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EBA consults on draft AML/CFT guidelines on cooperation and information exchange

The European Banking Authority (EBA) has launched a consultation on proposed guidelines setting out how supervisors and financial intelligence units (FIUs) should cooperate and share anti-money laundering and counter terrorism financing (AML/CFT) related information.

Under Article 117(5) of the Capital Requirements Directive (CRD), prudential supervisors, AML/CFT supervisors and FIUs must cooperate closely and provide each other with information relevant for their respective tasks. The EBA's draft guidelines are intended to provide guidance on how this cooperation and information exchange should work in practice throughout the supervisory lifecycle. They cover:

- compliance and reporting obligations;
- mechanisms for cooperation, information exchange and the treatment of confidentiality;
- cooperation and information exchange in the context of:
- authorisation of institutions and withdrawal of authorisation;

- assessment of proposed acquisitions, mergers, increases of qualifying holdings, changes in management and outsourcing arrangements; and
- supervisory measures and sanctions.

Comments are due by 27 August 2021.

EBA publishes final RTS on own funds and eligible liabilities

The EBA has published a final report setting out draft regulatory technical standards (RTS) on own funds and eligible liabilities.

The draft RTS amend Delegated Regulation (EU) No 241/2014 to reflect changes introduced by the revised Capital Requirements Regulation (CRR2), including new criteria and requirements for eligible liabilities and changes to the prior permission regime to reduce own funds.

In relation to eligible liabilities, the draft RTS specify some newly introduced criteria derived from the own funds regime, including:

- the absence of direct or indirect funding for the acquisition of ownership of eligible liabilities by the resolution entity;
- the absence of incentives to redeem; and
- the need for the resolution authority's prior permission for the reduction of eligible liabilities.

In relation to the prior permission regime, the draft RTS specify:

- the process of cooperation between the competent authority and resolution authority;
- the procedures for granting ad hoc and general prior permission; and
- the meaning of 'sustainable for the income capacity of the institution'.

The EBA has also increased the threshold initially proposed for determining the predetermined amount for the general prior permission from 3% to 10% of the total amount of outstanding eligible liabilities instruments.

The final RTS have been sent to the EU Commission for adoption.

ESMA publishes response to EU Commission consultation on functioning of ESAs

The European Securities and Markets Authority (ESMA) has published its response to the EU Commission's consultation on the functioning of the European Supervisory Authorities (ESAs). The Commission's consultation sought feedback on supervisory practices and convergence, as well as targeted views on certain aspects related to the 2019 ESAs review.

In its response, ESMA discusses the progress it has made on the changes agreed under the 2019 review and sets out its high-level recommendations for future amendments to the ESMA Regulation and other relevant EU financial services legislation. These include:

- clarifying when and how the emergency coordination power granted under Article 18 of the ESMA Regulation can be triggered;

- reinforcing the legal basis on which national competent authorities (NCAs) and ESMA can request and share supervisory and enforcement information;
- reassessing the ESAs' Q&A processes to ensure they are meeting their underlying objectives;
- enhancing ESMA's position as a gatekeeper to the EU capital market and its powers to oversee and mitigate the potential risks posed by non-EU entities;
- building ESMA's data capabilities and its role as a data hub for the EU securities markets;
- delegating technical rulemaking to ESMA via Level 2 mandates, rather than requiring Level 1, in order to improve the flexibility and responsiveness of the EU regulatory framework; and
- reassessing the structure of ESMA's budget to address funding issues.

EU Commission consults on review of rules on distance marketing of consumer financial services

The EU Commission has published an inception impact assessment setting out plans to amend the Directive on Distance Marketing of Consumer Financial Services (2002/65/EC). The directive sets out certain consumer protection rules regarding the remote marketing of financial services.

Due to increasing digitisation, changes to online practices and the evolution of the legal framework for retail financial services, the EU Commission has been undertaking an assessment of whether the directive is still fit for purpose and included it in its 2020 work programme under the list of potential REFIT initiatives.

The inception impact assessment sets out the issues identified during the Commission's evaluation of the directive, including that:

- pre-contractual information requirements are not adequately adapted for the digital environment;
- the right of withdrawal for consumers is not fully effective;
- several issues affecting consumers (such as non-transparent personalisation of offers, pre-ticked boxes and an emphasis on benefits over costs) are currently not covered by the directive;
- the introduction of product specific legislation (such as the Consumer Credit Directive) and horizontal legislation (such as the ePrivacy Directive) have reduced the relevance and added value of the directive; and
- the directive has had limited success in its aim to foster the cross-border provision of financial services.

It also sets out the potential policy options for addressing these issues, including a complete repeal of the directive, a merging of the directive with other horizontal legislation, and a comprehensive revision of the directive.

