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act on crowdfunding for business ventures

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EU Commission issues legislative proposal on foreign subsidies

The EU Commission has proposed a [new instrument](#) to address potential distortive effects of foreign subsidies in the single market.

The Commission is concerned that existing competition, public procurement and trade defence instruments cannot be applied to foreign subsidies which provide their recipients with an unfair advantage when acquiring companies active in the EU, participating in public procurements in the EU, or making other investment decisions in the EU. The proposal aims to close this regulatory gap by granting the Commission power to investigate financial contributions granted by non-EU authorities to companies active in the EU. If distortive foreign subsidies are identified, the Commission may remedy the distortive effects as relevant.

The Regulation proposes the introduction of:

- a notification-based tool to investigate concentrations involving a financial contribution by a non-EU government, where the EU turnover of the company to be acquired is EUR 500 million or more and the foreign financial contribution is at least EUR 50 million;

- a notification-based tool to investigate bids in public procurements involving a financial contribution by a non-EU government, where the estimated value of the procurement is EUR 250 million or more; and
- a tool to investigate all other market situations and smaller concentrations and public procurement procedures, which the Commission can start on its own initiative and may request ad-hoc notifications.

The proposal also aims to deliver on the updated EU industrial strategy, adopted on 5 May 2021, by promoting a fair and competitive single market.

The proposal is open for feedback for eight weeks.

Securitisation Regulation: EU Commission adopts RTS on supervisory cooperation

The EU Commission has adopted a [Delegated Regulation](#) supplementing Regulation (EU) 2017/2402 with regard to regulatory technical standards (RTS) on the cooperation, exchange of information and notification obligations between competent authorities (CAs) and the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and European Insurance and Occupational Pensions Authority (EIOPA).

This follows the publication of a final report including the draft RTS by ESMA on 8 January 2019.

The Delegated Regulation sets out the general cooperation obligations, the information to be exchanged and the common notification procedures in the event of infringements of the Securitisation Regulation in the EU.

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

EMIR: EU Commission adopts Delegated Regulation extending clearing exemption for pension schemes arrangements and reports on viability of technical solutions

The EU Commission has adopted a [Delegated Regulation](#) extending the transitional exemption referred to in Article 89(1) of the European Market Infrastructure Regulation (EMIR), thereby extending by a further year a temporary exemption from the central clearing obligation for pension schemes arrangements (PSAs) that meet certain criteria.

The explanatory memorandum notes that the original transitional period under EMIR was intended to provide time for central counterparties (CCPs), PSAs and clearing members to develop viable technical solutions which would allow PSAs to meet the cash variation margin calls of CCPs, but that no such solution has emerged. Regulation (EU) 834/2019 (EMIR Refit) had prolonged the existing extension until 18 June 2021; the new Delegated Regulation as adopted prolongs it further to 18 June 2022.

The Commission has also published a [report](#) to the Parliament and the Council assessing the viability of the technical solutions developed as well as the need for any measures to facilitate those solutions, as required under Article 85 EMIR. The report's conclusions include discussion of recent progress towards central clearing for PSAs, including moves towards voluntary central clearing, as well as the Commission's views on the need to further extend the PSA exemption.

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

EMIR: Commission Delegated Regulation on rules of procedure for penalties imposed by ESMA on third-country CCPs or related third parties published in Official Journal

[Commission Delegated Regulation \(EU\) 2021/731](#) supplementing EMIR with regard to rules of procedure for penalties imposed on third-country CCPs or related third parties by ESMA has been published in the Official Journal.

Delegated Regulation 2021/731 entered into force on 7 May 2021.

Benchmarks Regulation: EU Commission adopts RTS on administrators' governance arrangements

The EU Commission has adopted a [Delegated Regulation](#) supplementing the Benchmarks Regulation (BMR) with regard to RTS specifying requirements to ensure that an administrator's governance arrangements are sufficiently robust.

This follows the publication of a final report including the draft RTS by ESMA on 29 September 2020.

The Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal and will apply from 1 January 2022.

