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SRB publishes work priorities for 2022

The Single Resolution Board (SRB) has published its work priorities, 2022 work programme and 2021-23 multi-annual programme. The key priorities highlighted by the SRB are:

- encouraging all banks to continue to build up their MREL;
- working with mid-size banks on separability and reorganisation plans;
- ensuring banks make the management of IT and cyber risks a key priority;
- continuing work on being crisis-ready through crisis simulation cases; and
- defining a heat-map on assessing resolvability as a tool to monitor, benchmark and communicate banks' progress.

Investment firms: RTS on K-factor daily trading flow coefficients published in Official Journal

Commission Delegated Regulation (EU) 2022/76, setting out regulatory technical standards (RTS) on K-factor daily trading flow (K-DTF) coefficients under the Investment Firms Regulation (IFR), has been published in the Official Journal.

The RTS set out how adjustments to K-DTF coefficients should be determined in instances where the K-DTF requirements seem overly restrictive or detrimental to financial stability.

The Delegated Regulation enters into force on 9 February 2022.

CRD/IFD: EBA consults on revised guidelines on high earners data collection

The European Banking Authority (EBA) has launched a consultation on revised guidelines on the high earners data collection exercises under the Capital Requirements Directive (2013/36/EU) (CRD) and the Investment Firms Directive ((EU) 2019/2034) (IFD).

The consultation (EBA/CP/2022/04) seeks views on changes intended to reflect the amended remuneration framework laid down in CRD V, including the introduction of derogations to pay out a part of the variable remuneration in instruments and under deferral arrangements, and the remuneration regime introduced for investments firms under IFD and Investment Firms Regulation (IFR).

The consultation is being run in parallel with the EBA's consultations on remuneration and gender pay gap benchmarking guidelines (EBA/CP/2022/02 and EBA/CP/2022/02), all three of which will be the subject of a public hearing on 17 February 2022 and close on 21 March 2022.

CRD/IFD: EBA consults on remuneration and gender pay gap benchmarking guidelines

The EBA has launched two consultations on draft guidelines on the benchmarking exercises on remuneration practices and on the gender pay gap under the CRD and IFD.

The consultation on the draft guidelines under CRD (EBA/CP/2022/02), last updated in 2014, seeks views on changes made to reflect additional remuneration and disclosure requirements introduced by CRD V regarding the application of derogations to the requirement to pay out a part of variable remuneration in instruments and under deferral arrangements and the benchmarking of the gender pay gap. The guidelines also seek to harmonise the benchmarking of approvals granted by shareholders to use higher ratios than 100% between the variable and fixed remuneration, and include revised data collection templates.

The consultation on the draft guidelines under IFD (EBA/CP/2022/03) reflect the changes made to the new remuneration framework for investment firms. The approach taken in the draft guidelines is consistent with the corresponding guidelines for banks under CRD above.

The consultations are being run in parallel with the EBA's consultation on revised guidelines on the high earners data collection exercises (EBA/CP/2022/04), all three of which will be the subject of a public hearing on 17 February 2022 and close on 21 March 2022.

EBA announces continued application of COVID-19 related reporting and disclosure requirements

The EBA has announced that the guidelines on the reporting and disclosure of exposures subject to measures applied in response to the COVID-19 pandemic will continue to apply until further notice.

The EBA has confirmed the need to continue monitoring exposures and the credit quality of loans benefitting from various public support measures following the uncertainty over COVID-19 developments. Unless instructed otherwise by their relevant competent authorities, credit institutions are

expected to continue to report and disclose COVID-19 related data beyond December 2021.

The EBA has noted that the effects of the COVID-19 pandemic on the credit quality of exposures may differ across jurisdictions and over time and that the level of public support measures considered for the purposes of COVID-19 reporting and disclosure may also differ. For this reason, competent authorities may exercise the flexibility provided in the guidelines to reduce or stop some specific reporting and disclosure requirements.

The EBA will continue to monitor developments and will consider repealing the guidelines in the future when the COVID-19 situation permits and credit outlook of loans under public support measures improves.

PSD2: EBA publishes discussion paper on preliminary payment fraud data

The EBA has published a discussion paper on its preliminary observations on selected payment fraud data under the Payment Services Directive (PSD2), as reported by the industry for 2019 and 2020.

The paper details the main findings related to credit transfers, card-based payments, and cash withdrawals and outlines other inconclusive patterns which would benefit from comments and views from market stakeholders.

