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EMIR: EU Commission publishes draft equivalence decision for Malaysia on CCPs framework

The EU Commission has published a draft implementing decision on the equivalence of the regulatory framework for central counterparties (CCPs) in Malaysia to the requirements of the European Market Infrastructure Regulation (EMIR).

The draft decision considers the legal and supervisory arrangements of Malaysia applicable to CCPs laid down in the Securities Commission Malaysia Act 1993 and the Capital Markets and Services Act 2007, as supplemented by the Securities Commission Malaysia's guidelines on financial market infrastructures, to be equivalent to the requirements laid down in EMIR.

The draft decision is open for feedback until 4 April 2022.

The decision will enter force on the twentieth day following its publication in the Official Journal.

IFD: ITS on supervisory disclosure published in Official Journal

Commission Implementing Regulation (EU) 2022/389 setting out implementing technical standards (ITS) with regard to the requirements for competent authorities publicly to disclose information for all types of authorised MiFID investment firms under the Investment Firms Directive (IFD) has been published in the Official Journal.

The ITS set out the format, structure, contents list and annual publication date of information on:

- the texts of laws, regulation, administrative rules and general guidance adopted in Member States in the field of prudential regulation;
- the options and national discretions available under the IFD and Investment Firms Regulation (IFR);
- the criteria and methodologies that competent authorities use in the supervisory review and evaluation process (SREP); and
- aggregated statistical data on own funds, risk to market supervisory measures and administrative penalties and applied exemptions.

Competent authorities are expected to complete the templates set out in the ITS with a reference date to 31 December each year and to publish the information the following year by 30 June, with public disclosures commencing from 30 June 2022.

Implementing Regulation (EU) 2022/389 enters into force on 29 March 2022.

Data reporting service providers: EU Commission adopts Delegated Regulation on supervisory fees

The EU Commission has adopted a Delegated Regulation specifying fees relating to the supervision by the European Securities Markets Authority (ESMA) of data reporting service providers (DRSPs).

The Delegated Regulation broadly follows the measures proposed by ESMA in its technical advice and sets out the application, authorisation and annual supervisory fees to be paid by DRSPs.

The Delegated Regulation will now be scrutinised by the EU Council and Parliament, and enter into force on the third day following its publication in the Official Journal.

ESMA publishes letter on MiFIR Review proposals

ESMA has published a letter setting out its technical comments on the EU Commission's proposals for a review of MiFIR.

ESMA expresses its overall support for the proposals and makes some recommendations in relation to:

- consolidated tape providers (CTPs);
- non-equity transparency, including the derivatives trading obligation (DTO);
- data reporting requirements; and
- payment for order flow (PFOF).

ESMA reports on supervision of cross-border activities of investment firms and issues recommendations to CySEC

ESMA has published its peer review report on the supervision of cross-border activities of investment firms.

The peer review assessed how national competent authorities (NCAs) supervise the investment services that investment firms and credit institutions provide to retail clients on a cross-border basis using a MiFID2 passport. In addition to the peer review recommendations, ESMA has issued two specific

recommendations to the Cyprus Securities and Exchange Commission (CySEC) under Article 16 of the ESMA Regulation.

ESMA identified that home NCAs' supervision is not sufficiently effective when it comes to their firms' cross-border activities, in particular:

- NCAs covered by the peer review did not specifically, adequately and structurally consider firms' cross-border activities in their supervision. NCAs did not sufficiently identify, assess and monitor the risks related to firms' cross-border activities or take supervisory actions to effectively address those risks;
- out of the six jurisdictions covered in the peer review, Cyprus had the highest level of outgoing cross-border activities, and by far the highest number of complaints relating to firms' cross-border activities and of requests from other NCAs relating to Cypriot firms' cross-border activities. ESMA identified that CySEC's supervisory activities have overall proven insufficient at addressing the risks posed by Cypriot firms' cross-border services; and
- ESMA identified that overall, home NCAs appear to have established adequate processes in relation to the passport notifications and, with some areas for improvements, in the context of cooperation.

ESMA expects to carry out a follow-up assessment in two years to review the level of improvements achieved considering the findings and recommendations of the peer review report. Following the Article 16 recommendations, CySEC has two months to inform ESMA whether it intends to comply with the recommendations. In addition, the recommendations foresee ad-hoc and periodic updates that CySEC should provide to ESMA to assess that the recommendations are effectively addressed.

