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If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

Marc Benzler +49 69 7199 3304
Caroline Dawson +44 207006 4355
Steven Gatti +1 202 912 5095
Lena Ng +65 6410 2215
Gareth Old +1 212 878 8539
Mark Shipman + 852 2826 8992
Donna Wacker +852 2826 3478

International Regulatory Update Editor

Joachim Richter +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname @cliffordchance.com

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

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EU Commission sets out sustainable finance strategy and proposes new EU Green Bond Standard

The EU Commission has adopted a set of measures intended to build a stronger European sustainable finance system.

Among these measures, the EU Commission has created a sustainable finance strategy focused on six sets of actions:

- extending the existing sustainable finance toolbox to facilitate access to transition finance;

- improving the inclusiveness of small and medium-sized enterprises (SMEs), and consumers, by giving them the right tools and incentives to access transition finance;
- enhancing the resilience of the economic and financial system to sustainability risks;
- increasing the contribution of the financial sector to sustainability;
- ensuring the integrity of the EU financial system and monitoring its transition to sustainability; and
- developing international sustainable finance initiatives and standards, and supporting EU partner countries.

Alongside the sustainable finance strategy, the EU Commission has proposed a new EU Green Bond Standard (EUGBS) intended to create a gold standard for green bonds that other market standards can be compared to and seek alignment. The EUGBS also aims to reduce the risk of greenwashing and is open to any issuer of green bonds, including issuers located outside of the EU.

Finally, the EU Commission has adopted a delegated act on the information to be disclosed by financial and non-financial companies about how sustainable their activities are, supplementing Article 8 of the EU Taxonomy Regulation. The delegated act will now be subject to a scrutiny period of four months by the EU Parliament and Council.

BRRD/CRR: RTS on calibrating MREL at resolution group level published in Official Journal

Commission Delegated Regulation (EU) 2021/1118 supplementing the Bank Recovery and Resolution Directive (BRRD) has been published in the Official Journal. The Delegated Regulation sets out regulatory technical standards (RTS) specifying the methodology to be used by resolution authorities to estimate the requirement referred to in the fourth Capital Requirements Directive (CRD4)'s Article 104a, as well as the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under that Directive.

Amongst other points, the Delegated Regulation's recitals note that Article 104a BRRD refers to additional own funds requirements which, together with the combined buffer requirements defined in Article 128 of the same Directive, are to be used by resolution authorities to set the minimum requirement for own funds and eligible liabilities (MREL).

Delegated Regulation 2021/1118 enters into force on 28 July 2021.

EMIR: Equivalence decisions for Australia, Brazil, Canada, Hong Kong, Singapore and USA published in Official Journal

Commission Implementing Decisions have been published in the Official Journal on the recognition of legal, supervisory and enforcement arrangements as equivalent to certain requirements of Article 11 of the European Market Infrastructure Regulation (EMIR) in respect of certain derivatives transactions, as follows:

- for Australia, derivatives transactions supervised by the Australian Prudential Regulation Authority (APRA) (Commission Implementing Decision (EU) 2021/1106);
- for Canada, those supervised by the Office of the Superintendent of Financial Institutions (Decision 2021/1104);
- for Hong Kong, those supervised by the Hong Kong Monetary Authority (HKMA) (Decision 2021/1107);
- for Singapore, those supervised by the Monetary Authority of Singapore (MAS) (Decision 2021/1105); and
- for the USA, those supervised by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency (Decision 2021/1108).

The Decisions enter into force on 26 July 2021.

Commission Implementing Decision (EU) 2021/1106

Benchmarks Regulation: Commission Implementing Regulation adding NIBOR and removing LIBOR from list of critical benchmarks published

Commission Implementing Regulation (EU) 2021/1122 of 8 July 2021, which amends Commission Implementing Regulation (EU) 2016/1368 on the list of critical benchmarks used in financial markets pursuant to the Benchmarks Regulation, has been published in the Official Journal.

In particular, Commission Implementing Regulation (EU) 2021/1122 amends the list of critical benchmarks established by Commission Implementing Regulation (EU) 2016/1368 by adding the Norwegian Interbank Offered Rate (NIBOR) and removing the London Interbank Offered Rate (LIBOR).

Commission Implementing Regulation (EU) 2021/1122 entered into force on 10 July 2021.

Investment firms: EBA publishes final draft RTS and ITS on supervisory cooperation

The European Banking Authority (EBA) has published two reports setting out draft technical standards on cooperation and information exchange between competent authorities involved in the prudential supervision of investment firms under the Investment Firms Directive (IFD).

The first report sets out final draft RTS on colleges of supervisors for investment firm groups specifying the conditions under which colleges exercise their tasks, covering:

- the establishment of colleges;
- the functioning of colleges;
- the planning and coordination of supervisory activities in going concern situations; and
- the planning and coordination of supervisory activities in preparation for and during emergency situations.

The second report sets out final draft RTS and implementing technical standards (ITS) on the exchange of information, covering:

- information to be provided by home Member State competent authorities regarding investment firms operating through branches in other Member States;
- information categories to be provided by host Member State competent authorities where such branches operate;
- information exchange regarding investment firms that provide services on a cross-border basis in other Member States; and
- the procedures, contact lists, and common formats and templates for information exchange regarding, among other things, compliance with own funds, concentration risk and liquidity requirements.