According to the EBA, patterns suggest that payment security regulatory requirements are having the desired effect. In almost all instances, the share of fraudulent payments in the total payment volume and value is significantly lower for transactions that are authenticated with strong customer authentication (SCA) than those that are not. Fraud also appears to be substantially higher for cross-border transactions with counterparts located outside the European Economic Area (EEA) than those conducted inside this area, which is a known pattern of payment fraud.

The EBA welcomes responses to the questions raised in the paper and hopes that these will support the EBA, the European Central Bank (ECB) and national authorities in interpreting fraud data reported in the future. Comments are due by 19 April 2022.

ESMA launches common supervisory action on valuation of UCITS and open-ended AIFs

The European Securities and Markets Authority (ESMA) has launched a common supervisory action (CSA) on the valuation of UCITS and open-ended alternative investment funds (AIFs) in the EU.

The CSA aims to assess compliance with the relevant valuation-related provisions in the UCITS and AIFMD framework and will focus on authorised managers of UCITS and open-ended AIFs investing in less liquid assets, namely unlisted equities, unrated bonds, corporate debt, real estate, high yield bonds, emerging markets, listed equities that are not actively traded and bank loans.

ESMA notes that a core objective of the CSA, which will be conducted with national competent authorities (NCAs) throughout 2022, is the consistent and effective supervision of valuation methodologies, policies and procedures of supervised entities to ensure that less liquid assets are valued fairly both during normal and stressed market conditions.

EMIR: ESMA publishes updated methodology for peer reviews in relation to authorisation and supervision of CCPs

ESMA has published an updated methodology for mandatory peer reviews analysing the supervisory activities of all competent authorities in relation to the authorisation and supervision of central counterparties (CCPs) under the European Market Infrastructure Regulation (EMIR).

The updated methodology replaces the version published on 5 January 2017 and reflects the changes to the regulatory framework for peer reviews introduced in December 2019 under Regulation (EU) 2019/2099 (EMIR 2.2) and Regulation (EU) 2019/2175. It is also more closely aligned with ESMA's Peer Review Methodology, which was adopted in July 2018.

The methodology is divided into four sections, which cover:

- an overview of the CCP mandatory peer review framework and process;
- the criteria for determining the topics for CCP peer reviews;
- the CCP peer review process, including the required questionnaire, on-site visit and report; and
- the framework for the follow-up to CCP peer reviews.

IOSCO consults on proposed measures to address risks arising from digitalisation of retail marketing and distribution

The International Organization of Securities Commissions (IOSCO) has launched a consultation on proposed measures and guidance intended to help its members address the risks posed by retail online offerings and marketing.

IOSCO notes that the growing use of social media and digitalisation are changing the way financial services and products are marketed and distributed. This may pose issues for IOSCO members, who will have to rapidly adapt their regulatory and enforcement approaches to keep pace with the changing trends and risks.

The consultation paper seeks to address this issue by setting out proposed policy and enforcement toolkits, which contain measures to assist members in addressing the issues and risks associated with online marketing and distribution.

The draft policy toolkit provides guidance on:

- firm level rules for online marketing and distribution, and online onboarding;
- responsibilities for online marketing;
- capacity for surveillance and supervision of online marketing and distribution;
- staff qualification and/or licensing requirements for online marketing;
- ensuring compliance with third country regulations; and
- clarity about legal entities using internet domains.
- The draft enforcement toolkit provides guidance on:

- proactive, technology-based detection and investigatory techniques;
- powers required in order to respond when websites are used to conduct illegal securities and derivatives activity and other powers required to stop online misconduct;
- increasing efficient international cooperation and liaising with criminal authorities and other local and foreign partners;
- promoting enhanced understanding by and collaboration with providers of electronic intermediary services with regard to digital illegal activities; and
- additional efforts to address regulatory and supervisory arbitrage.

Comments on the proposals are due by 17 March 2022.

Financial Services Future Regulatory Framework Review: HMT consults on CCPs and CSDs

HM Treasury (HMT) has published a consultation setting out proposals relating to the Bank of England's (BoE's) regulation of CCPs and central securities depositories (CSDs).

