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BRRD: Implementing Regulation on impracticability of contractual recognition of bail-in published in Official Journal

Commission Implementing Regulation (EU) 2021/1751 laying down implementing technical standards (ITS) with regard to uniform formats and templates relating to the contractual recognition of write down and conversion powers under the Bank Recovery and Resolution Directive (BRRD) has been published in the Official Journal.

The ITS specify uniform formats and templates for the notification to resolution authorities of contracts meeting the conditions of impracticability defined in Delegated Regulation (EU) 2021/1527.

The Implementing Regulation will enter into force on 24 October 2021.

CRR: Implementing Decision on third country equivalence as regards treatment of exposures published in Official Journal

Commission Implementing Decision (EU) 2021/1753 on the equivalence of the supervisory and regulatory requirements of certain third countries and territories for the purpose of the treatment of exposures in accordance with the Capital Requirements Regulation (CRR) has been published in the Official Journal.

The third countries and territories set out in the decision are deemed equivalent for the following purposes:

- equivalence of requirements applied to credit institutions for the purposes of Article 107(4) of the CRR relating to capital requirements for credit risk;
- equivalence of requirements applied to investment firms for the purposes of Article 107(4);
- equivalence of requirements applied to exchanges for the purposes of Article 107(4);
- equivalence of requirements applied to exposures to central governments, central banks, regional governments, local authorities and public sector entities for the purposes of Articles 114, 115 and 116 of the CRR relating to risk weights, exposures to regional governments or local authorities, and exposures to public sector entities;

- equivalence of requirements to credit institutions and investment firms for the purposes Article 142 of the CRR relating to the internal ratings based approach; and
- equivalence of requirements applied to institutions for the purposes of Article 391 of the CRR relating to the definition of an institution for large exposures purposes.

The decision repeals Implementing Decision 2014/908/EU and will enter into force on 24 October 2021.

ESMA consults on retail investor protection

The European Securities and Markets Authority (ESMA) has launched a call for evidence on certain retail investor protection topics under the Markets in Financial Instruments Directive (MiFID2).

The call for evidence is intended to inform ESMA's technical advice to the EU Commission on legislative proposals implementing aspects of the retail investment strategy announced in the September 2020 Capital Markets Union (CMU) Action Plan.

Information is sought on the following focused areas:

- the identification of any significant overlaps, gaps, redundancies and inconsistencies between MiFID2 and other investor protection legislation governing disclosures directly addressed to retail clients;
- the use of, and solutions for, digital disclosures, including whether approaches should be integrated within the MiFID2 framework; and
- the risks and opportunities presented by digital tools and channels, such as robo-advice, online brokers and social media, as well as feedback on risk warnings for non-advised services and open finance.

Comments are due by 2 January 2022.

ESMA intends to deliver its technical advice to the Commission by 30 April 2022.

Joint statement on EU-US Financial Regulatory Forum published

The EU Commission has published a joint statement on the meeting of the EU-US Financial Regulatory Forum held on 29 and 30 September 2021.

Participants included representatives from the EU Commission, the US Department of Treasury and their respective regulatory agencies, who discussed:

- market developments and financial stability risks, including the need for cooperative international engagement in the light of an uncertain economic outlook;
- sustainable finance, including priorities, approaches to aligning private investments to sustainability goals, and ongoing work on climate and sustainability-related financial disclosures;
- multilateral and bilateral engagement in banking and insurance, including the Basel III reforms, the treatment of foreign bank branches, prudential requirements for investment firms, the EU's review of Solvency II and new framework for the recovery and resolution of (re)insurers, and the

implementation of the EU-US Covered Agreement on prudential measures regarding insurance and reinsurance;

- regulatory and supervisory cooperation in capital markets, including the transition away from LIBOR, the EU's reviews of Alternative Investment Fund Managers Directive (AIFMD) and the Markets in Financial Instruments Regulation (MiFIR), efforts in the area of money market funds, and ongoing discussions on data transfers and the registration of EU funds in the US;
- progress on the implementation of the US's substituted compliance regime for EU-domiciled security-based swap dealers, as well as US plans for new capital and financial reporting requirements for swap dealers;
- financial innovation, including operational resilience, central bank digital currencies, crypto-assets and stablecoins; and
- anti-money laundering and countering the financing of terrorism (AML/CFT), including progress made in strengthening their domestic frameworks, the opportunities and challenges arising from financial innovation, and potential areas for enhanced cooperation.

