

INTERNATIONAL REGULATORY UPDATE 21 – 25 FEBRUARY 2022

- Delegated Regulation amending list of high-risk third countries published in Official Journal
- EU Council updates list of non-cooperative jurisdictions for tax purposes
- Investment firms: RTS on calculation of K-factor 'clear margin given' published in Official Journal
- ESMA launches call for evidence on climate risk stress testing for CCPs
- PSD2: EBA publishes final guidelines on limited network exclusion
- EBA updates methodology for assessing third country equivalence of prudential requirements
- BaFin publishes circular on online notification of supervisory and administrative board members
- BaFin publishes guidance note on contingency mechanism exemption for dedicated account interfaces
- Bill creating a monitoring committee for restrictive measures in financial matters published
- Bill of law implementing Digitalisation Directive published
- HKMA and PBoC seek applications for conducting pilot trials of cross-boundary fintech initiatives in GBA
- HKMA, MPFA and IA implement vaccine pass arrangement
- SFC issues guidance on business continuity plans
- SFC concludes consultation on regulating trustees and custodians of public funds and further consults on implementation details
- Monetary Authority of Singapore (Amendment) Act 2022 gazetted
- Recent Clifford Chance briefings: Developments in Ukraine, SEC cybersecurity regulations for registered investment advisers and funds. Follow this link to the briefings section.

Delegated Regulation amending list of high-risk third countries published in Official Journal

[Delegated Regulation \(EU\) 2022/229](#) amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 as regards amending the

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

To request a subscription to our Alerter: Finance Industry service, please [subscribe to our Client Portal](#), where you can also request access to the Financial Markets Toolkit and subscribe to publications, insights and events.

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

list of high-risk third countries with strategic anti-money laundering (AML) and counter-terrorist financing (CTF) deficiencies has been published in the Official Journal.

The Delegated Regulation adds Burkina Faso, Cayman Islands, Haiti, Jordan, Mali, Morocco, the Philippines, Senegal, and South Sudan to the table in point I of the Annex and deletes the Bahamas, Botswana, Ghana, Iraq and Mauritius from the table.

The Delegated Regulation will enter into force on 13 March.

See our [January 2022 briefing](#) for more information relating to Cayman securitisation SPVs.

EU Council updates list of non-cooperative jurisdictions for tax purposes

The EU Council has [adopted](#) a revised list of non-cooperative jurisdictions for tax purposes. The countries remaining on the list of non-cooperative jurisdictions (Annex I) are American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

The Council has also published a revised version of Annex II, which recognises the ongoing work cooperative jurisdictions have undertaken to implement good tax governance principles. In particular, a number of countries are identified in Annex II for making commitments with regard to the recommendations of the OECD Forum on Harmful Tax Practices (FHTP) on the effective implementation of the economic substance requirements or the implementation of the OECD domestic tax base erosion and profit shifting (BEPS) country-by-country reporting (CbCR) minimum standards. Several other countries are also taking steps to reform their preferential tax regimes or further improve their legislation.

The next revision of the list is scheduled for October 2022.

Investment firms: RTS on calculation of K-factor ‘clear margin given’ published in Official Journal

Commission [Delegated Regulation \(EU\) 2022/224](#), setting out regulatory technical standards (RTS) on the amount of total margin required for the calculation of the K-factor ‘clear margin given’ (K-CMG) under the Investment Firms Regulation (IFR), has been published in the Official Journal.

The RTS clarify that the total margin should be the amount of collateral comprising the initial margin, variation margins and other collateral, as required by the clearing member based on its margin model.

The Delegated Regulation will enter into force on 14 March.

ESMA launches call for evidence on climate risk stress testing for CCPs

The European Securities and Markets Authority (ESMA) has published a [call for evidence](#) on the methodology to assess climate risk with a new stress testing framework for central counterparties (CCPs).

The call for evidence seeks stakeholders’ views on:

- a proposed classification of climate risks relevant to CCPs;
- the methodology to build an EU-wide climate risk stress testing framework for CCPs;

- how to best calibrate this stress test; and
- the current development of climate risk assessments by CCPs.

ESMA will consider all comments received by 21 April 2022.