Published as part of the Government's Financial Services Future Regulatory Framework (FRF) Review, which is aimed at developing the UK's long-term regulatory approach to financial services post-Brexit, proposals include:

- granting the BoE a general rule-making power in relation to CCPs and CSDs, including overseas CCPs and CSDs, to enable the BoE to replace retained EU law with its own regulatory requirements;
- granting the BoE additional powers to underpin the general rule-making power, including in relation to enforcement action, powers to waiver or modify rules, and investigatory and information gathering powers;
- a revised set of statutory objectives, including widening the BoE's primary objective for financial stability to other countries in which UK CCPs or CSDs operate or provide services, and a secondary objective to facilitate innovation;
- applying the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) regulatory principles to the BoE, as amended to reflect CCPs and CSDs;
- introducing a new regulatory principle for the BoE to have regard to the desirability of facilitating fair, reasonable and equitable provision of services by CCPs and CSDs to their members, subject to conforming with international standards;
- granting the Government powers to set 'have regards' for the BoE when making rules in relation to one specific type of financial market infrastructure (FMI), such as CSDs; and
- placing the BoE's internal FMI Board, which does most decision-making in relation to CCPs and CSDs, on a statutory footing; and
- applying enhanced accountability mechanisms for the BoE to HMT and Parliament.

The consultation closes on 28 February 2022.

The Government intends to separately consult on the regulatory perimeter for systemically-important payment actors in H1 2022.

HMT publishes findings from consultation on cryptoasset promotions

HMT has published a report setting out the findings from its consultation on proposals to expand the perimeter of the FCA's financial promotions regime to include certain types of cryptoasset.

In its consultation, HMT proposed adding 'qualifying cryptoassets' to the list of controlled investments under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (FPO). This would make them subject to the same requirements and restrictions on financial promotions as traditional financial services, namely that any promotions must:

- be communicated and approved by an authorised person; or
- qualify for an exemption.

HMT intends to define 'qualifying cryptoassets' as any cryptographically secured digital representation of value or contractual rights which is fungible and transferable. The definition excludes:

- cryptoassets that are only transferable to one or more vendors in payment for goods or services;
- other controlled investments;
- electronic money under the Electronic Money Regulations 2011; and
- central bank money.

HMT notes that this definition is still subject to change. Once finalised, the Government intends to allow a transition period of approximately six months from both the finalisation and publication of the amended FPO and associated FCA rules. The FCA is expected to consult on its rules for cryptoassets shortly.

FCA consults on amendments to financial promotion rules for high-risk investments including cryptoassets

The FCA has launched a consultation (CP22/2) on proposals intended to strengthen its financial promotion rules for high-risk investments, including cryptoassets.

In particular, the FCA is seeking views on:

- amendments to the rules in COBS 4 to simplify and clarify the classification of high-risk investments;
- new requirements for firms responsible for approving and communicating financial marketing ('section 21 approvers') to ensure they have the relevant expertise and sufficient understanding of the investments being offered;
- changes to the consumer journey into high-risk investments to ensure consumers only access high-risk investments knowingly. These changes include strengthening risk warnings, banning inducements to invest (such as refer-a-friend), and introducing stronger appropriateness tests; and

- new restrictions on the marketing of cryptoassets by defining them as 'restricted mass market investments'. This would mean firms issuing cryptoasset promotions would have to follow the FCA's requirements on clearness, fairness and accuracy, and that only restricted, high-net worth or sophisticated investors would be permitted to respond to the promotions.

Comments are due by 23 March 2022. The FCA intends to publish a policy statement and final rules in summer 2022, after which firms will have three months to implement the new requirements on consumer journeys and section 21 approvers. The FCA suggests that the requirements on cryptoasset promotions should apply from the date qualifying cryptoassets are brought within the financial promotion regime.

Brexit: FCA confirms approach to temporary permissions regime

The FCA has published a statement on its approach to EU firms temporarily operating in the UK under the temporary permissions regime (TPR).

The FCA states that the TPR should only be used by firms who want to operate in the UK in the long-term and meet the standards to do so, and that firms may be asked to stop undertaking new business or could be removed from the TPR if:

- they miss their 'landing slot' to apply for full authorisation;
- they fail to respond to mandatory information requests;
- they have no intention to apply for full authorisation; or
- their authorisation application is refused.

The FCA notes that it has already cancelled the temporary permissions of four firms who failed to respond to mandatory information requests, and that firms who have had their permissions cancelled will be committing a criminal office if they conduct regulated business in the UK.

FCA updates Competition Act 1998 guidance

The FCA has published a revised version of its guide to its powers and procedures under the Competition Act 1998 (FG15/8).

