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EU Parliament Civil Liberties Committee adopts report on proposed directive on a single access point to bank account registries

The Civil Liberties Committee of the EU Parliament has [adopted](#) the Commission's proposal for a directive on the access of competent authorities (CAs) to centralised bank account registries through a single access point.

The directive would extend the access to the bank account registers single access point, which will be established by a proposed sixth anti-money laundering directive (AMLD6) and operated by the Commission, to any authorities designated by Member States as competent for the prevention, detection, investigation or prosecution of criminal offences under Directive (EU) 2019/1153. The directive aims to ensure more effective investigations into illicit finance by making it easier for CAs to quickly establish if an individual holds accounts in several EU countries without multiple queries.

In their position ahead of interinstitutional negotiations on the legislative proposal, MEPs emphasised the importance of respecting an individual's right to privacy, and the principle of data minimisation. They also highlighted the need to gather bank account information proportionally to the needs of a specific ongoing investigations and emphasised that searches in the centralised bank registries should only be allowed in cases where the authorities would be allowed to conduct a similar search in national registries.

The full house of the EU Parliament will be asked to endorse the mandate for negotiations.

Investment firms: EU Commission adopts RTS and ITS on supervisory cooperation

The EU Commission has adopted Implementing and Delegated Regulations laying down technical standards on cooperation and information exchange between CAs involved in the prudential supervision of investment firms under the Investment Firms Directive (IFD).

The Implementing Regulation sets out [implementing technical standards](#) (ITS) with regard to standard forms, templates and procedures for information sharing between the CAs of home and host Member States.

Two Delegated Regulations set out:

- [regulatory technical standards](#) (RTS) specifying requirements for the type and nature of the information to be exchanged by CAs of home and host Member States; and
- [RTS](#) on colleges of supervisors for investment firm groups specifying the conditions under which colleges exercise their tasks.

The Regulations will enter into force 20 days following their publication in the Official Journal.

EBA publishes peer review on authorisation under PSD2

The European Banking Authority (EBA) has published a [peer review](#) on authorisation of payment institutions and e-money institutions under the revised Payment Services Directive (PSD2).

In particular, the report considers the implementation of the [EBA's 2017 guidelines](#) on authorisation under PSD2. The peer review found that CAs

have largely implemented the guidelines and that there was increased transparency and consistency of the information required in the authorisation process. However, it also noted that there have been significant divergences in CAs' assessment and the degree of scrutiny of applications.

The EBA has adopted follow-up measures for CAs, including targeted measures to strengthen consistency and effectiveness and follow-up measures for all CAs, in particular to:

- review their authorisation resources and processes to ensure that they remain adequate to scrutinise applications within a reasonable timeframe;
- ensure that applicants have a 'three lines of defence' model that includes the functions of risk management, compliance and internal audit, where the nature, scale and complexity of their activities makes this appropriate; and
- ensure that applicants are effectively managed and controlled from the jurisdiction in which they seek authorisation.

The report also recommends that the EU Commission clarify, as part of its ongoing PSD2 review process:

- the delineation between the different categories of payment services and e-money issuance;
- the applicable governance arrangements for institutions; and
- what having sufficient local substance requires.

The report concludes that any future review of the guidelines should provide more detailed guidance on how the proportionality principle should be applied in assessing the suitability of shareholders with qualifying holdings.

UNIDROIT consults on digital assets and private law

The International Institute for the Unification of Private Law (UNIDROIT) has launched a [consultation](#) on a set of [draft principles and commentary](#) on digital assets and private law.

The consultation is intended to ensure that the draft principles are well suited to application in different contexts, including both civil law and common law jurisdictions as well as developing economies, emerging markets, and developed economies.

The draft principles consider:

- private international law;
- control;
- custody;
- secured transactions;
- procedural law including enforcement; and
- insolvency.

Comments are due by 20 February 2023.

HMT publishes review and call for evidence on Payment Services Regulations

HM Treasury (HMT) has launched a [review and a call for evidence](#) on the Payment Services Regulations 2017.