CRR: SRB updates approach to MREL calibration under leverage ratio

The Single Resolution Board (SRB) has confirmed that final minimum requirements for own funds and eligible liabilities (MREL) targets will be recalibrated in the 2022 resolution planning cycle based on the leverage amount, to ensure adjustment of the MREL before the compliance date of 1 January 2024.

Following the introduction of a temporary measure in September 2020 to exclude certain exposures to central banks from the calculation of an institution's leverage amount under the Capital Requirements Regulation (CRR), the SRB noted that the measure may affect the calibration of the final MREL targets applicable from 1 January 2024. In February 2022, the European Central Bank (ECB) announced that the relief measure would not be extended after the end of March 2022.

Until MREL targets are recalibrated, the SRB intends to compute, where relevant, notional final MREL targets based on institutions' leverage amount including the central bank exposures and communicate those notional targets to institutions affected by the relief measure in the context of the 2021 resolution planning cycle. The SRB plans to use the targets to monitor the institutions' build-up of MREL resources towards the final MREL targets.

FSB, CPMI and IOSCO publish report on efficacy of financial resources and tools for CCP recovery and resolution

The Financial Stability Board (FSB), the Committee on Payments and Market Infrastructures (CPMI), and the International Organization of Securities Commissions (IOSCO) have published a report analysing existing financial resources and tools for central counterparty (CCP) recovery and resolution.

Firstly, the organisations assessed the current use, composition and amount of financial resources and tools available to cover CCP losses, using a sample of CCPs that are considered systemically important in more than one jurisdiction. The assessment was based on default and non-default loss scenarios that were potentially extreme enough to require the use of recovery and resolution tools. For default losses, all the CCP service lines were able to absorb all losses, with half having to use recovery tools, but none requiring resolution. For non-default losses, a cyber theft scenario was tested and the analysis demonstrated that resolution authorities would have needed to trigger resolution for the majority of CCPs to generate sufficient resources to cover the loss.

Secondly, the organisations assessed the potential financial stability implications of the use of the financial resources and tools covered by the existing CPMI-IOSCO guidance on recovery of financial market infrastructures and FSB guidance on CCP resolution. Based on a quantitative analysis, the use of cash calls and variation margin gains haircutting had a limited impact on bank clearing members' liquidity and solvency. A qualitative review concluded that different recovery and resolution tools could have varying consequences in terms of knock-on effects on the wider financial system, performance risk, and impact on market and public confidence in CCPs.

Going forward:

- the FSB will review whether the existing toolkit for CCP resolution is sufficient, with a particular focus on non-default loss scenarios, and whether resolution authorities have access to an adequate set of resolution tools; and
- the CPMI and IOSCO will continue their analysis of CCP non-default losses in resilience and recovery and their monitoring of the implementation of their principles for financial market infrastructures.

The FSB is also seeking stakeholder input on future work that can be undertaken on the sufficiency of the existing toolkit for CCP resolution and the need for potential alternatives. Comments are due by 29 April 2022.

FCA publishes Quarterly Consultation No. 35

The Financial Conduct Authority (FCA) has published its latest quarterly consultation paper.

CP22/4 proposes miscellaneous amendments to the FCA Handbook, including:

- changes to chapters 2 and 13 of the Perimeter Guidance manual to clarify applications of the MiFID2 ancillary activities test in the absence of overall market size data;
- amendments to the research and inducement rules for collective portfolio managers so they are subject to the same rules as investment managers;

- changes to reflect amendments made by Her Majesty's Treasury (HMT) to the UK MiFID delegated regulation in places where it is copied out in the glossary and COBS;
- amendments to LR 14 to reflect the original policy position for investment entities other that OEICs prior to the amendments introduced in January 2021;
- changes to the approach to continuing professional development for retail investment advisers and pension transfer specialists; and
- extending the MIFIDPRU TP 7.4R(2)(b) notification deadline.

Comments on Chapters 2 to 7 are due by 11 April 2022.

PRA publishes policy statement on operational resilience and continuity in resolution for CRR and Solvency II firms and financial holding companies

The Prudential Regulation Authority (PRA) has published a policy statement (PS2/22) which provides feedback and final policy following its consultation (CP21/21) on operational resilience and continuity in resolution for firms under Solvency II and the Capital Requirements Regulation (CRR) and for financial holding companies.