The guide focuses on the procedural aspects of the FCA's powers of enforcement in relation to potential breaches of UK competition law in relation to the provision of financial services in the UK, and has been updated to:

- reflect the UK's withdrawal from the EU;
- make clear that since April 2019 the FCA's competition law jurisdiction extends to the provision of claims management services in the UK;
- reflect changes adopted by the Competition and Markets Authority (CMA) in its procedural guidance;
- describe the FCA's practice of applying penalty reductions where a party obtains approval for a voluntary redress scheme; and
- reflect the FCA's practical experience of investigation under the 1998 Act.

FCA publishes results from strategic review of retail banking

The FCA has published a report setting out the findings from its strategic review of retail banking business models. The report updates the findings from the last review, which was conducted in 2018, and covers the period 2015 to 2021. It is based on financial information, data and documents from the largest banks and building societies, as well as a selection of smaller banks and specialist firms. The purpose of the review is to understand the impact of change on retail banking business models and the implications for consumers.

The key findings from the 2021 review are that:

- large banks are in a strong position but face increasing competition, in particular for personal current accounts (PCAs);
- building market share has been a slow and expensive process for traditional challengers, often requiring switching incentives or relatively high interest on balances;
- digital challengers, on the other hand, have rapidly gained share in the PCA and business current account (BCA) markets, however, relative to the major banks, a smaller proportion of digital challengers' PCAs are used as main accounts, which means they see lower balances, fewer transactions and thereby less scope to generate income;
- competition in the mortgage market has intensified, which has caused yields to come down;
- yields on consumer credit have also fallen, partly due to the introduction of the overdraft remedy which has resulted in a significant decline in unarranged overdraft yields, and partly due to the pandemic which has resulted in reduced spending and reduced demand for consumer credit;
- large banks did proportionately more micro-business lending under the government schemes than most other banks, which was a reversal of pre-pandemic trends; and
- increased competition has improved outcomes and service quality for many consumers, with many larger banks adopting digital innovation in PCA banking in response to competition from digital challengers.

The FCA has invited comments on the results of its strategic report. Responses are due by 31 March 2022.

Ring-fencing and Proprietary Trading review panel publishes interim statement

The Ring-fencing and Proprietary Trading (RFPT) review panel has published an interim statement on the findings of the RFPT Independent Review, ahead of publishing its final report and recommendations.

Among other things, the review panel reports that:

- the package of reforms from the Independent Commission on Banking (ICB) in 2011, including the creation of the ring-fencing regime, has contributed to a more resilient banking sector in the UK;

- the ring-fencing regime has had no significant impact on competition in retail banking or its sub-markets;
- the current rules have resulted in unintended consequences that create unnecessary rigidity for customers, banks and regulators; and
- classic proprietary trading is no longer an activity being systemically undertaken by banks in the UK.

The review panel intends to publish recommendations focusing on:

- improving outcomes for customers;
- increasing flexibility and efficiency of the regime;
- reducing unnecessary complexity of the regime;
- maintaining financial stability benefits; and
- minimising risk to public funds from too-big-to-fail.

The review panel plans to deliver its report to HM Treasury in early 2022.

CNMV adopts ESMA guidelines on assessment of suitability of members of management body and key function holders

The Spanish Securities Market Commission (Comisión Nacional del Mercado de Valores) (CNMV) has announced that it has adopted the ESMA guidelines on the assessment of the suitability of members of the management body and key function holders.

CNMV issues circular on crypto-assets advertising

The CNMV has published Circular 1/2022 on the regulation and control of crypto-asset advertising.

The circular defines the rules, principles and criteria applicable to publicity activities regarding crypto-assets. Amongst other things, it establishes a mandatory pre-notification regime for mass advertising campaigns.

The circular applies to all crypto-asset services providers performing advertising activities for crypto-assets; to advertising services providers; and to any natural or legal person other than the preceding entities carrying out, on their own initiative or on behalf of the above, advertising activities regarding crypto-assets.

The circular will enter into force one month after its publication in the Spanish Official Gazette.

Royal Decree-Law amending SAREB's legal regime to facilitate increase of Spanish state's stake published

Royal Decree-Law 1/2022, of 18 January, amending Law 9/2012, Law 11/2015, and Royal Decree 1559/2012, of 15 November, in relation to the legal regime for the Sociedad de Gestión de Activos procedentes de la reestructuración bancaria (SAREB) has been published in the Spanish Official Gazette.

The main purpose of Royal Decree-Law 1/2022 is to facilitate the increase of the stake of the Spanish state in the SAREB. In addition, the possibility for the

SAREB to dispose of assets on the basis of the general principle of sustainability is incorporated.