The draft RTS and ITS have been submitted to the EU Commission for adoption and will be subject to scrutiny by the EU Parliament and Council before being published in the Official Journal.

ESMA publishes letter to EU Commission on crowdfunding framework

The European Securities and Markets Authority (ESMA) has written to Mairead McGuinness, Commissioner for Financial Services, Financial Stability and the Capital Markets Union at the EU Commission, expressing concerns regarding the interpretation and application of Regulation (EU) 1503/2020 on European crowdfunding service providers for business (ECSPR), following discussion with national competent authorities (NCAs) and market participants.

In particular, ESMA asks for clarification on:

- the transitional period set out in Article 48 of the ECSPR with respect to crowdfunding services provided in accordance with national law;
- the meaning of 'business activity' under point (l) of Article 2(1) of the ECSPR;
- the legal status of the provision of 'individual portfolio management of loans' in light of points (a) and (c) of Article 2(1) of the ECSPR;
- the scope of the prohibition preventing prospective non-sophisticated investors from investing in crowdfunding projects;
- the scope of the prohibition preventing ECSPs from paying or accepting any remuneration, discount or non-monetary benefit for directing investors' orders to a particular crowdfunding offer; and
- the respective responsibilities of ECSPs and project owners regarding the content of the key investment information sheet.

ESMA also notes that, while the ECSPR is due to apply on 10 November 2021, it is likely that the technical standards pursuant to the ECSPR will not be ready until a significantly later date. ESMA calls on the Commission to consider delaying the date of application of the ECSPR to allow for a more orderly and harmonised implementation.

MiFIR: ESMA consults on review of transparency requirements under RTS 1 and 2

ESMA has launched a consultation on the review of regulatory technical standards on transparency requirements under MiFIR, in particular on equity transparency (RTS 1) and non-equity transparency (RTS 2).

ESMA notes the EU Commission's parallel work reviewing MiFIR and consequently focuses on changes that do not require a change to Level 1 legislation, including in relation to the following topics:

- the transparency regime for commodity derivatives;
- non-price-forming transactions and their reporting;
- pre-trade transparency requirements for new trading system types;
- post-trade and reference data reporting; and
- pre-and post-trade 'large in scale' thresholds for trading Exchange Traded Funds (ETFs).

ESMA notes its proposals are also intended to prepare for the establishment of a consolidated tape (CT).

Comments are due by 1 October 2021.

Benchmark transition: ESMA consults on RTS amendments for EMIR clearing and MiFIR derivatives trading obligations

ESMA has launched a consultation on the clearing and derivative trading obligations in view of the benchmark transition. ESMA's consultation paper sets out draft RTS amending existing RTS on the clearing obligation (CO) under EMIR and on the derivatives trading obligation (DTO) under MiFIR in relation to the transition away from EONIA and LIBOR in favour of risk-free rates (RFRs) in the OTC interest rate derivatives market.

Comments are due by 2 September 2021. ESMA expects to submit a final report to the EU Commission in autumn 2021 and aims to ensure that the scope of derivatives classes subject to the two obligations reflect the transitions to alternative rates at the beginning of 2022.

FSB publishes progress report on LIBOR transition

The Financial Stability Board (FSB) has published a progress report to the G20 on LIBOR transition, covering recent developments, supervisory issues and next steps.

The progress report covers:

- issues and risks associated with LIBOR transition;
- observations and key themes from the FSB's OSSG as regards remaining aspects of benchmark transition;
- findings from the FSB's follow-up questionnaire on supervisory issues related to LIBOR transition; and
- the FSB's conclusions and recommended next steps.

The FSB encourages authorities to set globally consistent expectations and milestones that firms will rapidly cease the new use of LIBOR, regardless of

where those trades are booked or in which currency they are denominated. The FSB urges supervisory authorities to step up their efforts for active and adequate communication to increase awareness of the scope and urgency of relevant IBOR transitions for all clients.

The FSB also urges market participants to act now to complete the steps set out in its global transition roadmap.

FSB publishes roadmap on climate-related financial risks

The FSB has presented to the G20 leaders a roadmap for addressing climate-related financial risks in a letter sent from its Chair, Randal K. Quarles.

The roadmap sets out the work currently being undertaken by standard-setting bodies (SSBs) and other international organisations over a multi-year period and it focuses on four key policy areas:

- firm-level disclosures, as the basis for the pricing and management of climate-related financial risks at the level of individual entities and market participants;
- data, using consistent metrics and disclosures, to provide the raw material for the diagnosis of climate-related vulnerabilities;
- vulnerabilities analysis, which provides the basis for the design and application of regulatory and supervisory frameworks and tools; and
- and regulatory and supervisory practices and tools that allow authorities to address identified climate-related risks to financial stability in an effective manner.

The FSB intends to submit the roadmap for endorsement by the G20 finance ministers and central bank governors at their meeting on 9-10 July.

Alongside the roadmap, the FSB has published two climate-related reports on:

- the availability of data with which to monitor climate-related financial stability risks and remaining data gaps; and
- promoting climate-related disclosures.