In CP21/21, the PRA sought feedback on proposals that certain group obligations in the Operational Resilience Part of the PRA Rulebook, relevant to CRR firms, should apply to CRR consolidation entities. This would mean that the policy requirements would apply directly to the consolidation entities, rather than to the individual firms in their groups. It also set out proposals for minor formatting and clarification amendments to the parts of the PRA Rulebook on operational resilience and operational continuity.

The PRA received five responses to the consultation. Respondents were generally supportive of the proposals but requested further clarification on some points and raised concerns about the implementation timeline. The PRA has therefore made amendments to the version consulted on to allow more time for the implementation of the governance procedures and to clarify the points raised by respondents. The final policy is set out in:

- amendments to the Operational Resilience Part of the PRA Rulebook, the Insurance – Operational Resilience Part of the PRA Rulebook and the Group Supervision Part of the PRA Rulebook;
- updated supervisory statement (SS1/21) 'Operational resilience: impact tolerances for important business services'; and
- amendments to the Operational Continuity Part of the PRA Rulebook.

The amended SS1/21 is effective from 31 March 2022. The implementation date for the Operation Resilience and Group Supervision Parts is 31 March 2022, and is 1 January 2023 for the Operational Continuity Part.

BaFin consults on draft guidance note on external bail-in implementation

The German Federal Financial Supervisory Authority (BaFin) has launched a consultation on a draft guidance note on external bail-in implementation, which is an extended version of the previous guidance note published on 13 April 2021.

The updated guidance note sets out requirements for the actions to be carried out by the parties involved, the information to be exchanged, communication channels, time periods and templates to support an effective and efficient implementation of the resolution tools of write-down and conversion of capital instruments and bail-in pursuant to sections 89 and 90 of the German Recovery and Resolution Act (Sanierungs- und Abwicklungsgesetz, SAG) (Articles 21 and 27 of the SRM Regulation).

The main extension relates to the external bail-in implementation by two international central securities depositories (ICSDs) – Euroclear Bank and Clearstream Banking Luxembourg – i.e. a so-called 'ICSD Add-On'. Further, additional stock exchanges were included, so that the new version covers the suspension of trading on all relevant stock exchanges in Germany. In addition, in respect of the instruments issued by an institution under resolution in Germany, the focus is expanded to percentage-quoted structured debt instruments.

BaFin will accept comments on the draft guidance note until 15 April 2022.

Luxembourg law of 25 February 2022 amending Luxembourg Securitisation Law and implementing EU Regulation on crowdfunding service providers for business published

The Luxembourg law of 25 February 2022 has been published in the Luxembourg official journal (Mémorial A). The main purposes of the law are to:

- amend the Luxembourg law of 22 March 2004 on securitisation, as amended (Securitisation Law);
- amend the Luxembourg law of 23 December 1998 establishing a financial sector supervisory commission, as amended;
- amend the Luxembourg law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, as amended;
- amend the Luxembourg law of 16 July 2019 implementing the Regulations on EuVECA, EuSEF, MMF, ELTIF and STS securitisation; and
- implement Regulation (EU) 2020/1503 of 7 October 2020 on European crowdfunding service providers for business and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937.

With respect to the Securitisation Law, the law modernises and provides increased legal certainty on key aspects of the Securitisation Law. Please refer to our briefing on these amendments to the Securitisation Law for further information.

In addition, the law specifies the supervision and investigation powers of the CSSF services as well as the sanctions and other administrative measures that may be applied by the CSSF as Luxembourg competent authority with respect to crowdfunding services as provided for under Regulation (EU) 2020/1503.

The law entered into force on 8 March 2022.

Luxembourg law of 25 February 2022 amending laws of 17 December 2010, 17 April 2018 and 16 July 2019,

transposing Directive (EU) 2021/2261 and implementing PEPP Regulation, SFDR, Taxonomy Regulation, Regulation (EU) 2021/557 and Regulation (EU) 2021/2259 published

The Luxembourg law of 25 February 2022 amending the amended law of 17 December 2010 relating to undertakings for collective investment (UCI Law), the amended law of 17 April 2018 on key information documents for packaged retail and insurance-based investment products (PRIIPS Law) and the law of 16 July 2019 implementing the Regulations on EuVECA, EuSEF, MMF, ELTIF and STS securitisation, in order to transpose Directive (EU) 2021/2261 amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS) and to implement certain provisions of the following EU Regulations, has been published in the Luxembourg official journal (Mémorial A):

- Regulation (EU) 2019/1238 on a pan-European Personal Pension Product (PEPP) (PEPP Regulation);
- Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR);
- Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment and amending SFDR (Taxonomy Regulation);
- Regulation (EU) 2021/557 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis; and
- Regulation (EU) 2021/2259 amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS.