Comments are due by 25 June 2021.

Banking Union: SRB publishes updated MREL policy and Q4 2020 dashboard

The Single Resolution Board (SRB) has updated its Minimum Requirements for Own Funds and Eligible Liabilities (MREL) policy to address further changes to resolution introduced by the banking package (the Bank Recovery and Resolution Directive 2 (BRRD 2), Single Resolution Mechanism Regulation 2 (SRMR 2), CRD 5 and CRR 2).

The SRB has introduced new elements, including:

- the maximum distributable amount related to MREL (M-MDA);
- criteria for identifying systemic subsidiaries for which granting of an internal MREL waiver would raise financial stability concerns; and
- the approach to MREL-eligibility of UK instruments without bail-in clauses.

The updated policy also:

- refines the methodology to estimate the Pillar 2 requirements post-resolution;
- confirms that MREL is calibrated on the preferred resolution strategy; and
- clarifies the MREL calibration methodology for liquidation entities.

The SRB has also published its MREL dashboard covering the reporting period Q4 2020.

BRRD: EBA reports on early intervention measures

The EBA has published a report on the application of early intervention measures (EIMs) under the BRRD.

The report contains the results of the survey on EIMs conducted in 2019, feedback received to the discussion paper on EIMs launched in June 2020 and the EBA's conclusions on key implementation issues, including:

- the need to eliminate existing overlaps between EIMs and other supervisory powers, as well as to remove the formal sequencing of EIMs;
- amending Article 27(1) of the BRRD to include an example of a quantitative early intervention trigger; and
- amending EBA guidelines on the EI triggers upon finalisation of the ongoing review of BRRD.

The EBA notes that the EU Commission is currently working on revising the existing BRRD provisions in EIMs.

CSDR review: ESMA publishes letter to EU Commission

ESMA has published a letter to the EU Commission regarding its proposals for the Commission's review of the Central Securities Depositories Regulation (CSDR). The letter from ESMA's interim chair to the EU's Commissioner for Financial Services, Financial Stability and Capital Markets Union is intended to highlight proposals in relation to the following topics:

- TARGET2-Securities (T2S), and in particular the settlement platform's status and arrangements for supervision and oversight – amongst other points, the letter notes ESMA's belief that it is no longer appropriate to

completely exclude such a systemic settlement platform from CSDR's scope;

- the third country central securities depositories (CSDs) recognition regime – the letter notes ESMA supports an enhanced regime featuring third country CSDs to notify ESMA regarding services provided in the EEA, as well as broadening the scope of the recognition regime to also cover the provision of EEA settlement services; and
- the frequency of ESMA reports on CSDR implementation to the Commission.

The letter also notes ESMA's prior input to the review via reports on CSD cross border services and on internalised settlement, as well as its planned input via forthcoming reports on banking-type ancillary services and on CSDs' technological innovations.

CRR: EBA consults on institutions' Pillar 3 disclosure of interest rate risk exposures

The EBA has launched a consultation on draft implementing technical standards (ITS) on Pillar 3 disclosures regarding exposures to interest rate risk on positions not held in the trading book (IRRBB).

The draft ITS put forward comparable disclosures that would allow stakeholders to assess institutions' IRRBB risk management framework as well as the sensitivity of institutions' economic value of equity and net interest income to changes in interest rates. The proposed standards are intended to help institutions comply with the requirements laid down in the revised CRR.

The draft ITS propose qualitative disclosures on how institutions calculate their IRRBB exposure values based on their internal measurement systems and on institutions' overall IRRBB objective and management. They also provide quantitative disclosures about the impact of changes in interest rates on institutions' economic value of equity and net interest income.

In addition, the EBA is proposing transitional provisions that should facilitate institutions' disclosures while the policy framework is being finalised.

Comments are due by 30 August 2021. The EBA expects to submit these draft ITS to the EU Commission in October 2021.

Credit ratings: ESMA consults on disclosure requirements for initial reviews and preliminary ratings

ESMA has published a consultation on proposed guidelines on disclosure requirements for initial reviews and preliminary ratings. The proposed guidance seeks to improve the functioning of provisions of the Credit Rating Agencies Regulation (CRAR) that are intended to provide clarity to market participants as to whether entities or debt instruments have been subject to an initial review or preliminary rating in order to address the issue of rating shopping.

The proposed guidance sets out ESMA's views in relation to the following points in particular:

- the definition of 'initial review and preliminary rating' for the purposes of the CRAR's public disclosure requirements;

- the content and timing of credit rating agencies (CRAs)' public disclosures for interactions that meet that standard; and
- steps to ensure that these disclosures are more accessible to market participants.