The next meeting is expected to be held in early 2022.

FSB and IMF report on G20 data gaps initiative progress

The Financial Stability Board (FSB) and International Monetary Fund (IMF) have published their 2021 progress report on the implementation of the second phase of the G20 data gaps initiative (DGI-2).

The report provides an overview of the work undertaken since October 2020 to implement the DGI-2 recommendations on addressing data gaps identified after the global financial crisis. Key findings include that:

- significant progress has been made in closing the identified policy-relevant data gaps;
- the value of the initiative has been made evident during the COVID-19 pandemic, as policymakers have been able to access key information, assess developments and risks in the financial and non-financial sectors, and analyse interconnectedness and cross-border risks; and
- the pandemic has affected progress on the DGI-2 work programme and some recommendations will not be fully implemented by the end of 2021. The areas particularly affected are: securities financing transaction data; institutional sectoral accounts; household distributional information; data on general government debt and operations; and commercial property price indices.

The report also notes that, while 2021 marks the final year of DGI-2, participating economies and international organisations have recognised the need for a new international cooperation initiative on data gaps after its conclusion. The FSB and IMF propose that this new initiative focuses in particular on climate change, household distributional information, fintech and financial inclusion data, access to private sources of data and administrative data, and data sharing. A detailed workplan for the new initiative will be developed shortly.

FSB reports on implementation of recommendations on regulation, supervision and oversight of global stablecoins

The FSB has published a report on the progress made by jurisdictions in the FSB and its regional consultative groups on implementing the high-level recommendations for the regulation, supervision and oversight of global stablecoin (GSC) arrangements, which were published by the FSB in October 2020.

The report notes that, overall, the implementation of the recommendations is still at an early stage and that there are a number of issues that may require further consideration to support adoption and prevent regulatory arbitrage. These include clarification of:

- the criteria for identifying a stablecoin as a GSC;
- prudential, investor protection, and other requirements for GSC service providers;
- redemption rights;
- cross-border and cross-sector cooperation and coordination; and
- mutual recognition and deference.

The report also highlights that other standard-setting bodies (SSBs), including the Basel Committee on Banking Supervision (BCBS), the Committee on Payments and Market Infrastructures (CPMI), and the International Organization of Securities Commissions (IOSCO), are currently considering whether and how existing international standards and principles apply to GSCs and, where appropriate, making adjustments in light of the FSB's recommendations.

The FSB emphasises that there may be areas not yet covered by these standards and that any gaps should be addressed in a holistic way that is coordinated across sectors. It intends to conduct a review with other SSBs in July 2023 to discuss this and will update its recommendations at that stage if necessary.

CPMI and IOSCO consult on stablecoin guidance

IOSCO and the CPMI have published for consultation draft guidance on how the Principles for Financial Market Infrastructures (PFMI) apply to systemically important stablecoin arrangements.

The guidance upholds the conclusions of the Financial Stability Board's October 2020 report that the PFMI are applicable to systemically important stablecoin arrangements, as the transfer function of a stablecoin is comparable to that of other types of financial market infrastructure (FMI). It sets out four criteria designed to help relevant authorities identify whether a stablecoin arrangement is systemically important, namely:

- the stablecoin arrangement's size;
- the nature and risk profile of its activity;
- its interconnectedness, interdependencies and complexity; and
- its substitutability (i.e. whether there are available alternatives in time-critical situations).

The draft report also provides guidance on how to apply the PFMI in instances where the nature and features of stablecoin arrangements differ from that of existing FMIs. These areas include:

- the potential use of settlement assets that are neither central bank money nor commercial bank money and carry additional financial risk;
- the interdependencies between multiple stablecoin functions;
- the degree of decentralisation of operations and/or governance; and
- a potentially large-scale deployment of emerging technologies such as distributed ledger technology.

Responses are due by 1 December 2021.

CPMI consults on increasing payment-versus-payment adoption

The CPMI has launched a consultation on proposals to increase payment-versus-payment (PvP) adoptions.