Coronavirus: Basel Committee reports on early lessons from impact of Basel reforms

The Basel Committee on Banking Supervision (BCBS) has published a report assessing the impact of the Basel III reforms on banks' resilience during the COVID-19 pandemic. The report is part of the BCBS's wider work programme to evaluate the effectiveness of its post-global financial crisis reforms.

Overall, the BCBS found that the reforms, and the subsequent increased quality and higher levels of capital and liquidity in the global banking system, in addition to the extraordinary support measures taken by public authorities, meant that banks were much better able to absorb the shock caused by the pandemic and to continue to lend and provide other critical services. BCBS notes that this suggests the Basel III reforms have achieved their broad objective of strengthening the resilience of the banking system.

In addition, the report looks in detail at functioning of the following in the context of the pandemic:

- the usability of capital buffers, members' experience with the countercyclical capital policies and price movements of additional tier 1 capital instruments;
- liquidity buffers;
- the impact of the leverage ratio on financial intermediation; and
- the cyclicality of specific Basel capital requirements.

BCBS intends to update and provide more comprehensive analysis on these areas in a report due to be published in 2022 once additional data on the impact of the COVID-19 pandemic becomes available.

Singapore and Japan sign memorandum of cooperation on digital economy, AI, cybersecurity and information and communications technology

The Republic of Singapore and Japan have signed a memorandum of cooperation (MOC) on digital economy, artificial intelligence (AI), cybersecurity, and information and communications technology in a virtual ceremony.

The MOC is intended to enable Singapore and Japan to collaborate more closely to exchange information on best practices, policies, and regulations relating to areas of mutual interest such as digitalisation, AI and cybersecurity and to deepen partnerships on joint initiatives to promote and support the growth of digital trade and the interoperability of frameworks.

Treasury Committee reports on future regulatory framework for financial services

The House of Commons Treasury Committee has published its report on the future framework for regulation of financial services.

The report covers the first part of the Committee's inquiry into the future of financial services and sets out conclusions and recommendations in relation to the issues raised by HM Treasury's October 2020 consultation on the second phase of its Financial Services Future Regulatory Framework (FRF) Review, including:

- agreeing that onshored EU financial services rules should be moved into the regulators' rulebooks, while noting that regulators should be sufficiently resourced to efficiently move rules out of statute;
- that there is no compelling evidence to legislate to provide HM Treasury with a formal power to see regulators' policy proposals before they are made public, and that the current informal arrangements help to ensure regulatory independence from government;
- that the proposed activity-based approach to regulation should be used sparingly, noting that regulating a company as a whole provides regulators with greater flexibility to respond to new activities as they develop;
- that HM Treasury should consider how decisions by the Financial Ombudsman Service would interact with the future regulatory framework for the Financial Conduct Authority (FCA); and

- that effective Parliamentary scrutiny can be achieved through the structures already available and that there is no clear need for the creation of a new committee or independent body to scrutinise financial regulations.

In the second part of the inquiry, the Committee intends to focus on issues affecting the financial services industry, such as financial services priorities in trade negotiations, consumer interests and fintech.

Working Group on Sterling Risk-Free Reference Rates publishes paper on active transition of legacy GBP LIBOR loan contracts

The Working Group on Sterling Risk-Free Reference Rates has published a paper for borrowers regarding the timelines and considerations for the active transition of legacy GBP LIBOR loan contracts.

The Working Group reminds market participants of its recommendation for the active transition of legacy GBP LIBOR contracts to be completed by end-Q3 where possible, to ensure preparedness for the cessation of GBP LIBOR at the end of 2021. The Working Group encourages borrowers actively to engage with their lenders and advisors to understand what this milestone means for them, how they can achieve it and how to ensure their readiness for LIBOR transition more broadly.

The appendix of the paper collates together documents published by the Working Group to help support the active transition of legacy GBP LIBOR contracts.

BoE, PRA and FCA publish diversity and inclusion discussion paper

The Bank of England (BoE), Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have published a joint discussion paper (DP21/2) on diversity and inclusion in the financial sector.

The paper seeks views from financial firms and other stakeholders on the ways the regulators can clarify their expectations and set higher standards. In particular, feedback is sought on how to measure progress through data collection and monitoring, and potential policy options for driving and supporting change such as:

- mandating areas of responsibility for diversity and inclusion at board level;
- senior manager accountability for diversity and inclusion;
- linking remuneration to diversity and inclusion metrics as part of non-financial performance assessments;
- requiring firms to publish a diversity and inclusion policy;
- regulatory requirements or expectations on targets for senior management and other employees;
- training aimed at promoting diverse workforces and inclusive cultures;
- developing expectations on product governance that specifically take into account consumers' protected, or other diversity, characteristics;
- proportionate information disclosures;
- auditing of diversity and inclusion;

- embedding non-financial misconduct into fitness and propriety assessments; and
- guidance on how diversity and inclusion relates to the threshold conditions.

The regulators intend to conduct a pilot survey in relation to data collection later in the year and to publish a joint consultation on detailed proposals in Q1 2022.

Comments on the discussion paper are due by 30 September.

FCA issues statement on supervision of commodity position limits

The FCA has issued a statement on the supervision of commodity position limits.