Amongst other things, the Luxembourg laws are being amended in order to:

- appoint the Luxembourg financial sector authority, the Commission de Surveillance de Secteur Financier (CSSF), and the Luxembourg insurance sector authority, the Commissariat aux Assurances (CAA), as Luxembourg competent authorities for monitoring the application of the PEPP Regulation, SFDR and Taxonomy Regulation by the Luxembourg entities subject to their respective supervision;
- specify the supervision and investigation powers of the CSSF and the CAA for the purpose of the PEPP Regulation, SFDR and Taxonomy Regulation as well as the sanctions and other administrative measures that may be applied by the CSSF and the CAA as Luxembourg competent authorities in the context of the abovementioned EU regulations. As an example, the sanctions that may be applied by the CSSF and the CAA in case of non-compliance by the entities subject to their respective supervision with the relevant requirements of the PEPP Regulation, SFDR and Taxonomy Regulation include, amongst others, a ban against the responsible persons from exercising management functions, pecuniary fines on both natural and legal persons, as well as publication of decisions in relation thereto on the CSSF's and CAA's websites; and

- specify that the key information document, prepared in accordance with Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), shall be deemed to meet the key investor information requirements imposed by Articles 55 and 159 to 163 of the UCI Law.

The law entered into force on 8 March 2022, with the following exceptions: Article 5 of the law (change to PRIIPS Law) entered into force on 1 January 2022 and Article 4 of the law (change to UCI Law) will enter into force on 1 January 2023.

Luxembourg law of 25 February 2022 amending law on indices used as benchmarks published

The Luxembourg law of 25 February 2022 amending the Luxembourg law on indices used as benchmarks has been published in the Luxembourg official journal (Mémorial A).

The law amends the Luxembourg law of 17 April 2018 on indices used as benchmarks (Benchmark Law) in order to reflect three EU regulations amending the Benchmark Regulation. Amongst other things, the law introduces a framework relating to the termination of benchmarks, in particular LIBOR by the end of 2021. The new rules are intended to reduce legal uncertainty and avoid risks to financial stability by ensuring that a legal replacement rate can be put in place before the benchmark ceases to exist.

In addition, the law integrates into Luxembourg law the changes introduced at EU level by Regulation 2019/2175 granting additional powers to the European Securities and Markets Authority (ESMA). ESMA has had direct supervisory powers over certain critical benchmarks and their administrators since 1 January 2022, and in particular over recognised third-country benchmark administrators.

Finally, the law also amends Article 4 of the Benchmark Law to include two new provisions in the list of provisions that are sanctionable under the Benchmark Law.

Article 1, points 1, 2 and 4 and Article 3 of the law entered into force starting from 1 January 2022, while the remainder of the law entered into force on 8 March 2022.

CSSF issues communiqué on launch of new web platform 'eRIIS' for entities subject to Transparency Law and Market Abuse Regulation

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a communiqué on the launch of eRIIS, a new CSSF web application for issuers or other persons subject to the Transparency Law and the Market Abuse Regulation.

eRIIS replaces the current CSSF filing process via email for the major legal filing requirements applicable to the two following types of persons: (1) issuers of securities and (2) holders of securities (for notifications of major holdings and for notifications of persons discharging managerial responsibilities within an issuer). These filing obligations are listed in the annexes to the communiqué. eRIIS will also serve as a main communication channel between these persons or entities and the CSSF.

In particular, eRIIS will:

- allow follow-up on regulatory filings, notably by consulting various dashboards and tracking the status of individual filings;
- offer advanced functionalities for the filing and validation of annual financial reports drawn up under the new ESEF format; and
- allow the adequatel management of the reporting entities' data while at the same time offering the possibility of delegating administrative tasks to third parties by defining various levels of access rights for different users.