The CPMI notes that settling FX trades can lead to principal risk exposures when one counterparty to a trade sends a currency payment to the other counterparty before receiving the currency it is buying, and that PvP mechanisms, which ensure that the final transfer of a payment in one currency occurs if and only if the final transfer of a payment in another currency or currencies takes place, can significantly mitigate principal risk.

The CPMI is seeking feedback on existing, planned, or possible future solutions to expand PvP settlement to a wider range of transactions, specifically addressing:

- how the solution would achieve PvP;
- what FX products and currency pairs the solution would be well-suited and/or designed to settle;
- which aspects of the solution would incentivise and broaden user participation;
- what challenges faced by the market related to settling cross-border wholesale deliverable FX payments the solution would address and how it would do so; and
- what roles the public and private sectors can play in the solution.

Comments are due by 12 November 2021.

PRA consults on expectations regarding trading activity wind-downs

The Prudential Regulation Authority (PRA) has published a consultation paper (CP20/21) on proposed expectations of firms with regard to their engagement in trading activities that may affect financial stability and their ability to carry out a full or partial orderly wind-down of these activities in recovery and post-resolution restructuring.

The expectations on trading activity wind-down (TWD) would be set out in a new supervisory statement (SS) and statement of policy, and in amendments to SS9/17 'Recovery planning'. They will apply to any firms that have been identified by the PRA as an 'other systemically important institution' (O-SII),

have the full or partial TWD as a recovery and post-resolution restructuring option, and have either been notified by the Bank of England (BoE) that their preferred resolution strategy is BoE-led bail-in, or that they are a 'material subsidiary' of an overseas-based banking group for the purposes of setting internal MREL in the UK.

In particular, the PRA is seeking feedback on proposals that these firms:

- include a baseline set of factors when designing the scenario or scenarios used to develop and test their TWD option;
- develop and refresh their information provision and decision-making capabilities so that they are able to support the TWD option in recovery and post-resolution restructuring; and
- produce and maintain data that is sufficiently broad and granular, as set out in the non-mandatory templates included in the appendices of the draft TWD SS.

Comments are due by 21 January 2022. The PRA expects to publish its final policy in the first half of 2022, with the final rules being implemented on 1 January 2025.

CRR: PRA publishes final policy on UK leverage ratio framework

The PRA has published a policy statement containing feedback from the PRA and Financial Policy Committee (FPC) on responses to the consultation on the UK leverage ratio framework (CP14/21).

PS21/21 contains the FPC's and PRA's final policy including:

- amendments to the PRA Rulebook;
- amendments to SS45/15 'The UK leverage ratio framework';
- FPC direction and recommendation;
- amendments to 'The FPC's powers over leverage ratio tools';
- amendments to SS34/15 'Guidelines for completing regulatory reports'; and
- updated reporting and disclosure templates and instructions.

Respondents generally welcomed the proposals and particularly supported creating a single leverage exposure measure, the extension of the central bank reserves (CBR) exemption, and the application of a PRA supervisory expectation rather than requirement for smaller deposit takers.

Recurrent requested areas for clarification included the qualifying CBR exemption, the level of application of the requirement in ring-fenced banking groups, and the definition and level of the PRA's proposed GBP 10 billion foreign assets threshold to capture firms with 'significant non-UK assets'.

Policy relating to the following will apply from 1 January 2023:

- extending the scope of application of the leverage ratio requirement to firms, ring-fenced body (RFB) sub-groups and CRR consolidation entities with non-UK assets equal to or greater than GBP 10 billion;

- applying the leverage ratio requirement on an individual basis to any firm that is not a CRR consolidation entity or a RFB that is the ultimate parent within an RFB sub-group; and
- making sub-consolidation available as an alternative to individual application where a firm has subsidiaries that can be consolidated.

The remaining policy is designed to take effect at the same time as HM Treasury's anticipated revocation of the leverage parts of the CRR, expected to take place on 1 January 2022.

BaFin issues statement on entry into force of amended Solvency Regulation and systemic risks capital buffer

The German Federal Financial Supervisory Authority (BaFin) has issued a statement noting that, as of 25 September 2021, a new version of the German Solvency Regulation (Solvabilitätsverordnung, SolvV) has come into force, with amendments introduced by way of the 'Third Ordinance to amend the Solvency Regulation' which reflect the European Capital Requirements Directive (CRD 5) and the implementing German Risk Reduction Act (Risikoreduzierungsgesetz).