Royal Decree-Law 1/2022 entered into force on 20 January 2022.

BaFin publishes new crypto securities list

The German Federal Financial Supervisory Authority (BaFin) has published a new publicly accessible list on its website in accordance with its obligation under section 20 para 3 of the Electronic Securities Act (Gesetz über elektronische Wertpapiere, eWpG), in which it compiles information on crypto securities notified to it pursuant to section 20 para 1 sentence 2 eWpG.

The information in the list is based on publications made by the respective issuer in the Federal Gazette. The crypto securities list is intended to provide an uncomplicated overview of publications pertaining to crypto securities.

BaFin adopts EBA guidelines on large exposures breaches and time and measures to return to compliance

BaFin has published a circular adopting the EBA guidelines specifying the criteria to assess the exceptional cases when institutions exceed the large exposure limits of Article 395(1) of the Capital Requirements Regulation (CRR) and the time and measures to return to compliance pursuant to Article 396(3) CRR into its administrative practice as of 1 January 2022.

BaFin applies ESMA guidelines on reference values

BaFin has announced that it will apply the German version of the ESMA guidelines on methodology, oversight function and record keeping under the Benchmarks Regulation (ESMA81-393-288) as of 7 February 2022.

The regulatory objective is to provide a framework for European administrators and supervisors to deal with temporary volatile market situations, such as for example due to the COVID-19 pandemic, in a consistent manner across Europe.

Administrators of benchmarks are to set out the criteria under which they assume extraordinary circumstances and how, in such cases, the benchmarks in question are calculated alternatively. In doing so, they must present the time frame in which the alternative calculation is applied and how it potentially affects the value of the respective reference value. Should the methodology of a benchmark need to be changed at short notice due to exceptional circumstances, the guidelines require that certain minimum standards be met when consulting affected users. Administrators must keep detailed records of any use of an alternative methodology for calculating benchmarks.

The guidelines will apply from 31 May 2022.

Variable Capital Companies (Consequential Amendments to Other Acts) Order 2022 gazetted

The Singapore Government has gazetted the Variable Capital Companies (Consequential Amendments to Other Acts) Order 2022, to amend the following Acts:

- Banking Act 1970;
- Broadcasting Act 1994;
- Corporate Bodies' Contracts Act 1960;

- District Cooling Act 2001;
- Electricity Act 2001;
- Employment Act 1968;
- Employment of Foreign Manpower Act 1990;
- Enterprise Singapore Board Act 2018;
- Extradition Act 1968;
- Finance Companies Act 1967;
- Financial Holding Companies Act 2013;
- Gas Act 2001;
- Home Team Science and Technology Agency Act 2019;
- Info-Communications Media Development Authority Act 2016;
- Insurance Act 1966;
- Maritime and Port Authority of Singapore Act 1996;
- Newspaper and Printing Presses Act 1974;
- Reciprocal Enforcement of Foreign Judgments Act 1959;
- Residential Property Act 1976;
- Singapore Food Agency Act 2019;
- Telecommunications Act 1999;
- Work Injury Compensation Act 2019; and
- Workplace Safety and Health Act 2006.

In particular, the Order amends section 32 of the Banking Act 1970 and section 34 of the Insurance Act 1966 to include variable capital companies within the scope of entities for which licensed banks and insurers in Singapore may not acquire a major stake in without the prior approval of the Monetary Authority of Singapore.

The Order is effective from 13 January 2022, except for paragraph 12 of the Order (that relates to the amendment of Financial Holding Companies Act 2013), which comes into operation on 30 June 2022.

MAS issues guidelines to discourage cryptocurrency trading by general public

The Monetary Authority of Singapore (MAS) has issued a new set of guidelines entitled 'Guidelines on Provision of Digital Payment Token Services to the Public'. The guidelines are intended to set out the MAS' expectations that digital payment tokens (DPT or cryptocurrency) service providers should not promote their DPT services to the general public in Singapore.

Unless stated otherwise, the guidelines apply to DPT service providers which have been granted a licence under the Payment Services Act 2019 (PS Act), banks and all other financial institutions providing DPT services in Singapore, as well as DPT service providers which are currently operating under the transitional exemption (collectively referred to as DPT service providers).

