of the required inputs is unavailable.

The proposed RTS are intended to clarify the regulatory treatment for exposures when the underlying derivatives risk is unknown, and for calculating exposure values for counterparty credit risk, among other points. The draft RTS have been developed on the basis of a mandate under Article 132a(4) of the Capital Requirements Regulation (CRR).

Comments are due by 16 March 2021.

EBA publishes final draft RTS on prudential requirements for investment firms

The EBA has published seven final draft RTS on the prudential treatment of investment firms.

The draft RTS are part of the phase 1 mandates set out in the EBA's June 2020 roadmap on investment firms, which set out the EBA's workplan for delivering mandates under the Investment Firm Directive (IFD) and Investment Firm Regulation (IFR).

The draft RTS focus on:

- reclassification of investment firms to credit institutions;
- capital requirements for investment firms at solo level; and
- requirements on a consolidated basis.

The RTS will be applicable from 26 June 2021.

EBA publishes final RTS on contractual recognition of stays

The EBA has published final draft RTS on the contractual recognition of stay powers under Article 71a(5) of the BRRD.

The draft final RTS concern the requirement for financial contracts governed by third country law and entered into by relevant institutions and entities to include a contractual term by which the parties recognise that the contract may be subject to the exercise of powers by a Member State resolution authority to suspend or restrict rights and obligations.

The draft RTS set out mandatory components that must be present in the contractual recognition term, including:

- an acknowledgement and acceptance that the contract may be subject to the exercise of certain powers by a resolution authority, as transposed by the applicable national law, to suspend or restrict rights and obligations arising from such a contract, and that the conditions relating to the exclusion of certain contractual terms in early intervention and resolution, as transposed, will apply;

- a description of or a reference to those powers (set out in Articles 33a, 69, 70 and 71) and conditions (set out in Article 68) as transposed;
- the parties' recognition that they are bound by the effect of those powers and conditions as transposed; and
- that the contractual term is exhaustive to the exclusion of any other agreements, arrangements or understandings between the counterparties relating to the subject matter of the relevant agreement.

Once endorsed by the EU Commission, the draft RTS will apply from the twentieth day following their publication in the Official Journal.

CRR: EBA publishes final draft RTS on stress scenario risk calculation and annual liquidity measures report

The EBA has published final draft RTS on the capitalisation of non-modellable risk factors (NMRFs) for institutions using the new Internal Model Approach (IMA) under the FRTB (Fundamental Review of the Trading Book).

The final draft RTS, developed according to Article 325bk(3) of Regulation (EU) 2019/876 amending Regulation (EU) No 575/2013 (CRR2), set out the methodologies that institutions are required to use for the purpose of determining the own funds requirements related to non-modellable risks in the new market risk regime.

Separately, the EBA has published its annual report on EU banks' compliance with the liquidity coverage ratio (LCR) under the CRR. Among other things, the report notes that:

- banks continued to maintain and improve their LCR, despite the impact of COVID-19 on liquidity positions, partly due to the support provided by extraordinary central bank facilities; and
- banks tend to hold materially lower liquidity buffers in some foreign currencies, in particular US dollar, but that activation of FX swap lines among the major central banks helped mitigate the stress in the FX funding markets and contributed to an improvement in EU banks' foreign currency LCRs.

The EBA suggests that as the duration and potential extension of currency swap lines are unknown, competent authorities should consider making greater use of their discretion to restrict currency mismatches by setting limits on the significant excesses of net outflows denominated in significant reporting currencies.

CRR: EBA publishes opinion on amendments to draft RTS regarding internal ratings based approach assessment methodologies

The EBA has published an opinion on the EU Commission's proposed amendments to final draft RTS which would specify the assessment methodology that competent authorities (CAs) should use to assess institutions' compliance with requirements regarding the use of the internal ratings based (IRB) Approach.

The opinion has been published following the EBA's original submission of final draft RTS to the Commission in July 2016, the mandate for which is laid down in Article 144(2) of the CRR, and a Commission letter to the EBA in July 2020 setting out its intention to endorse the draft RTS with amendments.

The opinion sets out the following, among others points:

- reasons for rejecting certain of the Commission amendments;
- reasons for adopting substantive amendments, including a proposed amendment which would turn the possibility for third parties involved in model development to provide relevant information for the validation into an obligation; and
- a revised version of the draft RTS, in which the EBA has changed the proposed drafting where it considered that the Commission's amendments do not reflect agreed policy.

Coronavirus: ECB and EBA publish updates on dividends and remuneration policies

The ECB and EBA have published updates on banks' approaches to dividends, remuneration policies and other distributions in light of COVID-19.

The ECB has published a revised recommendation that until 30 September 2021 significant credit institutions exercise extreme prudence when deciding on or paying out dividends or performing share buy-backs aimed at remunerating shareholders.

Alongside the recommendation, the ECB has published a letter on its approach and expectations in relation to remuneration policies, and updated section 4 (restrictions on dividends and variable remuneration) of its FAQs on ECB supervisory measures in reaction to coronavirus.

The EBA has also published a statement urging banks to refrain from distributing capital outside the banking system when deciding on dividends and other distribution policies, including share buybacks, unless extreme caution is applied.

Coronavirus: ESMA renews temporary decision on notification of net short positions

ESMA has renewed its decision to temporarily require holders of net short positions in shares traded on an EU regulated market to notify the relevant national competent authority if the position reaches or exceeds 0.1% of the issued share capital.

The temporary obligations on natural and legal persons do not apply to shares admitted to trading on a regulated market where the principal venue for the trading of the shares is located in a third country or in relation to market making or stabilisation activities.

The measure applies from 19 December for three months and expires on 19 March 2021.

MiFID2: ESMA consults on impact of requirements regarding algorithmic trading

Under MiFID2 and MiFIR, the EU Commission, after consulting ESMA, must present a report to the Parliament and the Council on various provisions, including the impact of requirements regarding algorithmic trading including high-frequency algorithmic trading set out under Article 90(1)(c) of MiFID2.

MiFID2 does not specify which provisions should be reviewed in the report, and many provision and requirements of MiFID2 are related either explicitly to algorithmic trading, e.g. Article 17 of MiFID2, or indirectly, e.g. direct electronic access or tick sizes.