Comments are due by 4 August 2021. ESMA expects to publish a final report by the end of 2021 and the guidelines as drafted would apply from 1 July 2022.

Cross-border distribution of funds: ESMA publishes guidance on marketing communications

ESMA has published a final report setting out guidelines on marketing communications under Regulation (EU) 2019/1156 on the cross-border distribution of funds (CBDF).

The final guidelines, which are set out in Annex IV of the report, seek to clarify the requirements that funds' marketing communications to investors or potential investors for UCITS and AIFs must:

- be identifiable as marketing communications;
- describe the risks and rewards in an equally prominent manner; and
- contain fair, clear and not misleading information.

Amendments made to the guidelines following consultation, which are set out in the feedback statement in Annex 1 of the report, include:

- aligning the guidelines with the wording of the MiFID2 Delegated Regulation;
- changes aimed at taking into account the presentation of marketing communications in an online environment;
- an extended negative list of marketing communications;
- updated disclaimer wording;
- clarifications concerning responsibilities for third party actions; and
- clarifications of the requirement to explain the terms describing the investment.

The guidelines will apply six months after translations are published on ESMA's website. NCAs have two months following publication to notify ESMA of whether they comply or intend to comply with the guidelines.

Digital finance: ESMA consults on fragmentation of value chains, digital platforms and mixed-activity groups

ESMA has launched a call for evidence on digital finance, following a request for technical advice from the EU Commission.

In September 2020 the Commission published its proposed digital finance package and in February 2021 it requested advice from the ESAs on three related issues, namely the regulatory and supervisory challenges raised by:

- the growing fragmentation of value chains in finance, caused by the increasing reliance of financial firms on third parties for the delivery of their services, and the increasing involvement of technology companies in financial services;

- digital platforms and the bundling of financial services; and
- groups which combine financial and non-financial activities.

ESMA is therefore calling for comment from interested stakeholders on their experience of these issues and their thoughts on how the supervisory or legislative framework could be amended to address them. ESMA intends to use the responses to inform its advice to the EU Commission, which it must submit, along with the other ESAs, by 31 January 2022.

Comments on the call for evidence are due by 1 August 2021.

MiFID2 Quick Fix: ESMA consults on commodity derivatives technical standards

ESMA has published a consultation on draft technical standards for commodity derivatives required under Directive (EU) 2021/338 (MiFID2 Quick Fix), which was adopted as part of the Capital Markets Recovery Package aimed at facilitating the EU's economic recovery from the COVID-19 pandemic.

Views are sought on technical standards relating to the application of position limits to commodity derivatives, including:

- draft RTS on the calculation methodology for position limits, to specify the procedures for applying for a hedging exemption and for a liquidity provision exemption;
- amendments to ITS 4 on the format of position reports by investment firms and market operators to reflect that securitised derivatives are no longer within the position reporting regime; and
- draft RTS on position management controls.

The consultation closes on 23 July 2021. ESMA intends to submit a final report to the EU Commission for endorsement by November 2021.

MiFID2 Quick Fix: EU Commission consults on ancillary activity exemption

The EU Commission has published a consultation on a draft delegated regulation on the ancillary activity exemption amended by MiFID2 Quick Fix, which was adopted as part of the Capital Markets Recovery Package aimed at facilitating the EU's economic recovery from the COVID-19 pandemic.

MiFID2 Quick Fix amended the exemption in order to delete quantitative elements of the ancillary activity test for determining whether the commodity derivatives trading activity of persons dealing on own account or providing investment services is considered to be ancillary to their main business.

The draft delegated act, which is based on and will repeal the existing Delegated Regulation 2017/592 specifying the criteria for the ancillary activity test (RTS 20), includes:

- the deletion of the overall market size test; and
- the introduction of a new de-minimis threshold test.

The amended text does not require changes to the established calculation methodology of the current trading test and capital employed test.

The consultation closes on 24 June 2021.

EMIR/SFTR: ESMA consults on guidelines for transfer of data between trade repositories

ESMA has published a consultation on guidelines on the transfer of data between trade repositories (TRs) under the European Market Infrastructure Regulation (EMIR) and the Securities Financing Transactions Regulation (SFTR).

ESMA notes that changes to the EU trade repository landscape as a consequence of TR registration withdrawals and Brexit have required it to set out expectations and guidance to TRs and market participants on portability-related issues not covered in the existing guidelines on the same topic.

The consultation paper sets out the following proposals:

- three replacement guidelines on data transfer under EMIR;
- nine new guidelines which are intended to compile clarifications based on experience gathered and ongoing guidance provided by ESMA to TRs and market participants; and
- SFTR guidelines – ESMA notes that these new guidelines are intended to build on the EMIR guidelines.