The MAS has consistently warned that trading DPTs is highly risky and not suitable for the general public, as the prices of DPTs are subject to sharp speculative swings. To discourage consumers from trading DPTs on impulse, the guidelines clarify the MAS' expectations that DPT service providers should not engage in marketing or advertising DPT services:

- in public areas in Singapore such as through advertisements on public transport, public transport venues, public websites, social media platforms, broadcast and print media, or provision of physical ATMs; or
- through the engagement of third parties, such as social media influencers, to promote DPT services to the general public in Singapore.

DPT service providers may promote their DPT services only on their own corporate website, mobile applications, or official social media accounts, but must not trivialise the risks of trading in DPTs in a manner that is inconsistent with or contradicts the risk disclosures under the PS Act.

Further, DPT service providers should not promote payment token derivatives (PTDs) to the public as a convenient unregulated alternative to trading in DPTs. DPT service providers should not mislead the public that PTDs are less risky than DPTs.

HKMA revises SPM module on foreign exchange risk management

The Hong Kong Monetary Authority (HKMA) has issued a revised version of its supervisory policy manual (SPM) module 'TA-2 Foreign Exchange Risk Management' as a guidance note.

The changes in the revised SPM module are mainly intended to incorporate the Basel Committee on Banking Supervision (BCBS)'s supervisory guidance for managing risks associated with the settlement of foreign exchange transactions, issued in February 2013.

The HKMA's current regulatory and supervisory frameworks already broadly covered the major requirements set out in the BCBS guidance, though at a slightly less granular level. The revision is intended more specifically to state the requirements in the SPM module in order to better align it with the BCBS guidance.

The HKMA has clarified that the start of full compliance with the revised SPM module should be commensurate with authorised institutions' exposures to foreign exchange settlement-related risks but not be reached later than 18 January 2023 unless an extension has been specifically agreed with the regulator. The HKMA also encourages authorised institutions to settle foreign exchange transactions through available payment-versus-payment arrangements to reduce their foreign exchange settlement-related risks.

China issues new rules governing related transactions of banking and insurance institutions

The China Banking and Insurance Regulatory Commission (CBIRC) has published the 'Measures for the Administration of Related Transactions of Banking and Insurance Institutions', which will take effect on 1 March 2022 and replace the currently effective CBIRC rules on related transactions (including the 'Measures for the Administration of Related Transactions between Commercial Banks and their Insiders or Shareholders' and the

'Measures for the Administration of Related Transactions of Insurance Companies'). The Measures are formulated to deal with potential risks caused by banking and insurance institutions concealing related transactions for the purpose of pursuing regulatory arbitrage or circumventing regulatory obligations.

The following key aspects are worth noting:

- unifying and standardising the applicable rules – different banking and insurance institutions (such as commercial banks, insurance companies, trust companies and other CBIRC-regulated non-banking institutions) will now fall under the same regulatory framework, with the CBIRC having the ability to set and adjust the relevant regulatory ratios applicable to different institutions on a case-by-case basis according to their corporate governance status, the risk level of related transactions and characteristics of the type of institution;
- clarifying the general supervisory principles – the CBIRC will adopt a 'substance over form' and 'see-through' principle when identifying 'related transactions', and banking and insurance institutions are required to maintain their operational independence to control the amount and scale of 'related transactions';
- setting prohibited activities – the Measures specifically set out prohibited activities which are used for the purpose of circumventing approval or regulatory requirements applicable to related party transactions, such as providing funding to related parties through complex transaction structures or through conduit business or off-balance sheet business;
- clarifying the responsibilities of management – banking and insurance institutions are required clearly to define the responsibilities taken by different departments and/or individuals with regard to the management of related transactions, for example, establishing a level-by-level accountability mechanism;
- reporting of related parties by 5% shareholders – any investor holding 5% equity or above in a banking or insurance institution (or having significant influence over the institution's business or management even where its shareholding does not reach 5%) shall report and update its related party status to the CBIRC within 15 working days; and
- enriching regulatory measures – administrative penalties for violation of the Measures by institutions and/or their directors, supervisors, and senior management are explicitly set under the Measures. Furthermore, banking and insurance institutions rated as Band E on the regulatory assessment of corporate governance may not carry out related transactions in the form of credit granting, investment, or other money-based dealings.