In its consultation, ESMA has adopted a holistic approach and reviewed all relevant provisions together. Its consultation covers:

- the overall approach towards algorithmic trading and high-frequency trading, and in particular, the authorisation regime attached to these types of market participants;
- the provisions applicable to algorithmic and high-frequency traders;
- the provisions applicable to trading venues allowing or enabling these market participants; and
- other provisions that aim at better framing the activity of algorithmic and high-frequency traders, e.g. tick size and market marking.

ESMA's consultation also includes new sections on new issues that have recently emerged in EU markets that are closely linked to algorithmic trading, such as the recent deployment of speedbumps and the sequence of publication between order/trade confirmations sent to individual participants and the public disclosure of orders and transactions.

Comments to the consultation close on 12 March 2021. ESMA will prepare its review for the Commission based on responses received to the consultation, and aims to submit the report by June 2021.

EMIR: ESMA reports to EU Commission on central clearing solutions for PSAs

ESMA has published a second report on central clearing solutions for pension scheme arrangements (PSAs) under EMIR.

The Regulation amending EMIR as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (EMIR REFIT) further extended the exemption from the clearing obligation for PSAs existing under EMIR. This extension was introduced because of the challenges that PSAs would face to provide cash for the variation margin (VM) calls related to cleared OTC derivative contracts.

EMIR REFIT requires that ESMA, in cooperation with the other European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB), prepare a report each year that the exemption still applies that assesses whether viable technical solutions have been developed for the transfer by PSAs of cash and non-cash collateral as VMs and the need for any measures to facilitate those technical solutions.

ESMA published its first report in April 2020 and consulted in June 2020 seeking updated data on European PSAs' portfolios and on the quantitative impact of moving their OTC derivatives portfolios to central clearing.

ESMA considers it unlikely that, after work from stakeholders and regulators since the start of the exemption, a new solution will emerge at this stage, and that the most likely scenario is that existing actors (regulators, CCPs, clearing members and their clients) will optimise already existing solutions. While some of these existing solutions will need further development or regulatory consideration, their addition should provide the conditions for PSAs to be able to clear and meet VM calls.

The existing exemption is due to expire in June 2021. To allow a thorough analysis and potential development of operational changes and/or regulatory adjustments to be effective, ESMA takes the view that the temporary exemption could be renewed by one year under EMIR to June 2022.

EMIR REFIT: ESMA publishes final report on technical standards on reporting, data quality, data access and registration of TRs

ESMA has published its final report on draft RTS and implementing technical standards (ITS) on reporting requirements, data quality, data access and registration of trade repositories (TRs) under the Regulation amending EMIR as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of TRs and the requirements for trade repositories (EMIR REFIT).

In March 2020 ESMA consulted on its proposed technical standards, which sought to build on existing rules and to revise certain aspects of reporting to TRs to align requirements with the global guidance developed by the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO).

The final report contains the assessment of the feedback to the consultation paper and ESMA's technical standards on reporting requirements, procedures to reconcile and validate the data, as well as the amendments to the technical standards on registration and access by the relevant authorities under EMIR REFIT.

The draft standards will be submitted to the EU Commission for endorsement. Following the entry into force of the technical standards, ESMA envisages an 18 month implementation period.

AIFMD: ESMA publishes final report on guidelines addressing leverage risk

ESMA has published its final report on guidelines addressing leverage risk in the alternative investment fund (AIF) sector.

The ESRB requested guidance from ESMA on Article 25 of the Alternative Investment Fund Managers Directive (AIFMD) in its April 2018 recommendations to address liquidity and leverage risk in investment funds.

Recommendation recommended that ESMA give guidance on:

- the framework to assess the extent to which the use of leverage within the AIF sector contributes to the build-up of systemic risk in the financial system; and
- the design, calibration and implementation of macroprudential leverage limits.

ESMA consulted on its proposed draft guidelines in March 2020. Its final report gives an overview of the feedback received to its consultation and its final guidelines on Article 25 of the AIFMD.

The guidelines will apply two months after their date of publication on ESMA's website in all EU official languages.

ESMA publishes cloud outsourcing guidelines

ESMA has published its final guidelines on outsourcing to cloud service providers (CSPs). The guidelines are intended to complement the existing outsourcing guidance published by the EBA in February 2019 and the European Insurance and Occupational Pensions Authority (EIOPA) in February 2020. They provide guidance on:

- the risk assessments and due diligence which firms should undertake on CSPs prior to outsourcing;
- the governance, organisational and control frameworks that firms should put in place to monitor the performance of CSPs;
- how firms can exit cloud outsourcing arrangements without undue disruption to their business;
- the minimum elements that outsourcing and sub-outsourcing agreements should include;
- what information should be notified to national competent authorities (NCAs); and
- how NCAs should supervise cloud outsourcing arrangements, including requirements on assessing and monitoring risk, and ensuring effective supervision of functions outsourced outside the EU.

The guidelines will now be translated into the official EU languages and published on ESMA's website. Once the translations are published, NCAs will have two months in which to notify ESMA whether they comply, or intend to comply, with the guidelines.

SRB publishes communication on MREL prior permission regime

The Single Resolution Board (SRB) has published a communication updating its approach to the prior permission regime for calling, redeeming, repaying or repurchasing of eligible liabilities instruments ahead of their maturity.

The SRB is updating its procedure to take account of:

- the expanded scope of the permission regime to all minimum requirement for own funds and eligible liabilities (MREL), including senior unsecured liabilities and internal MREL eligible liabilities, introduced by Regulation (EU) 2019/877 (SRMR2); and
- forthcoming RTS specifying the procedural aspects of the permission regime, including information requirements and the timeframe for the assessment of applications, under Regulation (EU) 2019/876 (CRR2).

Among other things, General Prior Permissions (GPPs) will be extended until new MREL targets under SRMR2 are provided, after which no permission will be required until 31 December 2021. However, for redemptions of MREL eligible liabilities to be performed after 31 December 2021, institutions will need to submit applications to the SRB four months in advance (unless amended by the RTS).

SRMR2 applies from 28 December 2020 and the new regime enters into force on 1 January 2022. The EBA is expected to publish the RTS in Q1 2021.