Comments are due by 27 August 2021. ESMA plans to publish the final guidelines by the end of 2021.

SFTR: ESMA publishes final guidelines for calculating positions

ESMA has published a final report setting out its guidelines on the calculation of positions in securities financing transactions (SFTs) by TRs under the SFTR.

The guidelines are intended to promote the use of a uniform methodology under EMIR and SFTR with regard to calculations' timing, scope of data used, data preparation and recordkeeping, and methodologies. In particular, the guidelines are intended to clarify the following points for TRs:

- calculations carried out by TRs, as well as the format of access provision to data pursuant to Article 80(4) EMIR (as referred to in Article 5(2) SFTR and detailed under Article 5 of RTS on data aggregation); and
- level of access to positions provided by TRs to the entities included in Article 12(2) SFTR with access to positions in line with Article 3 RTS on data access.

The guidelines apply from 31 January 2022.

Synthetic securitisations: ESMA consults on amending Securitisation Regulation STS templates

ESMA has published a consultation paper setting out draft amendments to the simple, transparent and standardised (STS) template notifications under the EU Securitisation Regulation as amended by Regulation (EU) 2021/557. Regulation (EU) 2021/557 provided for the extension of the existing STS framework to on-balance sheet (synthetic) securitisations.

In particular, the consultation paper sets out draft amended ITS and RTS specifying the content and format of the standardised templates in light of the introduction of synthetic securitisations to the framework. The amendments

are intended to build on existing STS notification technical standards for traditional securitisations whilst accounting for features specific to synthetic securitisations, as well as amending the existing true sale STS notification framework in order to clarify the information ESMA expects.

Comments are due by 20 August 2021.

BoE and PRA publish policy statements on resolvability

The Bank of England (BoE) and Prudential Regulation Authority (PRA) have published two PRA policy statements and an updated BoE statement of policy on resolvability.

The PRA's policy statement on operational continuity in resolution (OCIR) (PS9/21) provides feedback to consultation responses and the PRA's final policy concerning amendments to the Operational Continuity Part of the PRA Rulebook and a new supervisory statement on ensuring OCIR (SS4/21). Among other things, the PRA has amended the definition of critical services to include reference to the services supporting core business lines in addition to its critical functions.

Both the amended Operational Continuity Part and SS4/21, which will supersede SS9/16, will be effective from 1 January 2023.

The PRA's policy statement on amendments to resolution assessment reporting and disclosure dates (PS10/21) also provides feedback to consultation responses and the PRA's final policy concerning amendments to the Resolution Assessment Part of the PRA Rulebook and an updated supervisory statement on resolution assessment and public disclosure by firms (SS4/19), including:

- firms must submit their first report by 1 October 2021, and thereafter, biennially by the first Friday in October of the relevant calendar year;
- firms must submit to the PRA their plan for implementing the revised OCIR policy by 18 February 2022, and are encouraged to also submit updates to their reports as they progress implementation of capabilities ahead of the 1 January 2022 deadline; and
- firms must publish their first public disclosure by 10 June 2022, and thereafter, biennially by the second Friday in June of the relevant calendar year.

The amended rules took effect from 2 June 2021. SS4/19 took effect upon its publication on 28 May 2021.

The BoE statement of policy on its approach to assessing resolvability has been updated in light of these changes.

The implications for firms' assessments and submission of reports during the first resolvability assessment framework (RAF) cycle include:

- firms' assessments conducted prior to 1 January 2022 and reports due in 1 October 2021 should focus on the PRA OCIR policy that came into force on 1 January 2019; and
- firms should submit to the PRA their plan for implementing the PRA's revised OCIR policy, and any updates they may have to their reports in light of the January 2022 compliance deadline for other outstanding resolvability policies, by 18 February 2022.

PRA issues statement on updating requirements for identification of material risk takers

The PRA has published a statement setting out its approach to updating the applicable requirements on the identification of material risk takers (MRTs).

The PRA notes that there is currently a discrepancy between Commission Delegated Regulation (EU) No.604/2014, which sets out the RTS under the CRD, and the Remuneration Part of the PRA Rulebook, which uses the revised draft MRT RTS published by the EBA in June 2020 but not adopted by the EU before the transposition of CRD 5 into UK law on 28 December 2020.