In December 2020, the FCA published a supervisory statement setting out its approach to the operation of the MiFID markets regime after the end of the Brexit transition period. The statement included an amendment to the FCA's approach to commodity derivates position limits in light of constraints and inflexibilities revealed during the COVID-19 pandemic. In particular, the FCA stated it would not take supervisory or enforcement action for positions that exceeded limits where the position was held by a liquidity provider in order to fulfil its obligations on a trading venue. In its new statement, the FCA confirms that this remains its position.

The statement also refers to HM Treasury's consultation, launched on 1 July 2021, on its review of the wholesale markets. The FCA notes it supports HM Treasury's specific proposals to reform the MiFID commodity derivatives position limits regime by restricting the scope of position limits to agricultural contracts and physically settled contracts. It also notes that, while these changes are being considered, it will not take supervisory or enforcement action in relation to commodity derivative positions that exceed position limits on cash-settled commodity derivative contracts, unless the underlying is an agricultural commodity. This position will be kept under review and revised if there are indications of market abuse.

The FCA clarifies that its statement does not apply to physically deliverable or agricultural commodity derivative contracts, where the final settlement can be in the form of physical settlement of the underlying commodity, or where the underlying is an agricultural commodity. It also does not affect the responsibilities on members or participants of a trading venue under the position management rules of that venue or under other market conduct obligations.

FCA consults on reforms to improve effectiveness of UK primary markets

The FCA has launched a consultation on a series of proposed reforms designed to improve the effectiveness and competitiveness of the UK primary markets. The proposals are a response to the recommendations of the UK Listing Review, chaired by Lord Jonathan Hill, and the Kalifa Review of UK Fintech. They are intended to reduce barriers to listing for companies and increase the range of investment opportunities available to consumers on UK public markets, especially opportunities in higher growth sectors.

In particular, the FCA is proposing to:

- allow a targeted form of dual class share structures within the premium listing segment in order to encourage innovative, often founder-led, companies onto public markets sooner;
- reduce the amount of shares an issuer is required to have in public hands (i.e. free float) from 25% to 10%;
- increase the minimum market capitalisation threshold for both the premium and standard listing segments for shares in ordinary commercial companies from GBP 700,000 to GBP 50,000,000; and
- make minor changes to the Listing Rules, Disclosure Guidance and Transparency Rules, and the Prospectus Regulation Rules to simplify them and to better reflect changes in technology and market practices.

As part of the consultation, the FCA has also published a discussion paper which seeks views on:

- the overall structure of the FCA's listing regime;
- whether wider-reaching reforms could improve the regime's longer-term effectiveness;
- the value market participants place on different aspects of the regime; and
- how the regime might be modernised.

Comments are due by 14 September 2021.

PRA consults on designating investment firms

The PRA has published a consultation paper (CP15/21) on minor changes to its policy on designating investment firms.

The proposed amendments seek to reflect the introduction of the new Investment Firms Prudential Regime (IFPR) and include:

- widening the scope of the firms that can be designated to reflect the draft revisions to the PRA Regulated Activities Order (PRA RAO) recently published by HM Treasury;
- extending the date that a designated decision would take effect once issued from three months to six months;
- noting that the PRA will take into account whether or not a firm offers clearing services to other financial institutions that are not clearing members themselves when making a designation decision; and
- increasing the base capital resources requirement for designated firms from EUR 730,000 to GBP 750,000.

The PRA notes that it does not expect the proposals to involve significant additional costs for firms and that it will continue to designate firms on a case-by-case basis following a holistic assessment of the considerations set out in its statement of policy (SoP) on the designation of investment firms for prudential supervision.

The PRA proposes that the changes would take effect on 1 January 2022.

Comments are due by 5 October 2021.

PRA responds to feedback on IRB mortgage risk weights

The PRA has published a policy statement providing feedback following responses to its consultation paper (CP14/20) on internal ratings based (IRB) UK mortgage risk weights and managing deficiencies in model risk capture.

The statement contains the PRA's final policy and an updated supervisory statement (SS) on IRB approaches. It is relevant to PRA-authorised UK banks, building societies, and ring-fenced banks (RFBs) holding IRB model permissions.

Respondents to the consultation were generally not in favour of the proposed minimum expectations, with particular concerns raised about the proposed 7% risk weight minimum expectation for individual UK mortgage exposures. The PRA intends to consult on revised probability of default (PD) and loss given default (LGD) parameter minimum values as part of its implementation of the Basel 3.1 standards.

The amendments to the SS will take effect from 1 January 2022.

BaFin launches consultation on First Covered Bonds Amendment Ordinance

The German Federal Financial Services Supervisory Authority (BaFin) has circulated its draft First Covered Bonds Amendment Ordinance (Erste pfandbriefrechtlichen Änderungsverordnung) for consultation (consultation 10/2021).

Amongst other things, the draft ordinance implements Article 21 of the Coverage Bonds Directive regarding reporting obligations of institutions issuing covered bonds re eligibility of assets and cover pool requirements, segregation of cover assets, functioning of the cover pool monitor, coverage requirements, cover pool liquidity buffer as well conditions for extendable maturity structures. Further articles of the draft ordinance relate to other covered bond related ordinances (i.e. Covered Bond Present Value Ordinance, Coverage Register Ordinance, Lending Value Ordinance, Ship Lending Value Ordinance, Airplane Lending Value Ordinance and Refinancing Register Ordinance).