FSA publishes final report of Payment Services Working Group

The Japan Financial Services Agency (FSA) has issued the final report of the Payment Services Working Group (PSWG). The PSWG was established following the Japanese Government's request to establish a safe and efficient regime for anti-money laundering (AML), which resulted from the Financial Action Task Force (FATF)'s fourth mutual evaluation. The PSWG has also reconsidered the regulatory regime for digital assets such as stablecoins. Among others, the PSWG has made the following suggestions:

- restructuring of regulations on stablecoins – with regard to stablecoins pegged to statutory currency, apart from the clearness of the licensing requirement for the issuance of such stablecoins, which requires issuers to be banks or fund transfer service providers, the PSWG suggests the introduction of a consolidated licensing requirement for the intermediation of trades and to reconsider the legal structure of such stablecoins. Furthermore, with regard to stablecoins similar to cryptoassets, the PSWG suggests further discussions on sufficiency of regulations such as scope of disclosure requirements;
- introduction of a collaborative AML operation regime – as it is difficult for individual financial institutions to conduct sufficient AML activities, the banking sector intends to retain a third party and ask it jointly to conduct the filtering and monitoring of fund transfer deals. Consequently, the PSWG suggests introducing a licensing requirement for carrying out services concerning collaborative AML operations and regulations regarding the treatment of personal information by such entities; and
- enhancement of AML regulations regarding prepaid payment instruments – while there is a licensing requirement for the issuance of prepaid payment instruments, issuers are not subject to AML regulations at the moment. Considering money laundering trends, the PSWG suggests that it is necessary to extend the scope of AML regulations to issuers of prepaid payment instruments whose issued amount exceeds a certain threshold.

FSA proposes to amend ordinances to facilitate entry of foreign securities brokers, investment advisors and investment managers into Japanese market

The Japan FSA has launched a public consultation on amendments to the Cabinet Office Order on Financial Instruments Business, etc. The proposed amendments are intended to allow a foreign securities broker applicant who wishes to deal with Type 1 Securities (such as shares and bonds) to submit their application document for registration and other subsequent documents in English if the applicant satisfies the following conditions:

- its clients in Japan will be professional investors only;
- it will sell only foreign securities in Japan; and
- it or its group company is authorised to conduct securities brokerage businesses in a foreign jurisdiction.

In addition, a foreign investment advisor and investment manager applicant who is authorised to conduct the relevant businesses in a foreign jurisdiction will also be allowed to submit registration documents in English.

The proposed amendments are intended to enhance Japan's role as an international financial centre and to expand the functions of the Financial Market Entry Office.

Comments on the consultation are due by 17 February 2022.

ASX responds to feedback received on proposed changes to risk based capital requirements for ASX Clear participants

The Australian Securities Exchange (ASX) has published its responses to feedback received on its October 2020 consultation on proposed changes to

the risk-based capital requirements by consolidating the two capital measures (i.e. core and liquid capital) that non-bank ASX Clear participants are currently required to maintain under the ASX Clear Operating Rules into a single capital measure i.e. an adjusted liquid capital.

In response to the feedback received, the ASX has acknowledged that certain aspects of the proposal could be calibrated further to ensure fairness across different types of business models whilst ensuring that the main objective of uplifting the quality of assets held by participants continues to be upheld. Considering this, the ASX has made the following modifications to the proposal:

- an alternate framework for low risk direct participants; and
- a change to the limit on the amount of ASD that can be included in liquid capital.

ASX has also confirmed that it will proceed with the miscellaneous amendments set out in Appendix B of the consultation paper with only one change being made to Annexure 5, Table 2.1 (which shows counterparty risk weightings). The table is being changed to reflect the introduction of the ASIC Market Integrity Rules (Capital) 2021 which will replace in full the Market Integrity Rules (Securities Markets – Capital) 2017 and Market Integrity Rules (Futures Markets – Capital) 2017 in June 2022.

Regarding implementation of the rule amendments, the ASX has clarified that they are subject to regulatory clearance as well as dependent on the timing of the required relevant system changes. The implementation timing is uncertain at the present stage but will be no earlier than February 2023. The ASX will advise the market when there is more certainty on the timing.

RECENT CLIFFORD CHANCE BRIEFINGS

EU proposal for directive on transparency standards for the use of shell entities in Europe

On 22 December 2021, the European Commission released its proposal for a Council Directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (the 'Unshell Directive' or commonly named 'ATAD 3'). The aim of ATAD 3 is to prevent the misuse of so-called 'shell companies' (i.e., legal entities with no – or only minimal – substance and economic activity) interposed to obtain tax advantages within the EU.

The proposal introduces a substance test (mainly related to personnel and premises) to help Member States identify entities that are ostensibly engaged in economic activity but do not comply with minimum substance standards. The proposal also sets rules regarding the tax treatment of those entities that do not meet the substance indicators and provides for automatic exchange of information and tax audits among Member States' tax authorities.