Benchmarks Regulation: EU Commission adopts RTS specifying characteristics of systems and controls to ensure integrity of input data

The EU Commission has adopted a [Delegated Regulation](#) supplementing the BMR with regard to RTS specifying the characteristics of the systems and controls for the identification and reporting of any conduct that may involve manipulation or attempted manipulation of a benchmark.

This follows the publication of a final report including the draft RTS by ESMA on 29 September 2020.

The Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal and will apply from 1 January 2022.

EBA consults on proposal for central AML/CFT database

The EBA has launched a [consultation](#) on draft RTS on the establishment of a central database on anti-money laundering and counter terrorism financing (AML/CFT) activity in the EU. The database is intended to collate information on AML/CFT weaknesses that national competent authorities (NCAs) have identified in respect of individual financial institutions, as well as information on the steps the NCAs have taken to rectify those weaknesses.

The draft RTS set out:

- the definition and materiality of the AML/CFT weaknesses that will be added to the database;
- the type of information collected;

- the process for submitting information to the EBA for inclusion in the database;
- how the EBA will analyse and disseminate the information contained in the database;
- how the database will interact with other notifications that NCAs are required to provide to the EBA; and
- how the EBA will ensure the confidentiality and security of the data contained in the database.

Alongside the RTS, the EBA has also published for comment a draft Annex which sets out the data points that will be contained in the database and the list of authorities that will be indirectly submitting information to the database.

Comments are due by 17 June 2021.

Payment systems: Amendments to SIPS Regulation and implementing decisions published in Official Journal

Three pieces of European Central Bank (ECB) legislation regarding systemically important payment systems (SIPS) have been published in the Official Journal following a public consultation.

[Regulation \(EU\) 2021/728](#) amends Regulation (EU) No 795/2014 on oversight requirements for SIPS (SIPS Regulation). [Decision \(EU\) 2021/729](#) amends Decision (EU) 2017/2098 on procedural aspects concerning the imposition of corrective measures for non-compliance with the SIPS Regulation. [Decision \(EU\) 2021/730](#) amends Decision (EU) 2019/1349 on the procedure and conditions for exercise by a competent authority of certain powers in relation to oversight of SIPS.

Following comments from the consultation, the Eurosystem has clarified that:

- the original criteria in the SIPS Regulation remain the primary choice for classifying payment systems as SIPS, with the additional factors complementing the original criteria in order to adequately assess all relevant factors of systemic importance;
- the Governing Council of the ECB will continue to adopt a decision classifying a relevant new payment systems as SIPS, regardless of whether such identification is based on the original criteria or on the additional factors to be introduced in the new paragraph 3-a of the SIPS Regulation; and
- the Eurosystem is committed to the principles of proportionality and equal treatment in the context of the new paragraph 3-a of the SIPS Regulation and has introduced due process guarantees to underpin this commitment and to ensure the right of payment systems operators to good administration.

EU Commission publishes assessment of UK's Lugano Convention application

The EU Commission has published a [communication](#) setting out its assessment of the UK's application to accede to the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Lugano Convention).

The Commission states that it considers that the EU should not give its consent to the UK's accession. Among other things, it notes that:

- the Lugano Convention is a flanking measure of the internal market and relates to the EU-EFTA/EEA context;
- in relation to all other third countries, the EU has a policy of promoting cooperation within the framework of Hague Conventions; and
- the UK is a third country without a special link to the internal market.

As such, the Commission sees no reason for the EU to depart from its general approach, and that the Hague Conventions should provide the framework for future cooperation between the EU and UK in the field of civil judicial cooperation.

The Commission further notes that stakeholders, in particular practitioners engaged in cross-border contractual matters, should take its communication into account when making a choice of international jurisdiction.

The Lugano Convention ceased to apply in the UK following the end of the transition period on 31 December 2020. The UK applied to accede to the Convention as an independent contracting party on 8 April 2020. Although the UK received statements from Norway, Iceland and Switzerland in support of its intention to accede, its continued participation requires the unanimous consent of the current contracting states.

The EU Parliament and European Council are expected to provide their final decision on the UK's accession in due course.