Council of Financial Regulators releases statement by Trans-Tasman Council on Banking Supervision

The Council of Financial Regulators (CFR) has released a statement by the Trans-Tasman Council on Banking Supervision (TTBC), following the TTBC's regular end-of-year meeting on 3 December 2020.

All TTBC members provided updates on recent policy announcements, regulatory interventions and significant work to be undertaken in the coming months, including an update on the review of the Reserve Bank of New Zealand Act. The fiscal strategies discussion highlighted the importance of New Zealand and Australia starting with a strong fiscal position and using this position to flexibly support their economies. The TTBC also considered the need to re-examine fiscal strategies in light of the changed fiscal and economic circumstances and maintain the capacity to respond to future shocks.

While reviewing information sharing arrangements relating to the Australian Securities Exchange and New Zealand's Exchange, the TTBC agencies expressed their intention to ensure information about incidents affecting financial market infrastructures (FMIs), including outages, can be shared across jurisdictions between agencies, regulators and, where appropriate, FMIs. Further, it was agreed that the future work of the TTBC will include:

- finalising work on outstanding technical issues relevant to crisis preparedness and resilience;
- implementing recommendations to enhance crisis communication arrangements from a trans-Tasman crisis simulation;
- additional information sharing and monitoring including around the pandemic response and recovery; and
- strategies to promote cyber resilience.

The TTBC heads agreed to meet in June and December in 2021, with additional meetings if required by circumstances, and the TTBC deputies will meet separately in March and September 2021.

Green finance: NGFS reports on central banks' implementation of sustainable investment practices in portfolio management and inclusion of climate risk in operational policies

The Network for Greening the Financial System (NGFS) has published two new publications as part of its efforts to support the goals of the Paris Agreement. The first is a progress report on the implementation of sustainable and responsible investment (SRI) practices in central banks' portfolio management. It presents the results of a survey of NGFS members, representing a total of 40 central banks, along with case studies of their experiences. Key findings of the report include:

- a large majority of respondents have taken, or are planning to take, initial steps in adopting some form of SRI practices in one or more of their portfolios;
- central banks have varying SRI objectives and many are still determining which best align with their portfolios' characteristics;
- green bond investing, negative screening and environmental,
- social and governance (ESG) integration are the most popular investment strategies among respondents;
- there has been modest progress with respect to reporting frameworks, with only 10% of respondents following the recommendations on climate related financial disclosures issued by the Financial Stability Board;
- some central banks have made progress in embedding SRI in their governance structures, including establishing SRI committees or dedicated staff; and
- over a third of respondents use ESG and climate-related data from external providers but others remain cautious due to the limited comparability, standardisation and transparency of data.

The second publication is the results of the NGFS's survey of central banks' preparedness to cater for climate-related risks in their monetary policy operations. Overall, their responses demonstrated that, while many central banks are considering climate-related measures in general terms and see scope in their mandates for adjusting their operational frameworks to reflect them, the actual implementation of specific measures in their operational frameworks is still at a very early stage. The respondents identified the mitigation of financial risks as the main incentive for adopting protective measures, and the orderly transition to a low-carbon economy to ensure a smooth monetary transmission over the long term as the main incentive for adopting proactive measures. Key barriers to adoption included a lack of consistent climate-related disclosure requirements and the risk of potentially hindering central banks' operational ability to pursue their conventional monetary policy targets. Central banks viewed international coordination as key to facilitating the integration of climate-related risks into their operational frameworks.

Alongside the publication of these two reports, the NGFS has announced the addition of eight central banks and supervisors to its coalition, including the US Federal Reserve System, Central Bank of Paraguay, Financial Regulatory Authority of Egypt, Financial Services Authority of Indonesia, Central Bank of Iceland, Polish Financial Supervision Authority, Central Bank of Uruguay and ESMA.

French and Dutch financial market authorities call for EU regulation on ESG data, ratings, and related services providers

The French Autorité des Marchés Financiers (AMF) and the Dutch Autoriteit Financiële Markten (AFM) have called for a European regulatory framework for sustainability related service providers (SSPs) who provide ESG data, ratings and other related services to financial market participants. In particular, in a joint position paper the AMF and the AFM propose the use of an EU regulation to entrust the supervision of these SSPs to ESMA. The proposed framework is aimed at preventing misallocation of investments, greenwashing (presenting a given investment as 'greener' than it actually is), and ensuring investor protection. It includes requirements on the transparency of methodologies, management of conflicts of interest, internal control processes, and enhanced dialogue with companies subject to sustainability ratings.

Brexit: BoE and PRA publish final policy statement on changes at the end of the transition period

The Bank of England (BoE) and Prudential Regulation Authority (PRA) have published a policy statement (PS27/20) setting out final and near-final amendments to financial services legislation required before the end of the transition period on 31 December 2020.

Among other things, the policy statement contains:

- a final BoE transitional direction and near-final PRA transitional direction, and general guidance on their use of the temporary transitional power (TTP);
- a statement of policy on the interpretation of EU guidelines and recommendations;
- updated BoE and PRA supervisory statements; and
- EU Exit instruments making changes to existing PRA rules and onshored Binding Technical Standards (BTS) relevant to the BoE's and PRA's remits.

FCA consults on prudential regime for UK investment firms

The Financial Conduct Authority (FCA) is consulting on the first tranche of its proposed rules (CP20/24) to introduce the UK Investment Firm Prudential Regime (IFPR), a new prudential regime for UK firms authorised under MiFID. This is the first of three consultations the FCA plans to publish over the next year to introduce the regime in January 2022.

The new regime aims to streamline and simplify the prudential requirements for solo-regulated UK investment firms (FCA investment firms). Most of the relevant prudential rules for FCA investment firms will be brought into a new single prudential rulebook (MIFIDPRU).