The newly added section 36a of the SolvV creates the legal basis for calculating the capital buffer for systemic risks. CRD 5 has expanded the scope of the systemic risk buffer and made it more flexible. It now addresses all systemic risks that are not already covered by the capital buffers for systemically important institutions, the counter-cyclical capital buffer or measures under the Capital Requirements Regulation.

Section 37 SolvV, which specifies the method for calculating the maximum distributable amount within the meaning of Section 10i para 3 of the German Banking Act (Kreditwesengesetz), has also been slightly modified. The amendments are essentially limited to technical adjustments to the amended European requirements in Article 141 (5) and (6) of CRD 5.

BaFin publishes extended circular on minimum requirements for implementing a bail-in

BaFin has published an extended Circular 14/2021 (A) – Minimum Requirements for Implementing a Bail-in (MaBail-in). The extended circular now also covers institutions and entities belonging to a group for which the resolution plan does not set out any resolution actions, provided that they are part of a resolution group or relevant third-country subsidiaries. This is necessary to ensure that losses can be transferred within a resolution group to the resolution entity or within the third country group to the respective legal entity in the third country.

The MaBail-in previously only defined requirements for institutions and entities belonging to a group that were designated as resolution entities in the resolution plan.

The new MaBail-in are addressed to all institutions within the meaning of section 2 para 1 of the German Restructuring and Resolution Act (Sanierungs- und Abwicklungsgesetz – SAG) and entities within the meaning of section 1 para 3 SAG in Germany that do not fall within the competence of the Single Resolution Board (SRB) pursuant to article 7 para 2 and para 4 lit. b or para 5 of Regulation (EU) No 806/2014 (SRM Regulation). The MaBail-in generally

does not apply to institutions and entities belonging to a group for which the resolution plan stipulates a liquidation under normal insolvency proceedings.

Cross-border distribution of funds: Consob complies with ESMA guidelines on marketing communications

The Commissione Nazionale per le Società e la Borsa (Consob) has confirmed its intention to comply with ESMA guidelines on marketing communications under Regulation (EU) 2019/1156 on cross-border distribution of funds.

In particular, the guidelines provide for operational measures concerning drafting marketing communications, having regard to general principles, as well as the representation of information concerning costs, risks, past and expected returns and sustainability aspects.

Managers engaging in marketing activities in relation to collective investment schemes will be required to comply with these guidelines from 2 February 2022.

CSSF issues circular on periodic prudential reporting of investment firms

The Commission de Surveillance du Secteur Financier (CSSF) has announced the entry into force of the new regulatory provisions applicable to investment firms (IFs) under the EU wide Investment Firm Directive (IFD)/Investment Firm Regulation (IFR) package (as implemented in Luxembourg), which are intended to subject IFs to a better suited and harmonised framework with respect to prudential supervision.

The IFD/IFR package introduced, among other things, a new EU harmonised framework for prudential reporting by IFs, which includes information regarding the level, composition, requirements and calculation of capital requirements, level of activity, concentration risk and liquidity requirements. However, IFs also remain subject to the national reporting framework laid down in Circular CSSF 05/187, as amended.

The CSSF has therefore issued a new circular (CSSF 21/784) to introduce the 'Reporting Handbook for Investment Firms', which clarifies the applicable requirements by combining the reporting requirements pursuant to the IFR reporting and the national reporting frameworks and related technical specifications.

The Reporting Handbook applies to:

- IFs incorporated under Luxembourg law, including their branches;
- Luxembourg branches of third-country Ifs; and
- as regards some national reporting requirements, Luxembourg branches of EU IFs.

Considering the classification of IFs adopted by the IFD/IFR package, the CSSF requires:

- Class 2 IFs to report prudential data for the reference period ending 30 September 2021 for the first time and on a quarterly basis thereafter; and
- Class 3 IFs to report for the reference period ending 31 December 2021 for the first time and on an annual basis thereafter,

while large IFs, which are systemically important or exposed to the same type of risks as credit institutions (Class 1 IFs), continue to fall under the scope of the CRR and the CRD and are, therefore, not subject to the Reporting Handbook, but to the credit institution reporting framework.