The PRA intends to consult on how to address this discrepancy later in 2021 but in the meantime has published a statement to clarify its current position, which is as follows:

- Regulation 604/2014 continues to apply (together with the technical changes made to it during the onshoring process) and be binding in its entirety;
- firms should also apply the revised draft MRT RTS when determining the individuals to which the requirements of the Renumeration Part of the PRA Rulebook apply;
- in any instance where Regulation 604/2014 requires firms to identify individuals who do not meet any of the criteria under the revised draft MRT RTS, firms do not need to apply the requirements of the Remuneration Part to those individuals, provided their professional activities do not have a material impact on the firm's risk profile;
- the PRA considers the revised draft MRT RTS to be a minimum standard and reminds firms to assess whether an individual's professional activities have a material impact on the firm's risk profile even if they do not fall within any of the mandatory criteria established under PRA Rule 3.1 or the revised draft MRT RTS;
- the PRA intends to publish amended versions of the templates that firms may use on a voluntary basis to inform the PRA of their MRTs' identification and exclusion later in 2021;
- if firms wish to exclude an MRT under the criteria set out in Rule 3.1 and Article 7 of the revised draft MRT RTS, they must apply to the PRA for a waiver under Section 138A of the Financial Services and Markets Act 2000. The PRA will provide more information on this process when it publishes the revised templates; and
- firms with a fiscal year-end of 31 December are permitted additional time to submit their remuneration policy statement (RPS) tables on MRT identification and exclusion, the RPS questionnaire and Annex 1: Malus, with a new deadline of 30 September for the 2021/22 remuneration period.

PRA publishes business plan for 2021/22

The PRA has published its business plan for 2021/22.

The plan sets out the PRA's intended workplan over the medium to long-term for each strategic goal, such as:

- maintaining robust prudential standards, including creating a simpler prudential framework for smaller non-systemic banks and building

societies, continuing the review of Solvency II, continuing to engage with firms on LIBOR transition, developing policies on remuneration and the Senior Managers and Certification Regime (SM&CR), and intentions to publish the PRA's final policy on CRR2 in H2 2021, to consult on the implementation of Basel III and to publish the final policy on the supervision of international banks operating in the UK in summer 2021;

- continuing to adapt to market changes and horizon scanning, including continuing work on climate disclosures and climate-related policy, contributing to the Bank of England's work on fintech, such as developing prudential frameworks for stablecoins and cryptocurrencies, to further develop the PRA's regtech strategy, and to use specialist reviews to deliver a more risk-based approach to non-systemic firms;
- ensuring firms are adequately capitalised and have sufficient liquidity, including resuming the stress testing regime, working with international authorities and other jurisdictions to promote the consistent implementation of international standards, and continuing to assess credit risk and asset quality, including the risks resulting from COVID-19 across both commercial and retail activities;
- developing supervision of operational resilience, including assessing whether firms can meet policy expectations when they come into force on 31 March 2022; and
- taking forward implementation of the resolvability assessment framework, including an intention to publish the PRA's final policy jointly with the BoE in H1 2021, as well its policy on operational continuity in resolution, which will take into account the BoE's ongoing work on MREL.

In relation to the UK's withdrawal from the EU, the PRA intends to implement changes to the approval regime for holding companies, the designation of investment firms, and set out its approach to supervising international banking groups operating in the UK.

UK-US Financial Regulatory Working Group publishes joint statement on fourth meeting

HM Treasury (HMT) has published a joint statement on the fourth meeting of the UK-US Financial Regulatory Working Group held on 20 May 2021.

The meeting focused on the following key themes:

- international and bilateral cooperation, including the importance of preserving the global asset management industry's portfolio management delegation model, continuing to promote the free flow of cross-border financial services data, the need to avoid regulatory fragmentation and data localisation while strengthening operational resilience, and the benefits of the global nature of derivatives clearing;
- sustainable finance, including on sustainability-related financial disclosures and on a broader assessment of and possible responses to climate-related financial risks;
- updates on domestic initiatives and priorities, including the UK's future approach to financial regulation;
- benchmark transition, including SOFR and SONIA market developments and transition implications for other jurisdictions;

- operational resilience, including the upcoming US-UK financial innovation partnership meeting to be held in June for discussing further actions to deepening UK-US ties in financial innovation; and
- banking and insurance, including the implementation of Basel III, climate-related insurance work and insurance-related COVID-19 responses.

The next Working Group meeting is expected to take place in the autumn of 2021.

ESG reporting: Decree setting out information to be provided by financial market participants published

Decree 2021-663 of 27 May 2021, issued for the application of Article L. 533-22-1 of the Monetary and Financial Code, as amended by Article 29 of Law No. 2019-1147 of 8 November 2019 on energy and climate, has been published in the Official Journal. It sets out the information (and the format of reporting) that financial market participants must provide on the methods of taking environmental, social and governance (ESG) criteria into account in their investments and on the means implemented to contribute to the energy and ecological transition.

This text entered into force on 29 May 2021.

BaFin consults on draft guidance note on prohibition of blind pool constructions under German Capital Investment Act

The German Federal Financial Services Supervisory Authority (BaFin) has launched a public consultation on a draft guidance note regarding an intended prohibition of blind pool constructions.