The concerned persons have been able to fulfil their filing obligations through eRIIS since 4 March 2022. They are encouraged to use eRIIS as soon as possible but filings per email will be accepted until 30 May 2022 to allow sufficient time to complete all administrative tasks necessary for accessing eRIIS.

CSSF issues circular updating CSSF Circular 08/337 on Transparency Law and Grand-Ducal Transparency Regulation

The CSSF has published Circular 22/799, updating CSSF Circular 08/337 on the Law of 11 January 2008 and the Grand-ducal Regulation of 11 January 2008 on transparency requirements for issuers, as amended.

The circular updates CSSF Circular 08/337 by taking into account the changes that have taken place in connection with the introduction of the CSSF web application eRIIS, which was developed to enable entities subject to the Law of 11 January 2008 on transparency requirements for issuers as well as the EU Market Abuse Regulation to fulfil their filing obligations with the CSSF.

Annex 1 of the circular contains a tracked changes version of the amended CSSF Circular 08/337 and Annex 2 of the circular contains a 'clean' version of the amended CSSF Circular 08/337.

The circular entered into force on 4 March 2022.

CSSF issues circular updating CSSF Circular 08/349 relating to details regarding information to be notified with respect to major holdings in accordance with Transparency Law

The CSSF has published its Circular 22/800 updating CSSF Circular 08/349 relating to details regarding the information to be notified with respect to major holdings in accordance with the Law of 11 January 2008 on transparency requirements for issuers, as amended.

The circular updates CSSF Circular 08/349 by taking into account the changes that have taken place in connection with the introduction of the CSSF web application eRIIS, which was developed to enable entities subject to the Law of 11 January 2008 on transparency requirements for issuers as well as the EU Market Abuse Regulation to fulfil their filing obligations with the CSSF.

Annex 1 of the circular contains a tracked changes version of the amended CSSF Circular 08/349 and Annex 2 of the circular contains a 'clean' version of the amended CSSF Circular 08/349.

The circular entered into force on 4 March 2022.

CSSF reactivates IFM notifications on fund issues and large redemptions

The CSSF has issued a communication to inform investment fund managers (IFMs) that it has reactivated notifications on fund significant issues and large redemptions, as well as on related decisions and measures taken, via the CSSF eDesk platform. This decision was made in view of the specific circumstances and risks which the largest IFMs are exposed to as the result of the market conditions relating to the situation in Ukraine.

The aim of these notifications is to enable the CSSF to perform its daily supervision and to support discussions with other authorities and with market players to identify the issues and assist with their resolution.

A notification to the CSSF must be transmitted if one of the following events occurs:

- significant events/issues affecting the functioning of the IFM or the investment funds managed by the IFM, including the impact of restrictive measures applicable following the Ukraine crisis; and
- larger redemptions at the level of Luxembourg regulated investment funds (UCITS, Part II UCI, SIF) managed by the IFM.

If the IFM manages individual (sub-)fund(s) with a combined direct or indirect exposure (including exposure gained through derivatives) exceeding 10% of their Total Net Assets (TNA) to Russian and/or Ukrainian issuers, some specific additional information has been requested by the CSSF to IFM.

Concerned IFMs have already been contacted by the CSSF to inform them of the reactivation of the IFM notifications.

Further details on the IFM notifications are outlined in the CSSF communication and on the CSSF eDesk Portal.

CSSF issues communiqué on user guide on settlement fails reporting under Article 7 CSDR

The CSSF has issued a communiqué on the publication of its user guide allowing central securities depositaries (CSDs) to submit the settlement fails reporting under Article 7 of the Central Securities Depository Regulation (CSDR).

The communiqué follows the publication in January of Circular CSSF 22/792 informing the market that the CSSF applies the ESMA guidelines on settlement fails reporting published on 8 December 2021 (ESMA70-156-4717) under Article 7 CSDR.

The user guide details the technical solution implemented by the CSSF to allow CSDs to comply with this obligation.

CSDs are now required to implement the connectivity requirements set out in the user guide to submit the reporting and to ensure that their procedures are updated to ensure timely reporting of the requested information.

FINMA consults on revision of its ordinance on data processing

The Swiss Financial Market Supervisory Authority (FINMA) has launched a consultation on the proposed complete revision of the FINMA Ordinance on Data Processing.