Margin calls: BCBS, CPMI and IOSCO Joint Working Group on Margin surveys clients and NBFIs

The Basel Committee on Banking Supervision (BCBS), the Committee on Payments and Market Infrastructures (CPMI) and the International Organisation of Securities Commissions (IOSCO) have set up a Joint Working Group on Margin (JWGM) and published surveys of [non-bank financial intermediaries](#) (NBFIs) and of [clients](#) (entities that participate through an intermediary) in order to examine liquidity shortfalls during the early stages of the coronavirus pandemic.

The JWGM's investigations relate to both initial and variation margin in derivatives and securities markets, and are divided into workstreams on the following topics:

- firstly, margin in cleared and uncleared markets during the March 2020 market turmoil, including clearing member-client dynamics;
- secondly, margin practice transparency, predictability and volatility during the March market turmoil across various markets, jurisdictions and margining models. This workstream includes the NBFIs survey, which aims at a better understanding of the effects of margin calls in uncleared markets as well as calls related to house and client clearing activities from the firms' perspective; and
- liquidity management preparedness of market participants (especially non-banks) to meet margin calls and the actions they took to do so. This workstream includes the survey on client preparedness.

The JWGM is co-chaired by the Bank of England (BoE) and the US Commodity Futures Trading Commission (CFTC) and was established in response to a call from the G20, forming part of the latter's work to enhance the resilience of the NBFIs sector. Separately, the BCBS, CPMI and IOSCO are also collecting data from CCPs and bank intermediaries.

In November 2020, the Financial Stability Board (FSB) published a [Holistic Review](#) of the March Market Turmoil, noting that certain market participants in the NBFIs sector experienced a coronavirus-related liquidity shock in March 2020, and that increased volatility triggered margin calls that contributed to a 'dash for cash'.

Responses to the surveys are due by 17 May 2021.

National Security and Investment Bill receives Royal Assent

The National Security and Investment Bill has received Royal Assent.

The [Act](#) broadly establishes a new screening regime for government investigation of, and intervention in, mergers and acquisitions and other deals and investments for the purposes of protecting national security.

Under the Act, statutory instruments (SIs) are required to be made for the regime to commence by the end of 2021. In March 2021, the Department of Business, Energy & Industrial Strategy (BEIS) published a [policy statement](#) on these SIs, which are intended to cover:

- the publication of a policy statement on the Secretary of State's expected use of the call-in power;
- regulations specifying elements of the mandatory notification regime;
- the form and content of a mandatory notification, a retrospective validation application and a voluntary notice;
- the calculation of penalties and enforcement of the regime; and
- how documents should be served.

For more information, see Clifford Chance's [client briefing](#).

HM Treasury announces intention to remove exchange traded derivatives open access regime

HM Treasury (HMT) has published [updated guidance](#) announcing its intention to permanently remove the open access regime for exchange traded derivatives (ETDs) when parliamentary time allows.

Following a review of the regime after the end of the transition period, HMT has concluded that the regime is not suitable in a UK-only context. The Treasury notes that the decision has no implications on the UK's continued support for open access regimes in equity and OTC derivatives markets.

The Government is also conducting a broader review of wholesale financial markets. The Government will consult on wider capital markets reforms in summer 2021.

German Federal Government adopts strategy for sustainable finance

The German Federal Government (Bundesregierung) has adopted the first [German Sustainable Finance Strategy](#), which is intended to mobilise investments for climate action and sustainability while also addressing the climate risks that are increasingly relevant for the financial system. The German Sustainable Finance Strategy sets a new course in the financial system based on the core themes of climate action and sustainability. It contains a comprehensive set of 26 measures. The following key steps, among others, are intended to mobilise sustainable investments:

- federal investments shall be shifted towards sustainable investments;
- the German Federal Government shall ensure that reliable and comparable information is available for investors that show how sustainability risks and opportunities affect corporate business models and what impact corporate activities have on environmental and human rights;
- sustainability 'traffic light' labels shall be introduced to provide more clarity for private investors regarding financial products;
- the German Federal Government has also agreed on a list of requirements for so-called 'non-financial' corporate reporting. The list requires all publicly traded companies and major corporations with limited liability to present sustainability reports;
- the German Federal Government will be commissioning a scenario analysis of physical climate risks in the real economy and financial sector in Germany. This will improve methodologies and data; it is also an exercise that will allow individual actors to identify their own risks and incorporate them into their risk management systems;
- the German Federal Ministry of Finance (Bundesfinanzministerium) will be drawing up a strategy before the end of 2021 on how the German Federal Financial Services Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) will be supported organisationally. BaFin is due to present a report by the autumn of 2021, in which it will demonstrate how it can improve cooperation with other government departments and thus better benefit from their expertise on sustainability; and
- the German Federal Government will continue to support the Kreditanstalt für Wiederaufbau (KfW) (the German promotional bank) in implementing its sustainable finance agenda.

Which activities can be deemed sustainable is currently being negotiated at European level with the drafting of the EU taxonomy for sustainable activities. In its Sustainable Finance Strategy, the German Federal Government makes clear its position that nuclear energy cannot be considered sustainable.

BaFin publishes its supervisory priorities for 2021

The German Federal Financial Services Supervisory Authority (BaFin) has published its [supervisory priorities](#) for 2021 with the goal of ensuring greater transparency and comprehensibility regarding its prioritisation of issues.

BaFin has identified the following priority issues for 2021:

- the impact of the COVID-19 pandemic on supervised entities and financial markets;
- IT and cyber risk; and
- collective consumer protection.

Issues mentioned in the supervisory priorities for 2020 that are not explicitly carried forward as BaFin-wide issues for 2021 will be pursued independently in BaFin's individual divisions. BaFin's banking supervision, insurance supervision and securities supervision divisions as well as its bank resolution division have defined further priorities for their activities in 2021.

BaFin sets priorities in its activities in order to use its resources effectively and efficiently for the purpose of a risk-oriented supervision. In order to set its priorities, BaFin identifies, evaluates and prioritises all relevant supervisory issues. In addition, it takes into account aspects that are of particular regulatory or strategic importance.

Some of the lessons learned from the Wirecard case have already been incorporated into the supervisory priorities for 2021.

BaFin consults on draft ordinance under new Investment Institutions Act

The BaFin has [launched](#) a public consultation on the draft of a comprehensive ordinance (Mantelverordnung) under the new Investment Institutions Act (Wertpapierinstitutsgesetz – WpIG).

The WpIG implements Directive (EU) 2019/2034 (European Investment Firm Directive – IFD) into national law. In the future, investment firms that provide investment services will be covered by the WpIG. The draft ordinance serves to further implement the IFD and to execute the related, directly applicable Regulation (EU) 2019/2033 (European Investment Firm Regulation – IFR).

Articles 1 to 4 of the draft of the comprehensive ordinance consist of four new core ordinances for investment institutions, namely the Investment Institutions Audit Report Ordinance (Wertpapierinstituts-Prüfungsberichtsverordnung – WpI-PrüfbV), the Investment Institutions Remuneration Ordinance (Wertpapierinstituts-Vergütungsverordnung – WpI-VergV), the Investment Institutions Ownership Control Ordinance (Wertpapierinstituts-Inhaberkontrollverordnung – WpI-IKV) and the Investment Institutions Notification Ordinance (Wertpapierinstituts-Anzeigenverordnung - WpI-AnzV).

Regarding so-called large investment institutions, the provisions of the German Banking Act (Kreditwesengesetz – KWG) regulations continue to apply to a large extent. Therefore, large investment institutions continue to be subject to the corresponding ordinances under the KWG, namely the Audit Report Ordinance (Prüfberichtsverordnung - PrüfberV) and the Remuneration Ordinance for Institutions (Institutsvergütungsverordnung – InstitutsVergV). Article 5 of the draft ordinance contains the necessary changes to these relevant ordinances.

Comments are due by 28 May 2021. The comprehensive ordinance is expected to come into effect simultaneously with the WpIG on 26 June 2021.

BaFin answers frequently asked questions on new requirements for investment institutions

With effect from 26 June 2021, the new Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (Investment Firms Regulation – IFR) will apply. At the same time, the German Law on the Implementation of Directive (EU) 2019/2034 (IFD) on the Supervision of Investment Institutions (Gesetz zur Umsetzung der Richtlinie (EU) 2019/2034 (IFD) über die Beaufsichtigung von Wertpapierinstituten – WpIG) will in all likelihood also enter into force on 26 June 2021.