By amending Section 5b of the German Capital Investment Act (Vermögensanlagengesetz, VermAnlG), the German legislator aims to prohibit any blind pool construction (also in multi-level investment constructions) that (i) neither specifies the business sector nor the investment product or (ii) does not specify the investment product although the business sector to be invested in is already determined (so called semi blind pool construction). Investments in a particular corporate purpose (Geschäftszweck) are not covered by the prohibition.

Therefore, future section 5b para. 2 VermAnlG states that investment objects shall be “exactly specified” (konkret bestimmt) at the time the investment prospectus or the investment information sheet is produced. Accordingly, any investment object not being exactly specified at this point of time shall not be permitted to a public offering in Germany.

Against this background, BaFin is drafting a new guidance note that shall clarify in which way the requirement of an investment object being “exactly specified” shall be construed.

In this respect, the draft guidance note stipulates that an investment object shall have reached a provable level of implementation (nachweisbarer Realisierungsgrad) and that a minimum of characteristics of the investment object shall already be known depending on the type of the investment object in order to be considered as “exactly specified”. Regarding the latter, the draft guidance note is setting out a minimum set of characteristics for instance for

real estate properties, wood, containers, wind/solar/other renewable energy parks or precious metals.

Comments on the draft guidance note are due by 4 June 2021.

German Federal Ministry of Finance consults on draft ordinance on enhanced due diligence when transferring crypto assets

The German Federal Ministry of Finance (BMF) has published a draft Ordinance on Enhanced Due Diligence when Transferring Crypto Assets (Verordnung über verstärkte Sorgfaltspflichten bei der Übertragung von Kryptowerten).

In order to further prevent money laundering or terrorist financing, to enable the competent authorities to identify the participants of a crypto asset transfer, and to check whether they are subject to any sanctions, credit institutions and financial service institutions which participate in a crypto asset transfer are required to submit information on clients and beneficiaries of such transfers to the competent authority.

In addition, whenever crypto assets are transferred from or to an unhosted wallet, which means from or to an electronic crypto wallet (elektronische Geldbörse) that is not administered by a crypto custodian (Kryptoverwahrer), credit institutions and financial service institutions shall gather and store relevant information (name and address) on clients and beneficiaries of such transfers and shall ensure by applying reasonable efforts that this information is correct.

Luxembourg bill amending Securitisation Law and implementing the EU Crowdfunding Regulation published

A new bill of law (Bill No. 7825) amending the Luxembourg law of 22 March 2004 on Securitisation and implementing Regulation (EU) 2020/1503 on European crowdfunding service providers has been lodged with the Luxembourg Parliament.

With respect to the Securitisation Law amendments, the bill proposes to modernise and to provide increased legal certainty on key aspects of the Securitisation Law, including as regards increased flexibility on the financing side, the rules impacting the securitised assets, as well as the corporate governance of securitisation vehicles.

With respect to the implementation of the Crowdfunding Regulation, the bill appoints the Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), as competent authority for the application of the Regulation, and specifies the supervision, investigation and sanction powers of the CSSF.

The lodging of bill No. 7825 with the Luxembourg Parliament constitutes the start of the legislative procedure.

Luxembourg law transposing CRD 5 and BRRD 2 enters into force

The Luxembourg law of 20 May 2021 transposing CRD 5 and BRRD 2, as well as implementing CRR 2 entered into force on 25 May 2021, except for a few provisions which will enter into force on 1 January 2022.

The new law transposes the CRD 5 provisions. These introduce, amongst other things, new methods for assessing interest rate risks arising from non-trading book activities and new measures strengthening the supervisory framework for holding companies. The new law also introduces a new obligation for third-country banking groups to set up a single intermediate EU parent undertaking established in the EU. The new law further extends the application of the proportionality principle in banking regulation, particularly with regard to remuneration policies, while strengthening the obligations for cooperation and information exchange between prudential authorities and authorities in charge of combating money laundering and terrorist financing.

The new law also transposes BRRD 2, which aims to improve the resolution of banks in crisis. To this end, the new law strengthens the rules on loss-absorption capacity by creating a framework for restructuring that should be less costly for the resolution fund, while extending the protections given to depositors and to other non-subordinated creditors of banks. The law further introduces new standards for determining additional own funds requirements, that would be more specific to the risks inherent in each institution. The law also provides CSSF, with powers to suspend certain obligations under certain circumstances.

The new law also improves depositor protection by introducing an additional safety net for the Luxembourg deposit guarantee scheme (Fonds de garantie des dépôts Luxembourg).