The revision of the Ordinance is intended to supplement and set out more precisely FINMA's existing implementing provisions in light of the new federal regulations on data protection. The Ordinance details how FINMA processes data in the context of fulfilling its statutory duties.

No material adjustments to the existing practice for data processing are planned as part of the revision. Rather, FINMA is implementing the adjustments made by the Swiss Parliament as part of the revision of the Data Protection Act, which defines more closely the formal legal basis for data processing by FINMA.

The consultation will last until 10 May 2022. The revised Ordinance will enter into force after the fully revised Data Protection Act enters into force.

FINMA consults on partial revision of AMLO-FINMA

FINMA has proposed amending the FINMA Anti-Money Laundering Ordinance to take account of the latest revisions to the Anti-Money Laundering Act and the Federal Council's Anti-Money Laundering Ordinance. It has launched a consultation on the proposed changes that will end on 10 May 2022. Amongst other things, the proposed changes include that:

- the Ordinance will provide further guidance on the obligation of financial intermediaries to regulate the updating of client data in an internal directive;
- the implementing provisions on reporting that were transferred to the Federal Council's Anti-Money Laundering Ordinance will be repealed; and
- the application of the threshold for transactions with virtual currencies introduced at the start of 2021 will be defined more closely – in view of the risks and recent instances of abuse, the threshold of CHF 1,000 will apply for linked transactions within thirty days (and not per day).

SFC provides guidance on dealing with disruptions caused by financial distress and insufficient responsible officers

The Securities and Futures Commission (SFC) has issued a circular to licensed corporations (LCs) on measures to deal with disruptions caused by financial distress and insufficient responsible officers.

In view of the recent operational disruptions which exposed some vulnerabilities in the ability of LCs, particularly small-and-medium-size LCs, to cope with stress events, the SFC has expressed concerns that such incidents may result in the abrupt discontinuation of an LC's business, with a significant impact on its clients.

The circular sets out the SFC's regulatory approach and expected standards to mitigate the risks and impact of an abrupt discontinuation of business in the following areas:

- information about all controllers and the shareholding structure of an LC;
- maintenance of a sufficient number of responsible officers;
- maintenance of adequate financial resources;
- financial and operational dependency on another person;
- orderly closure of business in any regulated activity (exit plans); and
- responsibility of senior management.

SFC issues guidance on business continuity planning amidst COVID-19

In view of the fifth wave of COVID-19 infections in Hong Kong, the SFC has published a circular to again remind licensed corporations to review and update their business continuity plan (BCP).

Ahead of the Government's implementation of the compulsory universal testing (CUT) scheme, the SFC expects licensed corporations to:

- review each function of their business operations, including those performed by third party vendors or service providers;
- prepare for and keep track of staff being tested positive or identified as close contacts of positive cases, particularly those identified as essential, and put in place contingency measures to allow continued delivery of services to their clients;
- maintain close communication with the essential third-party vendors and service providers identified to understand if, and how, their BCP would impact the licensed corporations' activities and operations and put in place contingency measures, including support from other vendors and service providers;
- review their operations and consider alternative channels of payment to ensure timely settlement of transactions if licensed corporations themselves or their clients rely on physical cheques and/or visits to bank branches to settle payments;
- adopt measures to mitigate the risk of financial loss arising from potential forced liquidation of positions by licensed corporations themselves or the clearing houses because of delays in settlement of margin calls by clients; and
- promptly communicate with and notify their clients in situations where business operations and services to clients are unavoidably affected, delayed or disrupted.

The SFC notes that it will continue to have close dialogues with licensed corporations and may allow regulatory flexibility where permissible to address any unavoidable operational constraints.

MAS responds to feedback received on proposed amendments to capital requirements for locally incorporated recognised market operators

The Monetary Authority of Singapore (MAS) has published its responses to the feedback received on its October 2020 public consultation on the proposed amendments to the capital requirements for locally incorporated recognised market operators (RMOs).

In its response to the feedback received, the MAS has confirmed that it will:

- procced with the proposal to set the threshold of 25% of annual operating costs for the proposed liquidity requirements;
- exclude depreciation and amortisation (D&A) expenses from the calculation of annual operating costs for the purpose of the proposed liquidity requirements;

- not require that cash and cash equivalents be kept in an operating account or segregated in a separate bank account, and it does not consider intercompany receivables as liquid assets;
- proceed with the proposed solvency requirement which is to remain at the higher of (i) 25% of the RMO's annual operating costs, or (ii) SGD 250,000; and
- not exclude D&A and discretionary bonuses from the annual operating costs for calculating the proposed solvency requirement.