So far, the proposal provides that Member States are required to implement the ATAD 3 by 30 June 2023 and apply its provisions from no later than 1 January 2024.

This briefing paper discusses the proposal.

https://www.cliffordchance.com/briefings/2022/01/eu-proposal-directive-on---transparency-standards-for-the-use-of.html

European Commission to ban Cayman Securitisation SPVs

In June 2021, following action by the Financial Action Task Force (FATF) we published a briefing outlining concerns that AML-related actions of the EU might make it more difficult for European entities to deal with Cayman securitisation SPVs. In a document dated 7 January, the European Commission has proposed to add the Cayman Islands to its list of jurisdictions which have strategic deficiencies in their Anti-Money-Laundering/Counter Terrorist Financing (AML/CFT) regimes that pose significant threats to the financial system of the EU.

This briefing paper sets out the next steps and possible consequences for EU entities who have relationships with Cayman securitisation SPVs and considers the implications for non-EU sponsors of Cayman securitisation SPVs that seek EU investors.

https://www.cliffordchance.com/briefings/2022/01/european-commission-to-ban-cayman-securitisation-spvs.html

COP26 – did it deliver?

COP26, has been described as the 'last best hope' to avert climate disaster.

This briefing paper assesses the effectiveness of government actions and the important contribution made by businesses.

https://www.cliffordchance.com/briefings/2022/01/cop26--did-it-deliver-.html

Global Shift – M&A Predictions for 2022

M&A deals reached a record-breaking USD 5.1 trillion last year and that looks set to continue in 2022 despite continued uncertainty around COVID-19.

This briefing paper examines the global shifts that will influence the market in the year ahead.

https://www.cliffordchance.com/briefings/2022/01/global-shift--m-a-predictions-for-2022.html

Banks, bits and bailouts – investment treaty protection in the financial services sector

In times of financial and economic crisis, governments and monetary authorities may take a range of measures which could have adverse impacts on investors in the banking and finance sector, including bailouts, restructuring of sovereign debt and implementation of restrictive financial regulations. The response to COVID-19 has seen unprecedented regulatory measures such as these being taken around the globe to ease the economic impacts of the pandemic. Banks, financial institutions and investors may suffer adverse impacts as a result of these measures, therefore it is important to be aware of the protections offered by international investment treaties, such as bilateral investment treaties (BITs) and free trade agreements (FTAs). However, advance planning is essential to ensure the protections offered by BITs and FTAs are available to banking and finance investors if a dispute emerges.

This briefing paper discusses investment treaty protection in the financial services sector.

https://www.cliffordchance.com/briefings/2022/01/banks-bits-and-bailouts-investment-treaty-protection-in-the-f.html

Arbitration for cryptoassets and smart contract disputes

The cryptosphere is booming. New cryptoassets are issued on a daily basis and other applications utilising distributed ledger technology (DLT) are receiving substantial investment from established players and disruptive start-ups. With growth comes a rise in potential and actual disputes. It is therefore timely for this sector to give careful thought as to whether projects, transactions and investments make suitable provision for dispute resolution.

Disputes arising from DLT applications share many similarities with those in other fields of commercial activity. National courts are hearing disputes concerning parties' failure to perform contracts involving cryptoassets, ownership disputes, IP rights and frauds. On the other hand, aspects of these disputes are novel and may create barriers to securing effective redress. The intangible nature of cryptoassets, the lack of physically established exchanges, potential anonymity (or pseudonymity) of counterparties and immutability of distributed networks all create obstacles to obtaining and enforcing remedies from national courts.

This briefing paper explains how arbitration agreements can (and have) been used in the cryptoasset and smart contract contexts to provide effective dispute resolution and provides an overview of some of the many options that creators, users and investors select.

https://www.cliffordchance.com/briefings/2022/01/arbitration-for-cryptoassets-and-smart-contract-disputes.html

The MWC is back next February and Barcelona's courts are getting ready for it

The 2022 Mobile World Congress will take place in Barcelona from 28 February to 3 March. Barcelona's and Alicante's courts have just updated their fast-track protocol for dealing with MWC-related IP proceedings, covering both in-person and virtual activities.

This briefing paper discusses the Mobile World Congress.

https://www.cliffordchance.com/briefings/2022/01/international-regulatory-update-10---14-january-2022.html

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