PSD2: EBA publishes final guidelines on limited network exclusion

The European Banking Authority (EBA) has published its [final guidelines](#) on the limited network exclusion under the Payment Services Directive (PSD2).

The guidelines are intended to:

- clarify how national competent authorities (NCAs) should assess whether a network of service providers or a range of goods and services qualify as 'limited' and are, as a result, not subject to PSD2;
- address inconsistencies on how the exclusion has been applied across the EU in the past;
- contribute to the Single Market for payment services in the EU; and
- ensure transparency for supervisors and customers through clarifications around the provision of excluded services, the calculation of value thresholds, the submission of notifications, and the information to be included on national and EBA registers.

Following responses to its public [consultation](#), the EBA has further clarified certain aspects in relation to assessment criteria and indicators. It has also clarified that the functional connection between goods and services should be based on a specific category of goods and services with a common purpose, rather than a leading good or service, as originally proposed.

The guidelines will apply from 1 June 2022 with an additional 3-month transitional period for issuers that already benefit from the exclusion to submit a new notification to their national competent authority.

EBA updates methodology for assessing third country equivalence of prudential requirements

The EBA has published [updated questionnaires](#) used for its assessment of the supervisory and regulatory requirements of third country jurisdictions, which it conducts to assist the EU Commission in preparing equivalence decisions under the Capital Requirements Regulation (CRR).

The EBA's methodology for the assessment is based on a first step questionnaire providing an initial screening and a second step questionnaire providing for more detailed and granular information gathering on third country frameworks. Both of these questionnaires have been updated to reflect updates to the EU prudential framework introduced by CRD5 and CRR2.

The updated questionnaires replace the previous versions and will be used by the EBA to conduct future assessments.

BaFin publishes circular on online notification of supervisory and administrative board members

The German Federal Financial Supervisory Authority (BaFin) has published its [circular 02/2022](#) enabling companies under the direct supervision of BaFin to submit certain notifications regarding members of supervisory and

administrative bodies required under the German Banking Act (KWG) through BaFin's Reporting and Publishing Platform (MVP Portal).

Initially, this option will only be available for notifications concerning the appointment of members of administrative and supervisory bodies, with institutions being able to report the resignation of such members through the MVP Portal only if they have already reported their appointment in this way. A respective procedure was made available on the MVP Portal from 17 February 2022.

Since this date, companies no longer have to send such notifications additionally in paper form or by e-mail either to BaFin or to Deutsche Bundesbank. The electronic submission is voluntary for the time being, while BaFin optimises the system, also taking into account feedback from users.

BaFin further plans to extend the MVP Portal in the future to include additional person notifications, in particular those pursuant to section 24 para 1 nos. 1, 2 KWG, such as the notification of the intended appointment or the resignation of management board members.

BaFin publishes guidance note on contingency mechanism exemption for dedicated account interfaces

BaFin has published a [guidance note](#) on the granting of exemptions from the obligation to set up a contingency mechanism pursuant to Article 33 para 6 of Delegated Regulation (EU) 2018/389.

Account servicing payment service providers that offer payment accounts which are accessible online are required under PSD2 and the implementing German Payment Services Supervision Act to provide an interface for payment initiation service providers and account information service providers. Pursuant to Article 33 of Delegated Regulation (EU) 2018/389, account servicing payment service providers that establish such interface(s) by means of a dedicated interface are in principle obliged to set up a contingency mechanism for the event of e.g. a systems breakdown, but may be exempted from this obligation by the competent authority upon their request.

BaFin's guidance note does not establish any new regulatory requirements, but is intended to make its administrative practice transparent, which it has developed since 2019 for the review of dedicated interfaces and applied in decisions on individual exemption requests.

Bill creating a monitoring committee for restrictive measures in financial matters published

A bill creating a monitoring committee for restrictive measures in financial matters and amending the law of 19 December 2020 on the implementation of restrictive measures in financial matters ([Bill No. 7967](#)) has been lodged with the Luxembourg Parliament.

The bill is intended to establish a committee that will ensure the active and systematic monitoring that is essential to ensure consistent and effective implementation of financial sanctions, including the exemptions granted, in accordance with the provisions of Article 6(1)(2) of the law of 19 December 2020 on the implementation of restrictive measures in financial matters, in compliance with the applicable international and national requirements.