Specific changes the FCA is proposing to the existing regime for FCA investment firms include:

- replacing current definitions of FCA investment firms, such as BIPRU and IFPRU with two broad categories, where firms will either be a small and non-interconnected (SNI) investment firm or they will not;
- applying prudential consolidation to investment firm groups unless the FCA has granted permission to a group to use the alternative of the group capital test;
- own funds of FCA investment firms should be made up solely of common equity tier 1 capital, additional tier 1 capital and tier 2 capital;
- introducing a new permanent minimum requirement as one of the floors below which its own funds must not fall, based on the activities that an

FCA investment firm undertakes. The FCA also proposes increasing the initial capital required for a firm to become authorised as an FCA investment firm;

- a new approach to calculating capital requirements, 'K-factors', based on the activities that an FCA firm undertakes;
- new monitoring requirements for general concentration risk that will apply to all FCA investment firms, including entities with which FCA investment firms place their client assets and own cash, and to non-SNI firms; and
- requiring FCA investment firms to assess and hold financial resources against the potential for harm they present to markets and consumers.

Additionally, the FCA is also seeking feedback on its proposed template for the new reporting to support the IFPR and associated guidance.

Comments to the consultation close on 5 February 2021. The FCA plans to publish two further consultations in Q2 and Q3 2021. Following each consultation, the FCA will publish a policy statement and near-final rules.

FCA establishes temporary registration regime for cryptoasset firms

The FCA has established a temporary registration regime to allow certain existing cryptoasset firms to continue trading after 9 January 2021. The regime is being established for cryptoasset firms that were in operation before 10 January 2020 and have applied for registration with the FCA under the Money Laundering Regulations prior to 16 December 2020 but whose applications are still being processed. Under the temporary regime, these firms will be permitted to continue trading after 9 January 2021 until 9 July 2021, pending the FCA's final decision regarding their application.

Firms that began operating after 10 January 2020 must obtain full registration with the FCA before conducting business. Firms that did not submit an application by 15 December 2020 are not eligible for the temporary registration regime and must return cryptoassets to their customers and stop trading by 10 January 2021. The FCA advises consumers who use cryptoasset services to ensure any UK-registered firms they have dealings with are on the FCA's register or temporary registration list and, if they are not, to withdraw their cryptoassets and/or money before 10 January 2021.

CRD5: FCA publishes policy statement on dual-regulated firms remuneration code

The FCA has published a policy statement (PS20/16) setting out its feedback and final rules following its consultation (CP20/14) on proposals to amend its 'Dual-regulated firms Remuneration Code' (SYSC 19D) and relevant non-Handbook guidance in order to reflect the fifth Capital Requirements Directive (CRD5).

In CP20/14, the FCA proposed amending its remuneration rules and guidance for dual-regulated firms so that they remained largely consistent with the approach taken by the Prudential Regulation Authority and continued to work effectively at the end of the Brexit transition period. The proposed amendments included:

- adding categories of staff who must be included as material risk takers (MRTs);

- replacing the current proportionality thresholds with exemptions from some remuneration rules for firms below a certain size and for individuals with remuneration below a certain level;
- amending the criteria for assessing whether a UK branch of a third country firm is in scope of application of certain rules;
- amending the minimum deferral and clawback periods;
- introducing a new requirement for firms to have gender neutral remuneration policies and practices; and
- permitting listed firms to award variable remuneration in the form of share-linked instruments and equivalent non-cash instruments.

The FCA received ten responses to the consultation. Respondents were broadly supportive of the proposals, although they raised concerns regarding the application of remuneration requirements to groups on a consolidated basis, the minimum deferral and clawback periods, and part-year MRTs in role for less than three months. The FCA has therefore revised the guidance to provide clarity on part-year MRTs and the application of remuneration requirements to MRTs in groups, but has otherwise published the final rules as consulted upon.

The new rules and guidance will come into force on 29 December 2020. Firms are required to apply the new rules and guidance from the next performance year starting on or after 29 December 2020.

Brexit: FCA updates supervisory statement on MiFID transparency regime

The FCA has published a supervisory statement setting out how it will operate the pre- and post-trade transparency regime for the secondary trading of financial instruments after the end of the transition period on 31 December 2020.

The statement sets out the FCA's intended use of its temporary powers under the UK's Markets in Financial Instruments Regulation (UK MiFIR) in relation to:

- the Financial Instruments Reference Database (FIRDS), the Financial Instruments Transparency System (FITRS), the trading venue register and the systematic internalisers (SI) register;
- the concept of traded on a trading venue (ToTV);
- the submission of transparency data to the FCA;
- the double volume cap (DVC);
- transparency waivers and deferrals;
- equity transparency;
- frequent batch auctions (FBAs);
- bond transparency;
- derivatives and other non-equity instruments transparency;
- actionable indications of trading interest;
- SIs;
- trade reporting;

- tick sizes; and
- commodity position limits.

The supervisory statement replaces statements issued in March and October 2019 and applies if there is no free trade agreement (FTA) or mutual equivalence decisions in areas relevant to the MiFID markets regime. It may be subject to change in the event of a free trade agreement being reached, mutual equivalence decisions being taken or if market conditions develop.

Brexit: HM Treasury notes intention to amend notification thresholds under Short Selling Regulation

HM Treasury (HMT) has published guidance on notification thresholds under the Short Selling Regulation (SSR).

In the guidance, HMT notes its intention to lay a statutory instrument (SI) following the end of the transition period amending the initial notification threshold for reporting net short positions to the FCA in relation to the issued share capital of a company that has shares admitted to trading on a trading venue. In particular, the threshold is to be amended from 0.2% to 0.1%, coming into force on 1 February 2021.

HM Treasury seeks evidence on cross-border financial services

HMT has published a call for evidence on the framework for overseas access to UK markets.

The call for evidence seeks to take stock of the current overseas framework and its operation. In particular, information is sought on the following related but distinct regimes:

- the overseas persons exclusion (OPE);
- investment services equivalence under Title VIII of the UK Markets in Financial Instruments Regulation (UK MiFIR);
- recognised overseas investment exchanges (ROIEs); and
- the Financial Promotion Order (FPO) in general, and specifically the distribution of certain overseas long-term insurance products in the UK.

The call for evidence closes on 11 March 2021. HMT is expected to publish its future approach to the overseas regime in 2021.

PRA publishes Dear CEO letters to international banks, deposit takers and insurance firms on 2021 priorities

The PRA has published three Dear CEO letters setting out its 2021 supervisory priorities for regulated international banks, UK deposit takers and insurance firms.