The BaFin has already received a number of questions on the new rules, especially from the affected institutions. BaFin has therefore now published its [answers to frequently asked questions \(FAQs\)](#). The published questions and answers will be updated regularly.

CSSF issues FAQs on law of 17 June 1992 relating to accounts of credit institutions

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued the first version of its [FAQs](#) on the law of 17 June 1992 relating to the accounts of credit institutions.

In its FAQs, the CSSF provides clarifications on the publication obligations of credit institutions in the following situations:

- when a credit institution publishing its annual accounts under the mixed system (LUX GAAP with IAS/IFRS options), values financial instruments in accordance with IFRS 9 'Financial Instruments'; and
- when a credit institution publishing its annual accounts under the mixed system (LUX GAAP with IAS/IFRS options) applies IAS/IFRS other than IFRS 9 'Financial Instruments' (e.g. IFRS 16 'Leases', IAS 19 'Employee benefits', IAS 37 'Provisions benefits', IAS 37 'Provisions, contingent liabilities and contingent assets', IAS 40 'Investment Property', IAS 12 'Income Taxes').

In the first situation (i.e. IFRS 9), the CSSF stresses that the credit institution must comply with the disclosure requirements provided for under the IFRS. The CSSF further highlights that the credit institution must in particular refer to the information required under IFRS 7 'Financial Instruments: Disclosures' and IFRS 13 'Fair Value Measurement'.

With respect to IAS/IFRS other than IFRS 9, the CSSF clarifies that a credit institution is required to publish the information (qualitative and quantitative) set out in the IFRS it has chosen to use, provided that such information is necessary to enable users of the financial statements to understand the financial statements.

In both instances, the FAQs specify that the use of these IAS/IFRS is subject to the prior approval of the CSSF.

Ministry of Development Funds and Regional Policy publishes draft act on crowdfunding for business ventures

The Ministry of Development Funds and Regional Policy has published a [draft act](#) on crowdfunding for business ventures. The objective of the draft is to regulate the activity of crowdfunding platforms, harmonising Polish law with EU law. The new regulations provide for, among other things:

- supervision over crowdfunding platforms by the Polish Financial Supervision Authority;
- administrative and criminal sanctions for non-compliance with the law, including for the giving of false information in issue documents;
- the simplification of certain information requirements for issuers of securities; and
- a proposal of a two-year (until 9 November 2023) period to reach the maximum offering threshold, namely EUR 5 million, which an individual entity will be able to conduct via a crowdfunding platform.

The draft has been submitted for public consultation.

Polish Financial Supervision Authority sets out position on scope of activities covered by agreements for offering of investment certificates

The Polish Financial Supervision Authority (PFSA) has [published](#) its standpoint on the scope of activities covered by agreements for the offering of investment certificates. In its standpoint, the PFSA points out that the inclusion in agreements for the offering of investment certificates of activities carried out by an investment firm for an issuer (a closed-end investment fund), such activities not having the nature of an offering of financial instruments, should be deemed permissible, and the standpoint provides a sample list of such activities.

At the same time, the PFSA emphasises that the inclusion in agreements for the offering of investment certificates of additional terms on such additional activities does not mean that the inducements regime arising under the Act on Trading in Financial Instruments is not applicable to those activities.

Polish Financial Supervision Authority

Ministry of Economic Affairs and Digital Transformation consults on Draft Bill on Securities Market and Investment Services and implementing Royal Decrees

The Ministry of Economic Affairs and Digital Transformation has launched a public consultation on the [Draft Bill](#) on the Securities Market and Investment Services and three draft implementing Royal Decrees on:

- the legal regime for investment firms and other entities providing investment services;
- financial instruments, admission to trading, registration of securities and market infrastructures; and
- the development of the CNMV's administrative powers and faculties in relation to securities markets and investment services firms.