BaFin has asked market participants to consider certain questions and revert with written submissions by 15 August 2021.

BaFin announces regulatory relief for small and non-complex institutions

BaFin has issued a press release announcing regulatory relief for small and non-complex institutions (SNCI). These regulatory simplifications apply to institutions that qualify as SNCI within the meaning of the Capital Requirements Regulation (CRR2). Approximately 1,150 institutions in Germany could benefit from this more proportionate financial regulation relating to, amongst other things, a simplified version of the structural liquidity ratio (simplified Net Stable Funding Ratio), reduced disclosure and reporting obligations (e.g. quarterly liquidity reporting on additional monitoring metrics (AMM)). The requirements on capital or liquidity related obligations of SNCI remain unchanged. BaFin is in the process of contacting relevant institutions.

Tri-party repurchase agreements: BaFin publishes circular on application of EBA guidelines

BaFin has announced that, as of 28 June 2021, it has adopted in its administrative practice the EBA guidelines on the conditions for the application of the alternative treatment of institutions' exposures related to tri-party repurchase agreements pursuant to Article 403(3) of the Capital Requirements Regulation (CRR) for large exposures purposes (EBA/GL/2021/01). The EBA guidelines detail the conditions institutions should comply with when they decide to make use of the alternative treatment with regard to tri-party repurchase agreements facilitated by a tri-party agent. They also specify the conditions and frequency for determining, monitoring and revising the limits that the institution would instruct the tri-party agent to observe.

With this announcement, BaFin is adhering to its declaration to the EBA that it would comply with the guidelines by 28 June 2021.

Bank of Italy publishes updates on corporate governance of banks

The Bank of Italy has issued an update to the supervisory instructions intended to amend the existing rules governing the corporate governance of banks (Bank of Italy Circular No. 285/2013). These provisions are aimed at strengthening the governance structures of Italian banks and take into account the evolution of the European regulatory framework, including CRD5 and EBA guidelines.

Amongst other things, these new provisions include:

- the introduction of a minimum gender quota of 33% in management and control bodies;
- raising the size threshold for the definition of a bank of 'smaller size or operational complexity' from EUR 3.5 billion to EUR 5 billion;
- the inclusion of fintech, environmental, social and governance factors (ESG) and funding policies amongst issues of strategic importance;
- the adoption of ethical standards for all personnel;
- the reinforcement of some control structures; and
- the adoption of policies for managing dialogue between directors and shareholders.

CSSF issues regulation on setting of countercyclical buffer rate

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a new regulation (21-02) on the setting of the countercyclical buffer rate for the third quarter of 2021. The regulation was published in the Luxembourg official journal (Mémorial A) on 2 July 2021.

The regulation follows the Luxembourg Systemic Risk Committee's recommendation of 8 June 2021 (CRS/2021/002) and maintains the countercyclical buffer rate for relevant exposures located in Luxembourg at 0.5% for the third quarter of 2021. This rate is applicable since 1 January 2021.

The regulation entered into force on 2 July 2021.

China releases opinions on strictly regulating illegal activities in securities markets

The General Office of the Communist Party of China Central Committee and the General Office of the State Council have jointly issued the 'Opinions on Strictly Regulating Illegal Activities in Securities Markets'. The Opinions emphasise that China will adopt a 'zero-tolerance' approach towards illegal activities in China's securities markets and improve the social credit system applicable to the capital market.

Among others, the following key aspects of the Opinions are worth noting:

- illegal activities will be subject to more severe administrative/criminal/civil liability – China will refine the existing laws and regulations to increase administrative and criminal liabilities for breaching securities laws (including false statements, market manipulation and insider trading). China will also improve the implementation of a class action mechanism (through a representative) for securities disputes and launch a pilot programme of arbitration for the securities industry, as measures to further secure civil compensation for investors. In addition, criminal liabilities to be imposed on private fund managers for reasons of illegal fund raising and misappropriation of fund properties will be increased;
- cross-border cooperation on law enforcement and judicial activities will be enhanced – China will improve the legislation framework governing data security, cross-border data flow and confidential information management as well as promoting the establishment of law enforcement alliances against cross-border securities-related violations and crimes. Companies that are listed on overseas exchanges with their principal place of business in China may need to be prepared for an enhanced supervision approach on information management, including any data export activity. Details of the implementation rules and judicial interpretations to clarify the exterritoriality effect of the PRC Securities Law (2019 Amendment) are also expected to be issued in the near future.
- a well-organised credit system applicable to capital markets will be established – China will also be focused on establishing a social credit system for China's capital market based on, among others, implementation of commitments by market participants, which normally refer to the undertakings made by market participants publicly (for example, in the offering circular) or under written application documents submitted to regulators. Market participants severely violating their commitments may be subject to revocation of administrative licence and the credit status of market participants will be appropriately shared among regulators as well as market participants under the framework of the social credit system.