Noting that COVID-19 represents an over-arching issue, the letters are intended to provide an overview of the PRA's non-exhaustive priorities for 2021, covering:

- financial resilience, including the usability of liquidity and capital buffers, sustainable business models and credit risk management practices;
- operational risk and resilience, including an intention to set standards for operational resilience and outsourcing during 2021;

- LIBOR transition, including an expectation of intensive efforts and early progress in 2021; and
- financial risks arising from climate change, including the expectation that firms will enhance and embed their approaches to managing climate-related financial risks by end 2021.

In addition, the PRA continues to view strong governance at firms as key in meeting its expectations, and diversity as important for improving decision-making.

The UK deposit takers supervision letter sets out additional priorities concerning competition and future regulatory frameworks, including an intention by the PRA to finalise its approach for new and growing banks in H1 2021, an intention by the BoE to make an initial publication on its review of aspects of its MREL framework by end 2020, and an intention by the BoE's Financial Policy Committee and Prudential Regulation Committee to conduct a review of the UK leverage ratio framework.

The insurance supervision letter also notes that the PRA will assume functions at the end of the transition period previously carried out by the European Insurance and Occupational Pensions Authority (EIOPA), including the publication of technical information used in the calculation of insurance liabilities.

Working Group on Sterling Risk-Free Reference Rates publishes papers on loan market transition

The Working Group on Sterling Risk-Free Reference Rates has published materials to help the discontinuation of new GBP LIBOR lending by end-Q1 2021.

The Working Group has published:

- a paper on credit adjustment spread methods for active conversion of GBP LIBOR referencing loans, which is intended to facilitate consideration of the key methodologies emerging in the loan market and how these compare to the approaches taken in the bond and derivatives markets;
- a document providing an indicative path to the discontinuation of new GBP LIBOR lending by end-Q1 2021, to act as a guide for lenders, borrowers and infrastructure providers in determining intermediate steps within their firms to meet that timeline; and
- an open letter to loan system vendors and treasury management system providers asking them to support their clients and the market in their transition away from LIBOR. The Working Group asks vendors to ensure that their software is able to accommodate the Working Group's loan market convention recommendations ahead of end-Q1 2021.

BaFin consults on guidance note on external bail-in implementation

The German Federal Financial Supervisory Authority (BaFin) has launched a consultation on a draft guidance note on the implementation of bail-in of an institution in the systems of financial market infrastructures such as central securities depositories (external bail-in implementation). The draft guidance note is the extension of its predecessor of the same name, which was issued on 1 October 2019.

The note contains specifications on the activities to be carried out by the actors involved, the information to be exchanged, communication channels, timelines and format templates to support effective and efficient implementation of the resolution tools of participation of holders of relevant capital instruments and creditor participation in accordance with sections 89 and 90 of the German Recovery and Resolution Act (Sanierungs- und Abwicklungsgesetz – SAG) (Articles 21 and 27 of the Single Resolution Mechanism Regulation (SRMR)).

The main enhancements particularly relate to the extension of trading suspension/cancellation, the suspension of payments (interest and principal) during technical implementation, the listing process (for example, in the event of a change of legal form), as well as pool factors and foreign currency bonds.

Comments on the draft guidance note may be submitted to BaFin until 15 January 2021.

BaFin issues circular on use of joint SSM IMAS portal with European Central Bank

BaFin has published a circular on the use of the joint SSM IMAS portal with the ECB.

As of 27 January 2021, the ECB will allow directly supervised institutions, financial holding companies and mixed financial holding companies to electronically submit notifications of the intention to appoint board members via the joint portal.

This submission option applies in particular to notifications:

- of the intention to appoint a director to the management board of a significant institution; and
- concerning the appointment of a director to the supervisory board of a significant institution.

Therefore, as of the launch of the joint SSM IMAS portal with the ECB, BaFin will, until further notice, refrain from resubmitting notifications in paper form that have been submitted electronically via this portal.

Market Abuse Regulation: BaFin consults on guidelines on general criteria for ad hoc publicity obligations and deferral options

BaFin has launched a consultation on guidelines for determining general criteria for ad hoc publicity obligations and deferral options for credit and financial institutions regarding banking supervision and resolution as an Annex to the Issuer Guidelines (Emittentenleitfaden), Module C – Regulations on the Market Abuse Regulation (MAR).

In particular, the guidelines take into account when the existence of inside information should be examined in the context of a restructuring and/or resolution measure. In addition, the guidelines provide guidance when deciding on an exemption situation pursuant to Article 17 paragraph 4 or 5 MAR.

The planned review of MAR by the EU Commission may still result in changes in some areas. In addition, further adjustments may be made to take into account the adoption of the German Law on the implementation of Directives

(EU) 2019/878 and (EU) 2019/879 on risk reduction and strengthening of proportionality in the banking sector (Risikoreduzierungsgesetz, RiG).

The consultation ends on 5 February 2021.

Brexit: Bank of Italy issues communication to UK institutions in preparation for end of transition period

In light of the approaching end of the transition period agreed in the context of Brexit negotiations, the Bank of Italy has issued a communication inviting UK institutions that have not already done so to conclude plans for an ordered management of Brexit and setting out its expectation that institutions should have already submitted information to their clients about the impact of Brexit and managed the transition in a careful manner.

With a focus on customer protection, the Bank of Italy also invites institutions to strengthen their tools and channels of assistance and communication, including those online, in favour of customers, to be kept active even after the end of the transition period.

In particular, institutions will have to indicate at least:

- contact details that clients can refer to;
- procedures to be activated to receive assistance in relation to their specific needs or to present reports or complaints;
- non-judicial dispute resolution systems to which they adhere; and
- deposit protection schemes applicable to existing accounts and any changes that may occur after 31 December 2020 if the contracts are continued.

Shareholder Rights Directive II: Consob takes further steps towards full implementation

The Commissione Nazionale per le Società e la Borsa (Consob) has approved the amendments to the Regulation on transactions with related parties, the Consob resolution no. 11971 of 14 May 1999 (Issuers Regulation) and the Markets Regulation with a view to fully implementing the Shareholder Rights Directive II (EU) 2017/828 (SHRD II).