Finally, the new law makes targeted amendments to other laws, including the Law of 23 December 1998 establishing a financial sector supervisory commission and the Law of 24 March 1989 on the Banque et Caisse d'Epargne de l'Etat, with a view to facilitating, where necessary, the implementation of the crisis management mechanisms provided for by the EU directives.

HKEX publishes consultation conclusions on Main Board profit requirement and review of listing rules relating to disciplinary powers and sanctions

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has published conclusions to its consultations on (i) the Main Board profit requirement; and (ii) a review of the listing rules relating to disciplinary powers and sanctions (disciplinary consultation conclusions).

The listing rules amendments to be implemented, combined with the approach being taken by the SEHK and the Securities and Futures Commission (SFC) as set out in their published joint statement, aim to address issues of regulatory concern and provide further protection to investors.

In relation to the Main Board profit requirement, the SEHK has modified its proposal to adopt the following approach:

- a smaller increase in the profit requirement – a 60% increase in the profit requirement, which will result in an aggregate profit threshold of HKD 80 million, and to amend the profit spread (the Modified Profit Increase);
- implementation date – the Modified Profit Increase will become effective on 1 January 2022; and

- more flexible relief from profit spread on case-specific circumstances – the SEHK will be prepared to grant relief from the profit spread between the first two financial years and the final financial year of the three-year track record period under the profit requirement.

The SEHK intends to continue to work with the SFC in combating the regulatory issues identified in the consultation conclusions through reviews of listing applications, and placing heightened scrutiny on cases displaying features as described in the joint statement. There will be an increased emphasis on holding individuals accountable in relation to the listing rule breaches, including those who participate in problematic behaviour.

The SEHK has also indicated it will launch a review of the Growth Enterprise Market (GEM) to consider, amongst other things, comments received regarding GEM's positioning, market perception, and viability as an alternative to the Main Board.

Under the disciplinary consultation conclusions, the HKEX will implement all the proposals relating to disciplinary powers and sanctions, with minor modifications. The proposals aim to ensure that disciplinary actions can be brought against a broader range of individuals, including members of senior management, if they cause or knowingly participate in a contravention of the listing rules. The revised listing rules set out in the disciplinary consultation conclusions will be implemented from 3 July 2021.

HKMA encourages wider adoption of iAM Smart in remote onboarding arrangements

Further to its circular 'Remote on-boarding of individual customers' issued on 1 February 2019, the Hong Kong Monetary Authority (HKMA) has issued a circular to provide further guidance on, and encourage the wider adoption of, iAM Smart in remote onboarding arrangements.

Consistent with the Financial Action Task Force (FATF) standards and the Guidance on Digital Identity published by the FATF in March 2020, the identity verification requirements as set out in the Guideline on AML/CFT are sufficiently flexible to allow authorised institutions (AIs) to on-board customers remotely.

In light of developments and based on feedback received in the HKMA Fintech Supervisory Sandbox and Chatroom, the Hong Kong Association of Banks, with input from the HKMA, has updated its frequently asked questions (FAQs) in relation to AML/CFT. For example, the FAQs clarify that when iAM Smart is used for identity verification, record keeping requirements may be met by retaining the specific data or information obtained from iAM Smart through Application Programming Interface, showing the customer's iAM Smart authentication result and verified Hong Kong Identity Card data. AIs do not need to obtain additional identification documents solely for record keeping purposes.

The HKMA has indicated that it will continue to work closely with the industry to promote the greater use of technology, including remote on-boarding initiatives, to enhance the efficiency of AIs' customer due diligence processes and improve customer experience.

Hong Kong Government publishes consultation conclusions on legislative proposals to enhance anti-

money laundering and counter-terrorist financing regulation

The Hong Kong Government has published its consultation conclusions on legislative proposals which are intended to enhance the AML/CTF regulation in Hong Kong through the introduction of (a) a licensing regime for virtual asset services providers (VASPs); (b) a two-tier registration regime for dealers in precious metals and stones (DPMS); and (c) miscellaneous technical amendments under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO).

Under the VASPs licensing regime any person seeking to engage in the regulated activity of operating a virtual assets exchange in Hong Kong will be required to apply for a licence from the SFC, subject to passing a fit and proper test. Licensed VASPs will be subject to the AML/CTF requirements stipulated under the AMLO, as well as other regulatory requirements designed to ensure the protection of market integrity and investor interest. The SFC will be empowered to supervise the AML/CTF conduct of licensed VASPs and enforce other regulatory requirements in accordance with the AMLO.

Under the two-tier registration regime for DPMS, registrants engaging in cash transactions at or above HKD 120,000 will be subject to the AML/CTF obligations stipulated in Schedule 2 to the AMLO. The registration regime will be administered by the Commissioner of Customs and Excise, who as the Registrar will maintain a register of DPMS for public information.