The Draft Bill and the three implementing Royal Decrees are aimed at improving the systematic technique of the current Spanish Securities Market Law and to incorporate into Spanish law certain aspects of various EU Directives in the most appropriate and favourable way for the interests of the domestic capital markets, financial stability and the rights of investment services clients. The Draft Bill also amends the Spanish Corporations Law to regulate the specific legal regime applicable to special purpose acquisition companies (SPACs).

The public consultation is open until 25 May 2021.

HKMA publishes guidelines on Green and Sustainable Finance Grant Scheme

The Hong Kong Monetary Authority (HKMA) has published [guidelines](#) on the Green and Sustainable Finance Grant Scheme (GSF Grant Scheme), as announced in the 2021-22 Budget. The guidelines include relevant information with respect to the eligibility criteria and application process for the GSF Grant Scheme.

The GSF Grant Scheme is intended to provide subsidies for eligible bond issuers and loan borrowers to cover their expenses on bond issuance and external review services. The GSF Grant Scheme has been effective from 10 May 2021 and last for three years.

The grant amount for each green and sustainable bond issue is equivalent to half of the eligible expenses, up to the following limits:

- HKD 2.5 million where the bond, its issuer or its guarantor(s) possess a credit rating by a rating agency recognised by the HKMA; or
- HKD 1.25 million where none of the bond, its issuer or its guarantor(s) possess a credit rating by a rating agency recognised by the HKMA.

Each issuer can apply for a grant for two green and sustainable bond issuances at most.

HKMA concludes consultation on implementation of mandatory reference checking scheme to address 'rolling bad apples' phenomenon

The HKMA has published the [conclusions](#) to its May 2020 public consultation on the implementation of a mandatory reference checking (MRC) scheme to address the 'rolling bad apples' phenomenon. Based on the industry feedback, the HKMA has made a number of changes to its proposals, which include the following:

- narrowing the proposed scope of personnel covered in phase 2 to individuals who are registered or licensed with financial regulators only;
- adding responsible officers under the Mandatory Provident Fund Schemes Ordinance to the MRC scheme;
- reducing the MRC information retention period from 10 years to 7 years; and
- altering the timeframe for reference providing authorised institutions to respond to an MRC request from 10 days to one month.

The HKMA intends to set up an industry working group (IWG) to work out the operational details of the MRC scheme. The HKMA expects the IWG to deliver the operational details within six months.

The HKMA is of the view that a phase 1 review could be conducted two years after the implementation of phase 1, to allow sufficient time for the industry to gain experience and to identify room for improvements.

MAS publishes report on critical infrastructure to promote inclusive digital economy

The Monetary Authority of Singapore (MAS) has [launched a report](#) on the foundational digital infrastructure necessary for an inclusive digital economy and seamless cross-border transactions around the world. Through the report, the MAS intends to help public sector agencies and players in the financial sector and technology community better understand the key value drivers of strong digital infrastructures.

The report notes that foundational digital infrastructures, which are systems that allow different users and different digital devices to seamlessly interact with one another, are critical for more pervasive and inclusive digitalisation across societies. Such foundational digital infrastructures will enable interoperable solutions and seamless digital services to reach more people and businesses, at lower cost and greater convenience. The report also highlights four key pillars that underpin effective foundational digital infrastructures:

- digital identity to ensure authentication and validation of an individual's identity, while protecting privacy and security of information;
- authorisation and consent to ensure transparent and secure digital transactions through authorised use of data and mechanisms for obtaining users' consent;
- payments interoperability to ensure systems for clearing and settlement of payments between users are interoperable, for seamless domestic and cross-border transactions; and
- data exchange to enable users to make their data accessible to third parties for the benefit of the users, such as for payments and financial planning.

The MAS has indicated that it looks forward to engaging other financial regulators, the financial industry, and the international technology community to advance the work on foundational digital infrastructures. The next phase of the initiative will focus on building a consortium of countries keen to explore the digital infrastructure potential for cross-border use.

Australian Government consults on development of consumer data right framework for energy and banking sectors

The Australian Government has launched a [public consultation](#) on the development of rules and standards designed to implement a peer-to-peer data access model in the energy sector and an opt-out data sharing model for joint accounts in the banking and energy sectors.