With regard to the Regulation on transactions with related parties, the main changes concern:

- the definition of the directors involved in an operation with related parties required to abstain from voting; and
- the fact that the Board of Directors is entitled to approve transactions of greater importance, which is also extended to smaller companies, newly listed companies and companies with widely distributed shares, as well as in cases of urgency.

The adopted solutions are intended to maintain the flexibility provided for in the regulations already in force, which are largely consistent with SHRD II. For these changes, it is provided that a transitional period until 30 June 2021 applies. Companies will have to adapt their procedures to the new provisions within this period.

As regards the Issuers' Regulations, the amendments concern:

- transparency rules on remuneration with regard to the disclosure and content of the related report on the remuneration policy and the remuneration paid, and the applicable disclosure schemes; and
- regulations on the transparency of voting procedures applicable to managers of assets and advisors (for which the methods and terms of compliance are indicated).

The provisions referred to above will be applicable to shareholders' meetings to be held in 2021.

On this occasion, further amendments were made to the Issuers' Regulations, implementing the new definition of small and medium-sized enterprises (SMEs), as recently reformulated in the Legislative Decree no. 58/1998.

CSSF issues new and revised circulars on central administration, internal governance and risk management

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued the following circulars:

- Circular 20/759 amending Circular 12/552 on central administration, internal governance and risk management (as amended);
- revised consolidated Circular 12/552 (as amended in particular by Circular 20/759) (the track-changes version is attached to Circular 20/759);
- Circular 20/757 introducing Circular 20/758 on central administration, internal governance and risk management for investment firms; and
- Circular 20/758 on central administration, internal governance and risk management for investment firms, which repeals and replaces Circular 12/552 for such firms.

Circular 20/759 incorporates a number of EBA guidelines into Circular 12/552, one of the central CSSF circulars for banks in Luxembourg, and introduces, amongst other things, the following amendments to that circular:

- with respect to the scope of application, the revised Circular 12/552 applies to credit institutions and professionals performing lending operations. It no longer applies to investment firms, which are now covered by a separate circular, the new Circular 20/758. In addition, the scope has been extended to cover financial holding companies and mixed financial holding companies;
- with respect to the proportionality principle, it introduces a more precise articulation of this principle by its attachment to the concept of systemic institution and provides clarifications on its application for the purpose of the implementation concerning internal control functions;
- strengthening the management body in its monitoring function through reinforced diversity and independence provisions;
- the inclusion of environmental, societal and governance (ESG) factors to ensure the viability of the business model; and
- the introduction of a summary chapter dedicated to the risk arising from the custodian bank activity.

Through its Circular 20/757, the CSSF repeals Circular 12/552 and replaces it with Circular 20/758 with respect to investment firms.

It also provides a list of key changes, which cover in particular the amendments resulting from the incorporation into Circular 20/758 of certain EBA guidelines, covering the extension of scope to financial holding companies and mixed financial holding companies, clarifications on the proportionality principle, reinforced diversity and independence provisions as well as the inclusion of the ESG factors.

Circulars 20/757, 20/758, 20/759 and the revised Circular 12/552 will apply as of 1 January 2021.

CSSF issues circular on liquidity risks arising from margin calls

The CSSF has issued a circular (20/761) on liquidity risks arising from margin calls.

The circular indicates that the CSSF, as competent authority in charge of the supervision of clearing members and of financial and non-financial counterparties in Luxembourg, intends to comply with the ESRB recommendation dated 25 May 2020 (ESRB/2020/6), the aim of which is to address liquidity risks stemming from margin calls, in the context of volatile markets and uncertain collateral valuation.

The CSSF notes that the outbreak of the COVID-19 pandemic resulted in significant margin calls across centrally cleared and non-centrally cleared markets. Looking ahead, the ability of market participants to cover margin calls will depend on volatility levels and on the resilience of their liquidity management. In this context, sudden and significant changes and cliff effects relating to initial margins and collateral must be limited: i) by CCPs vis-à-vis their clearing members, ii) by clearing members vis-à-vis their clients, and iii) in the bilateral sphere. It further implies that CCPs, while maintaining their financial resilience, avoid excessive liquidity constraints for clearing members and that clearing members do so for clients.

CSSF issues circular on mandatory use of IMAS Portal for fit and proper applications submitted by significant credit institutions

The CSSF has issued a circular (20/763) on the mandatory use of the IMAS Portal for fit and proper applications submitted by significant credit institutions. The IMAS Portal is a new digital gateway for supervisory processes, which will be launched by the ECB and the CSSF on 27 January 2021.

In its circular, the CSSF emphasises that the use of the IMAS Portal does not change the legal environment and the allocation of legal responsibilities between the CSSF and the ECB. The CSSF further specifies that it remains the entry point in line with the SSM Framework Regulation and will have primary availability to all information received via the IMAS Portal.

The circular applies to all significant credit institutions incorporated under Luxembourg law.

CLIFFORD CHANCE

CSSF issues circular regarding survey of amount of covered deposits held as of 31 December 2020

Acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), the CSSF has issued CSSF-CPDI circular 20/24 dated 11 December 2020 regarding the survey of the amount of covered deposits held as of 31 December 2020.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL) (in particular to all credit institutions incorporated under Luxembourg law, to the POST Luxembourg, and to Luxembourg branches of non-EU/EEA credit institutions).

The collected data is intended to enable the CPDI to determine (i) the contributions that become necessary for the FGDL to maintain its target level in 2021 referred to in Article 179 of the amended law of 18 December 2015 on the failure of credit institutions and certain investment firms and (ii) the contributions to the buffer of additional financial means referred to in Article 180 of the 2015 law.

CSSF issues communication on transparency requirements and fast track procedure in relation to SFDR

The CSSF has issued a communication in relation to the new regulatory requirements contained in Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR), which requires, among others, management companies and alternative investment fund managers (IFMs) of undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs) to comply with harmonised rules on transparency with regard to (i) the integration of sustainability risks into investment decisions, (ii) the consideration of adverse sustainability impacts and (iii) the disclosure of sustainability-related information.