MAS commences remaining sections of Banking (Amendment) Act 2020 and issues response to feedback received on related amendments to Regulations, Notices and Guidelines

The Singapore Government has gazetted the Banking (Amendment) Act 2020 (Commencement) Notification 2021 to designate 1 July 2021 as the effective date for sections 2, 3, 5, 11, 13 to 17, 19, 20, 21, 24, 26 to 32, 33(b) and (d), 34 to 43, 44(a), (b) and (d) and 45 to 68 of the Banking (Amendment) Act

2020 (BAA). These sections deal with, among other things, the removal of the divide between the Domestic Banking Unit and the Asian Currency Unit (DBU-ACU), consolidation of the regulation of merchant banks under the Banking Act, and enhancement to the MAS' powers to tackle new and emerging risks including those relating to outsourcing arrangements.

To operationalise the new sections of the BAA, MAS issued a consultation paper in December 2020 on Proposed Amendments to Regulations, Notices and Guidelines arising from the BAA and Other Changes. The MAS' response to feedback received on this consultation paper was released on 30 June 2021. Based on the feedback received, the MAS has clarified the following:

- with the removal of the DBU-ACU divide, the asset maintenance requirements currently imposed in respect of deposit liabilities incurred by a bank in Singapore with non-bank customers in the DBU or ACU will instead be imposed in respect of deposit liabilities incurred by the bank with non-bank customers which are incurred in Singapore dollars and foreign currencies respectively;
- following a review of the anti-commingling framework, the Banking Regulations have been amended to make clear that the MAS will only allow a locally-incorporated bank to use or place its name, logo or trademark without the MAS' approval, in relation to any event that is sponsored by the bank, where it is subject to approval by its board;
- the revised regulation 23G(1)(a) and (b) of the Banking Regulations allow banks to carry on the business of operating an online location where consumer goods or services are sold to consumers. As such, the use of a bank's branches should be limited and no sale of consumer goods or services is allowed in them;
- Directives and Notices previously applicable to merchant banks have been cancelled and re-issued under the relevant provisions in the new Part VIIB of the Banking Act, which sets out a new licensing framework for merchant banks; and
- the MAS is reviewing the reporting requirements for breaches of section 47 of the Banking Act and section 49 of the Trust Companies Act in relation to privacy of customer information. The MAS may take into consideration the circumstances surrounding the breach, such as the severity of the breach in terms of its impact and harm, as well as the robustness of internal controls. Relevant mitigating and aggravating factors may be considered on a case-by-case basis in determining the severity of the action to be taken.

Consequently, the MAS has amended, cancelled and issued new instruments to support the legislative changes effected by the BAA. These are set out in Annex A of the response paper.

Additionally, consequential revisions have also been made to the following instruments which are not included in Annex A:

- PSN01AA Prevention of Money Laundering and Countering the Financing of Terrorism - Persons Providing Account Issuances Services who are Exempted under the Payment Services (Exemption for Specified Period) Regulations 2019; and
- Companies (Amendment) Regulations 2021.

MAS revises compliance toolkits for fund managers

MAS has revised its compliance toolkits for licensed fund management companies (LFMCs), registered fund management companies (RFMCs) and venture capital fund managers (VCFMs) relating to various MAS approval and reporting requirements and timelines.

The toolkit for LFMCs and the toolkit for RFMCs have both been revised to provide for new requirements to notify the MAS on:

- significant redemptions and the activation of liquidity management tools in authorised, restricted, or exempt collective investment schemes (CIS) managed by the FMC; and
- suspension of fund dealings or activation of gating measures for all CIS that the FMC manages, advises, acts as a representative of, and/or offers.

Finally, the toolkit for VCFMs has been revised to provide for a new requirement to notify the MAS on suspension of fund dealings or activation of gating measures for all CIS that the VCFM manages, advises, acts as a representative of, and/or offers.

MAS consults on proposed amendments to Securities & Futures (Reporting of Derivatives Contracts) Regulations

MAS has launched a public consultation on proposed amendments to the Securities & Futures (Reporting of Derivatives Contracts) Regulations (SF(RDC)R). The Securities and Futures Act and the SF(RDC)R set out the MAS' reporting regime for OTC derivatives contracts.

To facilitate the aggregation of OTC derivatives data through standardisation and harmonisation of data elements, the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions (CPMI-IOSCO) published three sets of technical guidance setting out approaches, definitions and characteristics of key reportable elements, namely the unique transaction identifier (UTI), unique product identifier (UPI) and other critical data elements (CDE).

The MAS agrees with the characteristics and approaches to UTI reporting as set out in the CPMI-IOSCO technical guidance on the harmonisation of the UTI, and intends to align its UTI reporting requirement as far as possible by amending the current UTI reporting requirement in the SF(RDC)R, and issuing guidelines to provide clarity on its expectation on the UTI generation and reporting requirements.

The MAS is also proposing to amend the reportable data fields in the First Schedule to the SF(RDC)R to introduce additional data fields, as well as aligning the definitions of common data fields with the CPMI-ISCO technical guidance on the harmonisation of critical OTC derivatives data elements as closely as possible and issuing guidelines to provide guidance on the interpretation of the data fields. Where there are international standards available for the structure and format of a data field value, the MAS is proposing to adopt them. Where international standards are not yet fully developed, the MAS will defer reporting of these fields and update the field values requirements as the standards become available. Where there are data fields not covered by the technical guidance on CDE, but that are also required to be reported by other authorities, the MAS intends to align the

definitions with those used by other authorities as closely as practicable to facilitate global reporting.