As part of the consultation response, the MAS has also issued a Notice which establishes the liquidity and solvency requirements for a RMO formed or incorporated in Singapore, and the methodology which such RMO must use for calculating its liquid assets and eligible capital and its liquidity and solvency requirements. The Notice is effective from 28 March 2022.

MAS revises Notice on Disclosures and Communications

The MAS has revised its existing Notice PSN08, which sets out the requirements for licensed and exempted payment services providers to provide certain disclosures to customers and potential customers.

The Notice has been revised to amend the annexures pertaining to the risk warnings on digital payment token (DPT) services. In particular, customers should be warned, before any money or DPT is paid to the DPT service provider, that they should not transact in the DPT if they are not familiar with the DPT, including how it is created, transferred or held by the service provider. Further, customers should also be made aware that the DPT service provider, as part of its licence to provide such service, may offer services related to DPTs which are promoted as having a stable value, commonly known as 'stablecoin'.

The revised MAS Notice PSN08 is effective from 7 April 2022.

MAS revises FAQs on Payment Services Act 2019

The MAS has updated its set of frequently asked questions (FAQs) on the Payment Services Act 2019 (PS Act).

The FAQs have been updated to add Question 23, which explains how stablecoins are regulated under the PS Act. The MAS has clarified that it does not in general expect that stablecoins, including single currency stablecoins, will meet the definition of 'e-money'. However, stablecoins may meet the definition of 'digital payment tokens'. The MAS will be taking a technology-neutral stance and examine the characteristics of the stablecoin to determine the appropriate regulatory treatment.

The MAS will continue reviewing industry developments relating to stablecoins and assess their appropriate regulatory treatment accordingly.

ASIC chair outlines corporate governance priorities and the year ahead

The Australian Securities and Investments Commission (ASIC) Chair has delivered a speech covering ASIC's priorities for the year, its work on digital transformation, and its focus on regulatory efficiency and on streamlining its interactions with the regulated population.

In the corporate governance area, the ASIC's priorities will principally relate to:

- governance failures relating to non-financial risk that result in significant harm to consumers and investors;
- cyber governance and resilience failures; and
- egregious governance failures or misconduct resulting in corporate collapse.

Other areas of focus for the year include:

- working with other regulators, industry and social media platforms to combat and disrupt financial scams;
- addressing the deceptive promotion of riskier asset classes such as crypto;
- disrupting investment 'gamification' on digital platforms;
- protecting financially vulnerable consumers impacted by predatory lending practices or high-cost credit;
- addressing misleading and deceptive conduct relating to investment products, including advertising through digital means that obscures the risk; and
- ensuring that consumers receive the benefits of the new design and distribution obligations.

ASIC also intends to work on cyber risks, climate-change disclosure for listed companies, and governance for whistleblowers.

As it enters the third year of the pandemic, ASIC plans to continue supporting the nation's economic recovery by using the full range of its regulatory tools in a targeted and proportionate way, to identify and address misconduct in the markets and sectors it regulates.

RECENT CLIFFORD CHANCE BRIEFINGS

Ukraine – the latest global sanctions and export controls

The US, EU, UK, Japan, Singapore, Australia, and Ukraine have imposed sanctions and export controls on Russia. These new sanctions are complex, multilateral and continue to be incrementally changing in real time in response to the developments on the ground in Ukraine. Our team of sanctions experts is monitoring the situation closely and we will endeavour to keep our briefings up to date.

This briefing paper discusses these sanctions and export controls, as well as measures adopted in response by Russia, as of 2pm GMT, 12 March 2022.

https://www.cliffordchance.com/briefings/2022/03/ukraine-the-latest-global-sanctions-and-export-controls-12-march-2022.html

A new step forward – President Biden signs new cryptocurrency executive order

The executive order requires federal agencies to review crypto market risks and study issues associated with the creation of a US central bank digital currency (CBDC).

This briefing paper discusses the executive order.

https://www.cliffordchance.com/briefings/2022/03/a-new-step-forward--president-biden-signs-new-cryptocurrency-exe.html

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