The Government intends to provide a 180-day transitional period upon commencement of operation of the licensing regime to facilitate application by interested parties. Likewise, DPMS who have been in operation immediately before commencement of the registration regime will be allowed 180 days to apply for registration.

The Government will proceed to prepare the amendment AMLO bill, with a view to introducing the amendment bill into the Legislative Council in the 2021-22 legislative session.

Diet passes amendment to Banking Act

An amendment to the Banking Act has been passed by the Diet.

The amendment relaxes restrictions on the businesses that Japanese banks and holding companies (including their subsidiaries inside and outside Japan) can engage in, in order to play a key role in supporting the recovery and revival of the Japanese economy in the COVID-19 era.

First, the scope of non-banking businesses that banks and their group companies will be allowed to engage in is expanded to include (i) the sale of own-developed applications and IT systems, (ii) data analysis, marketing and advertising, and (ii) staffing/HR business. The details will be designated under subordinated legislation in the future.

Second, the amendment also loosens restrictions on the maximum investment in business companies and now allows bank groups to take a 100% stake in unlisted companies that contribute to the regional economy, such as those selling local products.

Third, the amendment expands the scope of foreign financial institutions that can be acquired by a bank or its holding company. Currently, if a foreign financial institution acquired by a Japanese bank or its holding company has a

foreign subsidiary that is in breach of the scope of business regulations, the Japanese bank or its holding company is generally required to sell such indirect subsidiary within five years of the acquisition. In addition, the acquisition of a foreign leasing company or moneylender that also operates a general business is not permitted. With a view to strengthening international competitiveness, the amendment allows banks and their holding companies to continue to hold foreign indirect subsidiaries acquired by them for 10 years after the acquisition, regardless of the scope of business regulations. If such foreign subsidiary is required to be in a group to keep competitiveness in such jurisdiction, a Japanese bank or its holding company may continue to hold such foreign subsidiary as an exception to the scope of business regulations for an unlimited period of time by obtaining approval from the Financial Services Agency of Japan.

Japan issues basic guidelines on climate transition finance to align with ICMA Handbook and indicate expectations of fundraisers and approaches

The Japanese Financial Services Agency (FSA), Ministry of Economy, Trade and Industry and Ministry of the Environment have formulated the Basic Guidelines on Climate Transition Finance as a guide to the implementation of transition finance.

Based on the Climate Transition Finance Handbook (ICMA Handbook) published by the International Capital Markets Association (ICMA) on 9 December 2020, and following consultation with ICMA, the Guidelines are intended to inform market participants about Japanese domestic transition finance.

The Guidelines provide the objectives and definitions of transition finance. Under the Guidelines, transition finance is defined as financing means to promote long-term, strategic initiatives to reduce greenhouse gas emissions taken by companies wishing to tackle climate change for the achievement of a decarbonised society.

The in-scope transition finance under the Guidelines are bonds and loans:

- the use of whose proceeds are designated and which meet the four elements below;
- which meet the four elements, set targets in line with the transition strategy, and change their financial and/or structural characteristics depending on the achievement of predefined targets;
- which meet the four elements and follow the existing Green Bond Principles and the Green Bond Guidelines.

The Guidelines also discuss expectations in transition finance and specific approaches for each of the four elements (Element 1: Issuer's climate transition strategy and governance; Element 2: Business model environmental materiality; Element 3: Climate transition strategy to be 'science-based' including targets and pathways; and Element 4: Implementation transparency) provided by the ICMA Handbook. The Guidelines recommend these elements are disclosed.

As the Guidelines have been formulated in alignment with the ICMA Handbook, it is expected that financing in accordance with the Guidelines will be recognised as transition finance domestically and internationally.

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Update in the PRC Data Regulatory Regime – a closer look at the second draft of PRC Data Protection Laws

On 29 April 2021, the Standing Committee of the National People's Congress released the second draft of the Data Security Law (Draft DSL) and the Personal Information Protection Law (Draft PIPL) for public comment until 28 May 2021. The Draft DSL and the Draft PIPL mark another step by PRC regulators and legislators towards protecting data sovereignty and regulating data-related activities in line with internationally recognised practice. These draft laws build on the PRC Cyber-security Law which came into force in 2017 (CSL).

The Draft DSL and the Draft PIPL demonstrate PRC regulators' focus on developing the regulatory environment with respect to data matters by adding more granularity to the existing legal framework.

This briefing highlights a few key regulatory developments that will be vital to international institutions in managing data issues with respect to their PRC businesses.

https://www.cliffordchance.com/briefings/2021/05/update-in-the-prc-data-regulatory-regime---a-closer-look-at-the-.html