The CSSF has also indicated that the IFR reporting shall be communicated through the 'Investment firms reporting' module in the CSSF's eDesk portal, while national reporting tables will continue to be submitted through the usual transmission mode in compliance with Circular CSSF 08/334 on encryption specifications for reporting firms.

CSSF issues regulation on setting of countercyclical buffer rate

The CSSF has issued a new regulation (21-03) on the setting of the countercyclical buffer rate for the fourth quarter of 2021. The regulation was published in the Luxembourg official journal (Mémorial A) on 1 October 2021.

The regulation follows the Luxembourg Systemic Risk Committee's recommendation of 6 September 2021 (CRS/2021/004) and maintains the countercyclical buffer rate for relevant exposures located in Luxembourg at 0.5% for the fourth quarter of 2021. This rate is applicable since 1 January 2021.

The regulation entered into force on 1 October 2021.

Swiss Federal Council consults on revisions to Anti-Money Laundering Ordinance

The Swiss Federal Council has launched a consultation on amendments to the Anti-Money Laundering Ordinance and other ordinances. The proposed amendments provide more detail on the measures in the revised Anti-Money Laundering Act and are intended to improve the integrity of the Swiss financial centre.

Parliament approved the revision of the Anti-Money Laundering Act on 19 March 2021. The Act strengthens Switzerland's toolkit to combat money laundering and terrorist financing, and includes recommendations from the Financial Action Task Force's (FATF) mutual evaluation report on Switzerland of 2016. The measures require implementing provisions, specifically in the area of the reporting system for money laundering, the introduction of a licencing requirement for purchasing precious metal scrap, the appointment of the Central Office for Precious Metal Control as the new money laundering oversight authority, and the transparency of associations that carry a greater risk of terrorist financing.

The proposed ordinance amendments serve mainly to provide more detail on the adopted measures. In addition, the Federal Council intends to use this opportunity to transpose relevant disclosure provisions from the money laundering ordinances of the supervisory authorities and the Federal Department of Justice and Police (FDJP) into the Federal Council's money laundering ordinance.

The Federal Council is proposing amendments not just to the Anti-Money Laundering Ordinance, but also to the Ordinance on the Money Laundering Report Office Switzerland, the Commercial Register Ordinance, the Precious Metals Control Ordinance and the Ordinance on Fees for Precious Metal Control. At the same time, the Federal Customs Administration has launched

a consultation on its new Anti-Money Laundering Ordinance, which likewise provides more detail on the measures in the revised Anti-Money Laundering Act. The consultation will last until 17 January 2022.

Hong Kong Government welcomes passage of amendment bills regarding establishment of fund re-domiciliation mechanisms

The Hong Kong Government has welcomed the passage of the Securities and Futures (Amendment) Bill 2021 and Limited Partnership Fund and Business Registration Legislation (Amendment) Bill 2021 by the Legislative Council.

The amendment bills are intended to establish new fund re-domiciliation mechanisms for existing funds set up in corporate or limited partnership form outside Hong Kong in order to re-locate their registration and operation to Hong Kong and to be registered as open-ended fund companies (OFCs) or limited partnership funds (LPFs) respectively.

Under the re-domiciliation mechanisms, existing investment funds set up in corporate or limited partnership form outside Hong Kong may apply to the Securities and Futures Commission or the Companies Registry for registration of the fund as an OFC or LPF in Hong Kong respectively. Upon re-domiciliation, the continuity of the fund, including contracts made and property acquired, will be preserved. The mechanisms do not operate to create a new legal entity, which will necessitate dissolution procedures of the original fund. The fund would have the same rights and obligations as any other newly established OFCs or LPFs in Hong Kong. The fund will be required to deregister in its original place of establishment upon re-domiciliation.

The re-domiciliation mechanisms will come into operation on 1 November 2021.

SFC sets out standards for operational resilience and remote working arrangements

The Securities and Futures Commission (SFC) has published a report titled 'Report on Operational Resilience and Remote Working Arrangements', which is intended to:

- provide intermediaries with a better understanding of the regulatory standards and required implementation measures for operational resilience;
- explain the major possible risks of remote working arrangements, including working from home and provide suggested techniques and procedures for risk mitigation; and
- share examples and lessons learned drawn from the SFC's review of some licensed corporations' operational resilience measures during the COVID-19 pandemic and other disruptive events.