In 2020, the Australian Government started the roll out of the consumer data right (CDR) to the energy sector with a view to giving consumers more power

to compare and switch to cheaper providers. Based on stakeholder feedback and initial design and scoping work, the Government determined that a peer-to-peer model is the more effective data access model for the energy sector rather than a gateway model. To support the development of rules and standards to implement a peer-to-peer model in the energy sector, the Government has proposed the design options as outlined in the paper on ['Peer-to-peer data access model in the energy sectors'](#).

In response to feedback that joint account rules could limit engagement with the CDR, the Government has proposed an ['opt-out' approach for joint accounts](#) for both the banking and energy sectors with appropriate consumer safeguards as outlined in the corresponding paper. The proposed change is intended to reduce significant friction and enhance consumer experience by aligning CDR data sharing consent requirements more closely with the existing permissions and consents between joint account holders in operating a joint account.

The Government has also indicated that, to support the new approach, current requirements for banks to implement the joint account requirements that would have applied from November 2021 will be deferred, with new compliance dates to be set following later consultation.

Comments on the consultation are due by 26 May 2021.

ASIC publishes information sheet for providers of debt management services to explain their new regulatory obligations

The Australian Securities Investments Commission (ASIC) has published an [information sheet](#) for providers of debt management services, which explains their new regulatory obligations including the requirement to be licensed.

The [National Consumer Credit Protection Amendment \(Debt Management Services\) Regulations 2021](#) were made on 29 April 2021 to prescribe certain debt management services as a 'credit activity' for the purposes of the National Consumer Credit Protection Act 2009. Under the Regulations, a 'debt management service' broadly covers services such as 'credit repair' and 'debt negotiation' which are carried out in relation to a consumer credit contract and where a consumer is required to pay.

From 1 July 2021, subject to transitional arrangements, providers of debt management services will be required to hold a credit licence with an authorisation that covers debt management services. To assist providers of debt management services understand these changes and the steps they need to take to be covered by a credit licence with a relevant authorisation, ASIC's information sheet provides guidance about the following:

- what is a debt management service;
- the transitional arrangements set out in the Regulations;
- how to apply for a credit licence (or variation) with a debt management authorisation; and
- the conduct obligations that must be met by licensees.

ASIC has indicated that the transitional arrangements allow for the continued provision of debt management services while a provider is actively taking steps to be covered by a credit licence.

ASX responds to feedback received on proposed changes to ASX Clear Operating Rules and Procedures and guidance note regarding trust and client segregated accounts

The Australian Securities Exchange (ASX) has published its [responses](#) to the feedback received to its November 2020 consultation on proposed changes to the ASX Clear Operating Rules and Procedures (Rules and Procedures) and ASX Clear Operating Rules Guidance Note 12 Trust and Client Segregated Accounts (GN 12).

In response to the feedback received, ASX has decided to strengthen the client money framework and proceed with its proposed amendments to the Rules and Procedures and to GN 12, except for the following two proposed changes:

- ASX will not require participants to nominate and perform their trust/client segregated account reconciliations at a 'nominated reconciliation time'. Instead, it intends to require trust/client segregated account reconciliations to be of account balances as at the close of business; and
- ASX will remove, from GN 12, the proposed materials setting out its expectations of auditors when conducting an FS 71 review of a clearing participant's trust and client segregated accounts.

ASX has indicated that, subject to the required regulatory clearance, the changes to the Rules and Procedures and GN 12 will come into effect on 2 August 2021. Participants will be provided a 12-month transition period to align their arrangements with the revised Rules, Procedures and Guidance Note and are expected to be fully compliant by no later than 2 August 2022.

RECENT CLIFFORD CHANCE BRIEFINGS

ESG – European Commission proposes Corporate Sustainability Reporting Directive

The European Commission has published a proposal for a Corporate Sustainability Reporting Directive (CSRD) as part of a package of measures aiming to direct capital flows towards sustainable activities.