The term 'monitoring' comprises a reactive and a proactive component. The reactive component consists of the examination, analysis and evaluation of quantitative and qualitative data relating to the implementation of financial

sanctions. The proactive component consists in particular of active and systematic communication, consultation and coordination between all the competent authorities, and aims to formulate proposals for improvement, to set priorities and to decide on measures to be implemented.

The bill also defines the tasks, composition and functioning of the committee.

The committee is composed of a representative of the Minister of Finance, who chairs it, as well as one representative each of the Minister of Foreign and European Affairs, the Minister of Justice, the financial sector regulator Commission de Surveillance du Secteur Financier, the insurance sector regulator Commissariat aux Assurances, the tax authority Administration de l'Enregistrement, des Domaines et de la TVA and the financial intelligence unit Cellule de Renseignement Financier.

The committee will meet as often as its tasks require and at least twice a year.

The lodging of the bill with the Luxembourg Parliament constitutes the start of the legislative procedure.

Bill of law implementing Digitalisation Directive published

The Ministry of Justice has lodged [Bill No. 7968](#), which is intended to implement the Digitalisation Directive (EU) 2019/1151 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law.

The law will substantially modernise the processes for companies by, amongst other things:

- introducing the possibility to incorporate companies and to establish branches online;
- introducing a legal framework for the digitalisation of the notary profession (e.g. notarial deeds passed in electronic format with or without physical presence); and
- strengthening the exchange of information between European registers via an interconnection system (BRIS).

HKMA and PBoC seek applications for conducting pilot trials of cross-boundary fintech initiatives in GBA

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) informing authorised institutions that the HKMA and the People's Bank of China (PBoC) are ready to accept applications from financial institutions (FIs) and technology firms for conducting pilot trials of cross-boundary fintech initiatives in the Guangdong-Hong Kong-Macao Greater Bay Area (GBA).

In October 2021, the HKMA and the PBoC signed a memorandum of understanding (MoU) on fintech innovation supervisory cooperation in the GBA. Under the MoU, the two regulators agreed to link up the PBoC's Fintech Innovation Regulatory Facility with the HKMA's Fintech Supervisory Sandbox to provide a one-stop platform for eligible FIs and technology firms to conduct pilot trials of cross-boundary fintech initiatives in Hong Kong and the GBA cities simultaneously, and to obtain early supervisory feedback and user opinions.

The two regulators have jointly developed a set of operational procedures for the GBA fintech pilot trial facility. FIs and technology firms in Hong Kong intending to access the facility will be requested to complete a sandbox

application form and provide information about their company background, the fintech product or service to be tested, as well as the scope of testing. The information provided will be shared with the PBoC and relevant Mainland China authorities.

HKMA, MPFA and IA implement vaccine pass arrangement

The Hong Kong Monetary Authority (HKMA), the Mandatory Provident Fund Schemes Authority (MPFA) and the Insurance Authority (IA) have issued [circulars](#) to advise their relevant financial institutions to implement the ‘vaccine pass’ arrangements and to push forward the COVID-19 vaccination programme.

Under the vaccine pass arrangement, staff should be required to present proof of vaccination for at least the first dose of a COVID-19 vaccine before entering the workplace. Exemptions may be granted to staff who are unfit for vaccination due to medical conditions, supported by valid medical proof.

SFC issues guidance on business continuity plans

In view of the latest wave of COVID-19 infections, the Securities and Futures Commission (SFC) has published circulars to remind [licensed corporations](#) and [issuers of SFC-authorized investment products](#) to review and maintain an up-to-date and effective business continuity plans (BCP).

Amongst other things, the SFC urges licensed corporations to review their BCP with a view to maximising the number of staff who work from home and to arrange for staff to work in the office only if they conduct critical functions or duties that cannot be performed remotely. Additionally, licensed corporations are strongly encouraged to consider making arrangements so that only staff who are vaccinated are working in the office.

Issuers of SFC-authorized investment products are reminded that their BCP should ensure continuous operations relating to SFC-authorized investment products without undue disruption to protect investors’ interests. These include product valuation, dealing and trading arrangements, trading of underlying assets, and product risk management. Issuers are also reminded that they should discuss their BCP with key counterparties and third-party service providers, including trustees, custodians, market makers, clearing and settlement brokers, administrators and distributors, and the BCP should take account of these services. The SFC notes that it is incumbent upon issuers to properly monitor and manage their operations and take prompt and effective measures to mitigate any potential adverse impact on SFC-authorized investment products and their investors.