The SFC has encouraged intermediaries to adopt the suggested techniques and procedures set out in the report where appropriate in their circumstances. Registered institutions have also been advised to comply with all applicable requirements and make reference to other guidance issued by the Hong Kong Monetary Authority (HKMA) from time to time.

Exchanges (Demutualisation and Merger) (Amendment) Bill moved for first reading in Singapore Parliament

The Exchanges (Demutualisation and Merger) (Amendment) Bill has been moved for its first reading in the Singapore Parliament.

The Bill is intended to amend the Exchanges (Demutualisation and Merger) Act to allow the special purpose company designated under section 3(2)(b) of the Act (i.e. SEL Holdings Pte Ltd), with the Minister's approval, to subscribe to Singapore Exchange Limited (SGX) rights issues, elect to receive dividends in SGX scrip dividend schemes, and participate in other corporate actions under which it may elect to receive SGX shares. It also provides that new SGX shares acquired through such participation will be subject to the provisions of the Act in the same manner as the shares originally acquired by SEL Holdings Pte Ltd from SGX under the Act.

Australian Government consults on legislation promoting fair and reasonable distribution of class action proceeds involving litigation funder

The Australian Government has released for consultation exposure draft legislation to promote a fair and reasonable distribution of class action proceeds in proceedings involving third party litigation funders.

The proposed legislation implements key recommendations made by the Parliamentary Joint Committee on Corporations and Financial Services in its report on litigation funding and the regulation of the class action industry, including recommendations 7, 11, 12, 13, 16 and 20. It is intended to:

- enhance court oversight of the distribution of class action proceeds between the litigation funder and plaintiffs who are members of a class action litigation funding scheme, as well as empowering courts to approve or vary the share of proceeds to which members of the scheme are entitled to ensure the distribution is fair and reasonable;
- establish a rebuttable presumption that a return to the general members of a class action litigation funding scheme of less than 70% of their gross proceeds is not fair and reasonable, in order to further protect plaintiffs; and
- require plaintiffs to consent to become members to a class action litigation funding scheme before funders can impose their fees or commission on them, with a view to encouraging 'book building' and ensuring that actions involving litigation funders are commenced with the genuine support of plaintiffs.

Comments on the consultation were due by 6 October 2021.

ASX to consider all recommendations in RBA financial stability standards report

The Australian Securities Exchange (ASX) has announced that it will consider all the recommendations set out in the Reserve Bank of Australia's (RBA) financial stability standards (FSS) report titled 'Assessment of ASX Clearing and Settlement Facilities', as well as developing an action plan, particularly in the priority areas of governance, operational risk and margining.

The assessment found that the ASX's clearing and settlement (CS) facilities have conducted their affairs in a way that promotes overall stability in the Australian financial system. However, ASX will need to place a high priority on addressing recommendations related to operational risk and margin standards. The assessment includes a number of recommendations for the ASX CS facilities to strengthen their observance of relevant FSS, including in relation to:

- addressing the findings of an independent review of the ASX trading platform upgrade project;
- strengthening ASX's governance arrangements in line with findings of the RBA's governance review;
- managing the risks to central counterparties (CCPs) associated with large, late-in-day price movements;
- developing a systematic framework to address the risk of destabilising increases in margin and other financial risk requirements during volatile periods;
- aligning financial risk management practices and governance arrangements with international guidance on CCP resilience;
- reviewing the legal certainty of the delivery-versus-payment settlement process in Clearing House Electronic Sub-register System (CHESS);
- addressing remaining constraints to the joint processing capacity of CHESS and the related CORE system, and implementing the CHESS replacement system;
- establishing a systematic approach to assessing risks that other entities may pose to the CS facilities, and vice versa; and
- reviewing the quality controls and systems ASX has in place for notifying the RBA of material developments in a timely and transparent manner.

Council of Financial Regulators releases climate change activity stocktake 2021

The Council of Financial Regulators (CFR) has released its Climate Change Activity Stocktake 2021, outlining the recent activities and planned further work of the CFR Working Group on Financial Implications of Climate Change in relation to climate change risks.