The MAS intends to finalise the reportable data fields in the First Schedule to the SF(RDC)R and the UTI Guidelines by the second quarter of 2022, and implement the revised requirements in the second quarter of 2023.

Comments on the consultation are due by 3 September 2021.

MAS proposes to enhance its investigative and other powers under MAS-administered Acts

MAS has launched a public consultation on its proposal to strengthen its investigative powers under the MAS-administered Acts, in order to enhance its ability to gather evidence. The proposed amendments will be made under a Financial Institutions (Miscellaneous Amendments) Bill.

The Bill proposes to empower the MAS to enter premises without prior notice or a court warrant in connection with investigations under the Securities and Futures Act (SFA) or the Financial Advisers Act (FAA), where the MAS assesses that there is a risk of evidence being destroyed. The MAS also proposes to extend this power, along with other investigative powers that are currently available under the SFA and FAA, to the other MAS-administered Acts, namely the Banking Act, Insurance Act, Trust Companies Act, Payment Services Act and the new omnibus Act for the financial sector.

Other proposals in the consultation paper include:

- clarifying that the MAS may reprimand a person for misconduct even after the person has left a financial institution (FI) or the financial industry; and
- introducing powers to enable the MAS to impose requirements on certain FIs to manage risks arising from the conduct of unregulated businesses.

Comments on the consultation are due by 1 August 2021.

Australian Government consults on regulatory relief for foreign financial service providers

The Australian Government has launched a public consultation on relief for foreign financial service providers (FFSPs). The consultation follows the announcement by the Government in the 2021-22 Budget that it would consult on options to restore previously well-established regulatory relief for FFSPs and options to create a fast-track licensing process for those that wish to establish more permanent operations in Australia. These measures are intended to reduce duplicate regulation and barriers for FFSPs entering the Australian market.

The options proposed by the Australian Treasury are intended to:

- provide Australian licensing relief to FFSPs that are already similarly licensed and regulated in other jurisdictions that want to enter the Australian market;
- provide Australian licensing relief to FFSPs not based in Australia that provide financial services to their Australian clients; and
- fast-track the licensing process for FFSPs that will require a licence to operate in Australia.

Comments on the consultation are due by 30 July 2021.

ASIC announces commencement of debt management licensing regime

The Australian Securities and Investments Commission (ASIC) has announced the commencement of a debt management licensing regime with effect from 1 July 2021, which stipulates that providers of debt management services (including firms offering 'debt negotiation' or 'credit repair' services) will be regulated under the National Consumer Credit Protection Act 2009 (National Credit Act). As a result of the commencement of the regime, providers of debt management services will be required to:

- hold a credit licence with an authorisation that covers those services (or act as a representative of such an authorised licensee); or
- be operating in accordance with the transitional arrangements.

The transitional arrangements only apply while ASIC is considering the service provider's application for a credit licence or variation. ASIC has indicated that it will be closely monitoring compliance with the new laws, including identifying unlicensed conduct and taking action where necessary.

ASIC has also published a list of persons/entities that have applied for a credit licence or a variation by 30 June 2021, and were members of AFCA on that date. The list reflects licence applications that have not yet been determined by ASIC and where the person/entity has consented to ASIC publishing details of their application.

ASIC consults on proposed guidance and relief for litigation funding schemes

ASIC has launched a public consultation on proposed guidance and relief for litigation funding schemes (CP 345). Under CP 345, ASIC is proposing to:

- provide definitional guidance for key terms in the managed investment scheme (MIS) regulatory regime as they apply to litigation funding schemes;
- grant relief from the equal treatment duty in relation to distributions of a settlement or judgment sum obtained in connection with a litigation funding scheme;
- extend relief from the dollar disclosure provisions in relation to certain commercially sensitive information; and
- not remake pre-August 2020 relief instruments, which are due to expire on 31 January 2023.

ASIC is seeking feedback from the industry on whether the proposed guidance is necessary and adequate, and whether the proposed relief addresses industry concerns about the workability of the MIS regime for litigation funding schemes.

ASIC has also indicated that, in administering the Australian financial services licensing and MIS regimes for litigation funding schemes, ASIC intends to:

- give effect to the Government's policy intent; and
- facilitate the effective operation of the legislative framework by ensuring the workability of the regimes and promoting commercial certainty about their operation.

Comments on the consultation are due by 20 August 2021.

ASIC consults on remaking class order regarding when debentures can be called secured notes

ASIC has launched a public consultation on its proposal to remake its class order regarding when debentures can be called secured notes. The class order is due to expire (sunset) on 1 April 2022.

ASIC proposes to remake the class order on the basis that it is operating effectively and efficiently and continues to form a necessary and useful part of the legislative framework. According to ASIC, the fundamental policy principles that underpin the class order have not changed.

The consultation paper 'Remaking ASIC class order on when debentures can be called secured notes' (CP 344) outlines ASIC's rationale for proposing to remake the instrument. CP 344 seeks comments on:

- whether the class order is currently operating effectively and efficiently;
- whether the conditions of relief should remain unchanged; and
- whether the remade legislative instrument should remain in force for 10 years or for a shorter period of time.