In its communication, the CSSF asks IFMs to assess their situation in order to comply with the SFDR transparency requirements, including more particularly the pre-contractual disclosure requirements that have to be implemented at product/fund level as per Articles 6 to 9 of SFDR. In this respect, the CSSF reminds IFMs that they must put in place and implement by 10 March 2021 the adequate disclosures in UCITS prospectuses, inform investors of AIFs through the issue document (if any) or through any other investor disclosure document in accordance with Article 23 of the AIFMD, it being understood that the exact scope of such disclosures will vary as a consequence of the prior categorisation of each relevant UCITS/AIF as an Article 8 product, Article 9 product or other financial product under SFDR.

In anticipation of the above SFDR compliance at product level, the CSSF requires that the prospectuses/issue documents of Luxembourg UCITS and AIFs are updated and submitted to it with all applicable SFDR disclosures by 28 February 2021. In this context, the CSSF has introduced a specific SFDR fast track procedure, which is available from 16 December 2020 until 28 February 2021.

Dutch bill implementing CRD5 and CRR2 to enter into force on 29 December 2020

The bill implementing CRD5 and the revised Capital Requirements Regulation (CRR2) in the Netherlands has been published, together with the date of entry into force, which is 29 December 2020.

Coronavirus: Polish Financial Supervision Authority issues communication regarding deferment of obligation to apply ESEF

In connection with the COVID-19 pandemic, the Ministry of Finance and the Polish Financial Supervision Authority have decided to defer for a year the obligation to apply the European Single Electronic Format (ESEF) in financial reporting, until 2022.

At the same time the possibility to use this format already when reporting for the year 2020 has been maintained.

Polish Financial Supervision Authority sets out position on dividend policy in 2021

The Polish Financial Supervision Authority (PFSA) has presented its position on the dividend policy in 2021. Amongst other things, the PFSA has indicated that it regards as necessary the withholding of the payment of dividends by commercial banks in the first half of 2021, and its position regarding the dividend policy in the second half of 2021 will be presented after an analysis of the financial situation of the sector in the first half of the year.

Moreover, the PFSA also expects that no other actions, in particular those that remain outside the scope of the current business and operating activity and which could lead to a reduction of the capital base, will be taken without prior consultation with the supervisory authority. This also applies to the possible distribution of dividends from undistributed profit from previous years and redemption of treasury shares. The performance of such operations should always be preceded by consultations with the supervisory authority and dependent on their positive outcome.

HKMA consults on revisions to credit valuation adjustment risk framework

The Hong Kong Monetary Authority (HKMA) has launched a public consultation on revisions to its current regulations on the credit valuation adjustment (CVA) capital charges in the Banking (Capital) Rules.

In July 2020, the Basel Committee on Banking Supervision (BCBS) issued targeted revisions to the CVA risk framework. The revised CVA risk framework is intended to align its design with the new market risk framework and take into account exposure variability driven by daily changes of market risk factors in determining the CVA risk. The HKMA consultation paper outlines its plans for implementing the revised CVA risk framework in Hong Kong. The HKMA intends to implement the revised CVA risk framework in close alignment with the standards issued by the BCBS.

The HKMA intends to put the new standards for reporting purposes into effect on 1 January 2023, in line with the BCBS timeline. Therefore, it has recommended that all relevant authorised institutions consider the implications of implementation for their institutions, and to start preparing for the local implementation of the revised framework in due course.

Comments on the consultation are due by 26 February 2021.

Cabinet Office announces measures to promote Japan as global financial hub

The Japanese Government has announced its commitment to expanding Japan's role as a global financial hub. The Government has devised new policies intended to encourage foreign asset managers and other financial institutions to enter the Japanese market so that they can contribute to improving Japan's financial and capital markets.

In particular, the Japanese Financial Services Agency (FSA) intends to remove regulatory and taxation bottlenecks and to carry out corporate governance reforms to make it easier for foreign businesses and professionals who are already engaged in asset management business overseas to conduct the same kind of business in Japan. The national Government, local governments and the private sector will collaborate in an effort to enhance the attractiveness of financial and capital markets for foreign nationals who aspire to conduct asset management businesses in Japan. The collaborative key initiatives will include:

- providing seamless consultative support for foreigners intending to conduct asset management businesses in Japan, mainly in terms of establishing corporations, commencing businesses, and settling in and establishing secure livelihoods;
- making English communication available in supporting newly entering foreign asset management companies and others in terms of pre-application consultation, registration, supervision and others;
- relaxing requirements for obtaining status of residence and expanding incentives (preferential treatment); and
- enhancing information sharing in respect of English-speaking (or multi-lingual) services related to livelihoods, laws, accounting (finance and payment), education, real estate (housing and relocation), medicine (medical/healthcare), and others.

FSC Chairman highlights importance of anti-money laundering capabilities

Financial Services Commission (FSC) Chairman Eun Sung-soo has given a speech highlighting the need to strengthen anti-money laundering (AML) capabilities. Mr. Eun Sung-soo noted that the Financial Action Task Force's 2020 mutual evaluation report on Korea placed Korea's AML regime on a par with that of some of the advanced economies.

The Chairman emphasised that, amid growing threats involving the diversification and advancement of money laundering techniques especially through digital finance, it is necessary to adopt key measures to strengthen AML capabilities by:

- solidifying the Korea Financial Intelligence Unit (KoFIU)'s investigation and analysis capabilities and expanding its communication with law enforcement agencies;

- bolstering the AML supervision and inspection capabilities so that more and more business entities are subject to AML compliance with the use of technological advancements and newly emerging industries; and
- hiring more professional personnel at the KoFIU to enhance systematic human resources management and to improve the level of expertise.

The Chairman also believes that, in order to ensure an effective functioning of the AML regime, close cooperation is essential among all the relevant institutions, including financial institutions, KoFIU and law enforcement agencies.

APRA publishes information paper regarding implementation of banking executive accountability regime

The Australian Prudential Regulation Authority (APRA) has published an information paper on the findings from its review of the implementation of the Banking Executive Accountability Regime (BEAR) by three of Australia's largest authorised deposit-taking institutions (ADIs). The BEAR has enabled greater clarity and transparency of individual accountability at ADIs, and is a key regulatory lever for APRA to drive action from ADIs and to transform governance, risk culture, remuneration and accountability (GCRA) outcomes across the industry.