Issuers should also keep investors informed at all times and immediately report to the SFC any material or untoward issue that may have a significant impact on SFC-authorized investment products and/or their investors.

SFC concludes consultation on regulating trustees and custodians of public funds and further consults on implementation details

The SFC has published the [conclusions](#) to its September 2019 consultation on the proposed regulatory regime for depositaries of SFC-authorized collective investment schemes (CIS).

The 2019 consultation proposed a framework for a new type of regulated activity, 'Type 13 regulated activity' (RA 13), to regulate top-level trustees and custodians (i.e., the depositaries) of SFC-authorized CIS under the Securities and Futures Ordinance. The proposed regulatory regime is intended to provide better protection for scheme assets and help safeguard the interests of retail investors.

The SFC has confirmed that respondents were generally supportive of the proposal, with some seeking clarification of the proposed licensing scope and conduct requirements. Given the support for the RA 13 framework, the SFC is now consulting the public on proposed amendments to subsidiary legislation as well as its codes and guidelines to implement the regulatory regime proposed in the 2019 consultation.

Comments on the consultation are due by 30 April 2022.

Monetary Authority of Singapore (Amendment) Act 2022 gazetted

The Singapore Government has gazetted the [Monetary Authority of Singapore \(Amendment\) Act 2022](#), which was passed by the Singapore Parliament on 11 January 2022 and assented to by the President on 8 February 2022.

The Amendment Act is intended to amend the Monetary Authority of Singapore Act 1970 (MAS Act) to:

The Singapore Government has gazetted the Monetary Authority of Singapore (Amendment) Act 2022, which was passed by the Singapore Parliament on 11 January 2022 and assented to by the President on 8 February 2022.

The Amendment Act is intended to amend the Monetary Authority of Singapore Act 1970 (MAS Act) to:

- empower the MAS to subscribe for reserves management government securities (RMGS), a new type of non-marketable security that will be issued by the Government under the Government Securities (Debt Market and Investment) Act 1992 (GSA) in consideration for official foreign reserves (OFR) being transferred;
- allow the principal amount of a maturing tranche of RMGS to be reinvested into a new tranche of RMGS, if the principal amount is not required by the MAS to support monetary policy implementation or financial stability, and the Government agrees to do so; and
- put in place safeguards against potential misperceptions of monetary financing that will complement the existing safeguard in the GSA.

The Amendment Act also introduces related amendments to the GSA to facilitate the transfer of OFR to the Government via RMGS.

RECENT CLIFFORD CHANCE BRIEFINGS

Developments in Ukraine – The latest global sanctions and export controls

In response to the Russian Government's announcements and actions in relation to Donetsk and Luhansk regions of Eastern Ukraine, followed by Russia's military action more broadly into Ukraine on 24 February 2022, the United States (US), European Union (EU) and United Kingdom (UK), among others, have imposed broad sanctions on Russia.

This briefing paper provides an overview of the sanctions and export controls imposed by the US, EU, UK, Japan and Australia, as of 12 pm GMT, 26 February 2022. The situation is fluid and our team of sanctions experts is monitoring the situation closely and will be updating this briefing document as needed.

<https://www.cliffordchance.com/briefings/2022/02/developments-in-ukraine--the-latest-global-sanctions-and-export-.html>

SEC proposes substantial new cybersecurity regulations for registered investment advisers and funds

On 9 February 2022, the Securities and Exchange Commission (SEC) voted 3-1 to propose rules and amendments that would require registered investment advisers and registered funds to confidentially report significant cybersecurity breaches to the SEC, disclose significant cybersecurity risks and incidents to clients, adopt written cybersecurity policies, and abide by new recordkeeping requirements. If enacted in similar form, these would be the first regulations to require investment advisers to disclose cybersecurity incidents.

This briefing paper discusses the proposed rules and amendments.

<https://www.cliffordchance.com/briefings/2022/02/sec-proposes-substantial-new-cybersecurity-regulations-for-regis.html>

CLIFFORD CHANCE

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

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2022

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.