Many organisations are already required to carry out non-financial reporting under the Non-Financial Reporting Directive (NFRD). However, current requirements lack detail so levels and standards of reporting vary enormously. As well as making it difficult for organisations to determine what information to report, it makes it almost impossible for investors and stakeholders to compare performance between different organisations. The CSRD also proposes amendments to existing requirements under the Transparency Directive, the Audit Directive and the Audit Regulation.

This briefing discusses the proposal.

<https://www.cliffordchance.com/briefings/2021/05/esg--european-commission-proposes-corporate-sustainability-repor.html>

Foreign subsidies regulation

On 5 May 2021, the European Commission published its proposal for a Regulation on foreign subsidies distorting the internal market enabling it to take measures against market-distorting subsidies from foreign governments. The Commission would be empowered to intervene in takeovers of EU companies or public procurement bids when they are supported by state subsidies from third countries.

This briefing discusses the draft Regulation.

<https://www.cliffordchance.com/briefings/2021/05/foreign-subsidies-regulation.html>

Commission rejects UK application to join Lugano

The European Commission has recommended that the EU rejects the UK's application to accede to the Lugano Convention. But if this recommendation is accepted, will it achieve in fact the opposite of what the Commission intends?

This briefing discusses the Commission's recommendation.

<https://www.cliffordchance.com/briefings/2021/05/commission-rejects-uk-application-to-join-lugano.html>

Debt restructuring in Europe

The ongoing pandemic continues to present businesses with many challenges and uncertainties. The resilience of businesses together with vital governmental support (by, for example, deferral of taxes or the provision of funding or grants) and temporary relaxation of formal legislative and administrative requirements have all had their part to play in sustaining businesses over the last year with a limited number of formal insolvency cases in most jurisdictions.

Clifford Chance has produced an overview of the key issues to be considered in European debt restructurings. Our specialists in each jurisdiction, whose contact details are provided in the relevant section of the guide, will be happy to elaborate on any of the issues covered and answer any further questions you may have.

<https://www.cliffordchance.com/content/dam/cliffordchance/PDFDocuments/debt-restructurings-in-europe.pdf>

Chambers Global Practice Guide 2021 – Fintech – UK – Law and Practice

We are delighted to have authored the UK Law and Practice chapter in the Chambers 2021 Global Practice Guide on Fintech.

The chapter provides an invaluable introduction to the fintech market and its regulation in the UK for fintech start-ups and scale-ups, as well as more established firms. We consider a host of fintech business models and sectors, ranging from specific technologies such as blockchain and the use of artificial intelligence for robo-advice and algorithmic trading, to considering the outlook for funds, payments providers, online lenders, market places and exchanges.

<https://www.cliffordchance.com/briefings/2021/05/chambers-global-practice-guide-2021--fintech--uk--law-and-practi.html>

German foreign investment control tightened again

Following several changes to the German foreign investment (FI) regime last year, the German Ministry for Economic Affairs and Energy (Bundeswirtschaftsministerium, BMWi) published the 17th amendment to the German Foreign Investment Regulation (Außenwirtschaftsverordnung, AWV).

The 17th amendment came into force on 1 May 2021. Under the new rules, 16 additional industries will be included in the scope of the AWV. In addition, further types of transactions, e.g. increase of existing voting rights exceeding certain thresholds or the acquisition of certain corporate governance rights, will be subject to FI scrutiny as well.

This briefing discusses the amendment.

<https://www.cliffordchance.com/briefings/2021/05/german-foreign-investment-control-tightened-again--may-2021.html>

Draft PRC Futures Law – what to expect for exchange-traded and OTC derivatives trading?

The National People's Congress of the PRC published on its website the draft of the PRC Futures Law for public consultation (the Draft Futures Law) on 29 April 2021, after review and deliberation by the Standing Committee of the National People's Congress, the country's top legislature.

The public consultation period lasts until 28 May 2021. It will be the PRC's first statute on exchange-traded and over-the-counter derivatives and includes a number of key potential developments, which may have a significant influence on international market participants trading in the PRC or dealing with PRC counterparties.

This briefing discusses the Draft Futures Law.

<https://www.cliffordchance.com/briefings/2021/05/draft-prc-futures-law-and-what-to-expect-for-futures-and-otc-der.html>

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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