As at February 2020, APRA indicated that all of the ADIs required further work to achieve clearer and more transparent accountability practices. Since then, the ADIs have taken actions and made commitments to address the feedback received which includes actions to increase support for implementation of the BEAR, to enhance the use of scenario testing to clarify roles and responsibilities, and to further integrate their breach and consequence management framework with their remuneration frameworks.

The information paper shares entity-specific observations and examples of better practice identified in the review as part of APRA's strategy to transform GCRA across all regulated entities. APRA's latest review showed that all three of the ADIs had designed adequate frameworks to implement the BEAR which has helped to deliver:

- greater clarity and transparency of individual accountabilities at ADIs;
- sharpened challenge by boards on actions taken by accountable persons to meet their obligations; and
- more targeted engagement between APRA and ADIs to deliver prudential outcomes.

APRA has indicated that it will assess the effectiveness of these actions and outcomes, and will continue to monitor progress through its ongoing supervisory activities.

ASIC updates regulatory guide on conflicted and other banned remuneration

The Australian Securities and Investments Commission (ASIC) has released technical updates to the Regulatory Guide 246: Conflicted and other banned remuneration (RG 246) to reflect recent changes to the law. The updates to RG 246 reflect:

- the end of the grandfathering of conflicted remuneration for financial product advice from 1 January 2021; and
- the extension of the ban on conflicted remuneration to stamping fees paid in relation to listed investment companies and listed investment trusts (excluding real estate investment trusts) that took effect on 1 July 2020.

The ban on conflicted remuneration for financial product advice applies to all benefits given on or after 1 January 2021. The product issuers will be required to provide rebates to clients for all previously grandfathered benefits that they remain legally obliged to pay on or after 1 January 2021. The updated RG 246 also clarifies that the law does not prescribe a timeframe for repaying commissions that are being clawed back where a life insurance policy has been cancelled or reduced in the first two years.

ASIC has indicated that it will continue to monitor the industry's arrangements in relation to the ban on conflicted and other banned remuneration and will consider taking action where it finds misconduct.

RECENT CLIFFORD CHANCE BRIEFINGS

The EU's proposals for far-reaching regulation of the digital sector

The European Commission has announced far-reaching proposals for regulation of digital platforms and online intermediaries. The Digital Markets Act (DMA) will impose on digital platforms that are designated as 'gatekeepers' a long list of obligations to refrain from practices that are considered to limit competition or to otherwise be unfair. In contrast, the Digital Services Act (DSA) focuses on regulating the way that providers of online intermediary services interact with their customers and users, and their obligations in respect of harmful or illegal content, in order to create 'uniform rules for a safe predictable and trusted online environment'.

In combination, the two pieces of proposed legislation will create Europe's most dramatic and interventionist sector-specific regulatory regime in decades, and would require significant changes to the business practices of digital sector players such as Google, Facebook and Apple, but also potentially smaller competitors.

While it is likely to be around two years or more before these proposals result in binding obligations, they are unlikely, in our view, to be significantly watered down during the legislative process.

This briefing discusses these proposals.

https://www.cliffordchance.com/briefings/2020/12/the-eu-s-proposal-for-far-reaching-regulation-of-the-digital-sec.html

Restructuring schemes – a comparison between the new UK, Dutch and German tools

International law reform in the context of restructuring and insolvency has been gathering pace for a number of years. The focus is very much on the development of pre-insolvency and restructuring regimes rather than formal insolvency proceedings. They are designed to encourage investment with clear, efficient and cost-effective rules on restructuring. Recent reforms have taken place in various jurisdictions and most recently in the UK, the Netherlands and Germany. In the UK a new restructuring plan was introduced, in addition to the already existing Scheme of Arrangement, which includes cross class cram down. The Netherlands will be able to use a long-awaited restructuring plan to cram down dissenting creditors starting 1 January 2021. And Germany is expected to follow soon, by implementing a similar regime at the beginning of 2021.

This briefing provides a comparison of key features of the new regimes in these three jurisdictions.

https://www.cliffordchance.com/briefings/2020/12/restructuring-schemes--a-comparison-between-the-new-uk--dutch-an.html

UK Government extends emergency legislation to protect businesses until 31 March 2021 – the final extension?

In an announcement made by the UK Government on 9 December, further temporary insolvency and other measures aimed at protecting business during the coronavirus pandemic which were due to expire at the end of the year have now been extended by the UK Government until the Spring.

This briefing discusses the extension.

https://www.cliffordchance.com/briefings/2020/12/uk-government-extends-emergency-legislation-to-protect-businesse.html

Significant amendments to the UAE Commercial Companies Law

Federal Law by Decree No. 26 of 2020 (the Amendment Law), introduces a number of significant changes to the UAE Commercial Companies Law (CCL). The changes not only affect the foreign ownership regime (which has been the subject of much recent press speculation) but will also have an impact on transactional issues for UAE corporates.

This briefing provides an overview of the key changes that will be implemented under the Amendment Law.

https://www.cliffordchance.com/briefings/2020/12/significant-amendments-to-the-uae-commercial-companies-law.html

Delaware Court of Chancery issues first pandemic-related M&A opinion

Since the COVID-19 pandemic upended the world economy and daily life around the globe, many buyers and sellers that signed acquisition agreements prior to the pandemic with respect to transactions that had not yet closed have carefully scrutinized the terms of their agreements to determine whether, and to what extent, the pandemic would allow buyers to refuse to close and, if so, on what basis. Many of these cases resulted in litigation, some of which is currently pending in various state courts, but most of which has since been settled. In virtually every case, however, the two key questions driving this scrutiny have been the same:

- Does the pandemic constitute a 'material adverse effect' and, if so, does it excuse the buyer's obligation to close?

- Do the seller's responses to the pandemic comply with its obligation to operate the target business in the ordinary course between signing and closing and, if not, does it excuse the buyer's obligation to close?

This briefing discusses the Delaware Court of Chancery's decision in the case of *AB Stable VIII LLC v. Maps Hotels and Resorts One LLC et al*, which provided answers to these (and other) questions.

https://www.cliffordchance.com/briefings/2020/12/Delaware-Court-of-Chancery-Issues-First-Pandemic-Related-MA-Opinion.html