Comments on the consultation are due by 29 July 2021.

RECENT CLIFFORD CHANCE BRIEFINGS

The FCA, PRA and Bank of England have published a discussion paper seeking views on proposed regulatory plans to improve diversity and inclusion in regulated firms

The discussion paper makes it clear that the FCA, PRA and Bank of England expect to see diversity and inclusion become part of how they regulate and part of how the UK financial sector does business. They want firms to think about how they can advance diversity and inclusion through improving their policies, governance arrangements, accountability, remuneration arrangements and disclosure. The regulators' engagement on diversity and inclusion will be an important part of its wider engagement on ESG.

This briefing examines the contents of the discussion paper.

https://www.cliffordchance.com/briefings/2021/07/uk--client-briefing---the-fca--pra-and-bank-of-england-have-publ.html

FCA proposes mandatory climate-related disclosures for asset managers, life insurers and FCA-regulated pension providers

On 22 June 2021, the UK's FCA published a consultation proposing climate-related disclosure requirements for asset managers, life insurers and FCA-regulated pension providers.

The proposals reflect one of the UK Government's ESG aims of introducing mandatory climate-related disclosures across the UK economy and would integrate the Task Force on Climate-related Financial Disclosures

recommendations. With a relatively short turnaround time, larger in-scope firms would be required to produce their first entity-level disclosures by 30 June 2023, while smaller in-scope firms would be required to produce their first entity-level disclosures by 30 June 2024.

This briefing discusses the consultation proposals.

https://www.cliffordchance.com/briefings/2021/07/fca-proposes-mandatory-climate-related-disclosures-for-asset-man.html

How to enforce a foreign judgment in England

When asked whether and, if so, how a foreign judgment can be enforced in England, an English lawyer's answer will be: 'it depends'.

It depends upon when the judgment was given, what jurisdiction provisions the parties have agreed, what courts gave the judgment, and on a myriad of other factors. That is not to say that it will be impossible, or even hard – it just depends.

This briefing discusses the enforcement of foreign judgments in England.

https://www.cliffordchance.com/briefings/2021/07/how-to-enforce-a-foreign-judgment-in-england.html

Central Bank Digital Currencies and the theory of money

The development of Central Bank Digital Currencies (CBDCs) – a digital representation of fiat money issued by a central bank – has been accelerated by COVID-19 and the resulting shift to digital payments.

This briefing considers the different approaches being taken by central banks globally, including the digital euro, renminbi and dollar, what practical adoption of CBDCs may look like, the legal structures that might be employed and the consequences for businesses.

https://www.cliffordchance.com/briefings/2021/07/central-bank-digital-currencies-and-the-theory-of-money.html

ESG trends – the rise of climate litigation and the challenges for business

Activist shareholders and NGOs targeting governments and businesses in relation to climate change are increasingly turning to litigation.

This briefing discusses the rise of climate litigation.

https://www.cliffordchance.com/briefings/2021/07/esg-trends--the-rise-of-climate-litigation-and-the-challenges-fo.html

China introduces Anti-Foreign Sanctions Law

The PRC Anti-Foreign Sanctions Law (AFSL) was promulgated on 10 June 2021 and took effect on the same date. Comprising 16 articles, the AFSL sets out an overarching framework for further developing a legal toolkit for China to resist foreign sanctions. This is an effort to systematise the ad hoc sanctions imposed by the PRC Government on foreign individuals and organisations, and in furtherance of the Blocking Statute and the Provisions on the Unreliable Entity List promulgated by the PRC Ministry of Commerce in January 2021 and September 2020 respectively.

This briefing highlights the key issues arising under the AFSL.

https://www.cliffordchance.com/briefings/2021/07/china-introduces-anti-foreign-sanctions-law.html

The doctrine of penalties in Hong Kong – Court of Appeal clarifies test and adopts a modern approach

A recent decision of the Court of Appeal, Law Ting Pong, has confirmed that the test set out in Cavendish Square applies in Hong Kong.

This provides welcome certainty and brings Hong Kong in line with the position under English law. The Cavendish Square test is generally considered to be more commercial and practical than the Dunlop test that previously applied, which may benefit parties to complex commercial contracts in financing or M&A transactions.

This briefing discusses the decision and the Cavendish Square test.

https://www.cliffordchance.com/briefings/2021/07/the-doctrine-of-penalties-in-hong-kong--court-of-appeal-clarifie.html

New York Department of Financial Services issues ransomware guidance in wake of increased attacks

On 30 June 2021, the New York Department of Financial Services issued ransomware guidance to help companies prevent and respond to attacks. While the alert is styled as 'guidance', it is hard to imagine many situations, even applying a risk-based analysis, where DFS would not 'expect' supervised entities to implement the controls listed, which repeatedly cross-reference the Department's cybersecurity regulation. As ransomware attacks continue to increase in frequency and sophistication, supervised entities should review their cybersecurity controls against DFS's guidance to ensure that they have adequate protections in place.

This briefing discusses the ransomware guidance.

https://www.cliffordchance.com/briefings/2021/06/new-york-department-of-financial-services-issuers-ransomware-gui.html