The key activities of the working group members in 2020/21 can be grouped under the following four broad themes:

- using scenario analysis to measure the exposures of financial institutions and the financial system to climate related risks;
- setting supervisory expectations for the management of climate-related risks, including around governance, strategy, risk management, scenario analysis and stress testing, and disclosures;
- improving the quality, consistency and breadth of climate risk disclosures, which in turn improve investors' ability to assess financial risks associated with climate change; and
- monitoring the development of taxonomies used to define what is a 'sustainable' activity or financial product.

The working group has identified the following three priority areas for 2021/22:

- completing the climate vulnerability assessment and considering next steps to take in measuring and understanding the climate risk of regulated entities;
- identifying and strengthening the building blocks that will be needed to facilitate high-quality and comparable climate-related disclosures; and
- examining the implications of emerging sustainable finance taxonomies, including for investment flows, and considering possible Australian approaches to these developments.

RECENT CLIFFORD CHANCE BRIEFINGS

The EU renewable energy financing mechanism – will it incentivise investment?

In order to achieve the target of reducing emissions by 55% by 2030, the European Commission has proposed that the share of renewable energy in the power mix increases to 40% from 32%. Together with the EU's 2050 targets for the production of green hydrogen, an electricity-intensive process, this will require new sources of renewable energy.

This briefing looks at the EU renewable energy financing mechanism, which is designed to incentivise and support the development of renewable energy projects, reinforcing cooperation among EU Member States.

https://www.cliffordchance.com/briefings/2021/10/the-eu-renewable-energy-financing-mechanism---will-it-incentivis.html

UK Pension Schemes Act 2021 – new criminal offences in force and guidance published – lenders take note

The new criminal offences introduced by the Pension Schemes Act 2021 in relation to defined benefits (DB) pension schemes are now in force. They are accompanied by guidance published by the Pensions Regulator setting out the approach it will take in the investigation and prosecution of the new offences. The guidance, albeit not binding, gives some useful examples in a lending and restructuring context of where the Regulator would not expect to use its powers and will be critical for lenders in evaluating the new regime.

This briefing considers the new DB pensions landscape and what it means for lenders and transactions.

https://www.cliffordchance.com/briefings/2021/10/uk-pension-schemes-act-2021---new-criminal-offences-in-force-and.html

The new Italian fintech sandbox opens

On 1 October 2021, Consob, central bank (Banca d'Italia), and insurance regulator (IVASS) announced the term during which applications can be filed for admission to the regulatory 'sandbox' governed by Ministerial Decree 100/2021, which came into force in July 2021. The regulatory sandbox is a controlled space that allows financial intermediaries and operators in the fintech sector to experiment with high-technology innovation in the banking, financial and insurance sectors, benefiting from a temporarily simplified legislative framework.

This briefing discusses the sandbox.

https://www.cliffordchance.com/briefings/2021/10/the-new-italian-fintech-sandbox-opens.html

Pre-marketing of investment funds in the Netherlands

The bill implementing the European Union's Directive on the Cross-Border Distribution of Funds (CBDF) was adopted by the Dutch Lower Chamber on 23 September 2021. Its adoption by the Dutch Upper Chamber is expected on 12 October 2021, followed a few days thereafter by its implementation in the Dutch Financial Supervision Act.

The CBDF covers a variety of matters in order to take away barriers and to further harmonise the European regime for the cross-border distribution of investment funds (both AIFs and UCITS) with a view to achieving an even more competitive and integrated internal market for investment funds. Such matters include notification procedures (for both registration and de-registration), marketing communications, making facilities available to investors, costs for supervision and pre-marketing.

This briefing focuses on pre-marketing, given its novelty for the Dutch market and the scope and application of the pre-marketing rules (which also extend to non-EU fund managers). The CBDF covers the pre-marketing of AIFs, but not the pre-marketing of UCITS. The Netherlands did not have a specific pre-marketing regime for AIFs prior to the CBDF being implemented and is now goldplating CBDF by applying the pre-marketing rules to non-EU fund managers as well.

https://www.cliffordchance.com/briefings/2021/09/pre-marketing-of-investment-funds-in-the-netherlands.html