The review considers the following set of objectives:

- achieving agile and proportionate regulation, which facilitates the international competitiveness of the UK economy through growth and innovation in the UK payments sector;
- ensuring appropriate trust and protection for consumers;
- ensuring the resilience and integrity of the UK's payment market; and
- fostering competition, in the interests of consumers.

The call for evidence sets out how UK payments regulation should evolve to continue to meet the Government's aims and address the specific challenges highlighted in the review. As part of the call for evidence, HMT also seeks evidence on the Electronic Money Regulations 2011 and the UK Cross Border Payments Regulation. The call for evidence closes on 7 April 2023.

The Government has also published a [post implementation review](#) of the Payment Card Interchange Fee Regulations 2015.

FCA publishes portfolio letter for wholesale brokers

The Financial Conduct Authority (FCA) has published a [portfolio letter](#) on its supervisory strategy for wholesale brokers.

The letter sets out the FCA's view of the most important risks arising from wholesale brokers, what it thinks drives those risks and its supervisory focus for the next two years, including:

- financial resilience;
- remuneration structures;
- governance and culture; and
- control functions.

The FCA expects identified CEOs to have discussed the letter with their fellow directors and board by the end of February 2023 and to have agreed actions and next steps, based on a consideration of how the identified risks apply to their business.

FCA consults on changes to transparency rules for certain companies with securities admitted to UK regulated markets

The FCA has launched a [consultation](#) (CP23/2) on whether structured digital reporting can improve transparency of market disclosures by applying 'tags' to the information to make it easier for market participants to extract, compare and analyse it.

The FCA proposes:

- simplifying the content and arrangement of existing requirements by revoking the [Technical Standard](#) where they are currently set out, and

putting the key provisions directly in the Disclosure, Guidance and Transparency Rules (DTRs);

- making a new rule in DTRs requiring issuers to tag their annual financial statements using a ‘generally accepted taxonomy’ for annual corporate reporting in UK regulated markets; and
- issuing guidance on ‘generally accepted taxonomies’ in a new Technical Note.

Comments on CP23/2 are due by 24 February 2023.

FSCS: FCA and PRA consult on management expenses levy limit for 2023/24

The FCA and Prudential Regulation Authority (PRA) have published a [joint consultation](#) (FCA CP23/3, PRA CP1/23) on the annual management expenses levy limit (MELL) for the Financial Services Compensation Scheme (FCFS) for the financial year 2023/24.

The MELL covers the costs of operating the compensation scheme and includes the FSCS’s IT, staff, legal and outsourced and internal claims’ handling costs. It does not include compensation costs, which are levied separately and decided by the FSCS.

The proposed MELL for 2023/24 is GBP 109.8 million consisting of the FSCS management expenses budget of GBP 99.8 million and an unlevied reserve of GBP 10 million. It is GBP 0.7 million lower than the 2022/23 MELL of GBP 110.5 million. The proposed MELL would apply from 1 April 2023 to 31 March 2024.

Comments are due by 9 February 2023.

PRA publishes 2023 priority letters for insurance supervision, international banks, and UK deposit takers

The PRA has published Dear CEO letters setting out its 2023 priorities for:

- [insurance supervision](#), where the PRA’s main focus will be on financial resilience, risk management, implementing financial reforms, reinsurance risk, operational resilience, and ease of exit for insurers;
- [international banks active in the UK](#), where the PRA will focus on financial resilience, operational risk and resilience, data, and financial risks arising from climate change; and
- [UK deposit takers](#), where the focus will be on credit risk, financial resilience, operational risk and resilience, model risk, data, and financial risks arising from climate change.

AMF sets out action and supervisory priorities for 2023

The Autorité des marchés financiers (AMF) has published its [priorities for action for 2023](#), including promoting finance that meets investors’ expectations, taking up European and international challenges, the improvement of the regulatory framework for sustainable finance and the fight against greenwashing, and ensuring robust and efficient supervision.

The AMF has also set out its [supervisory priorities for 2023](#) around the three following themes: asset management, market intermediaries and infrastructures, and the distribution of financial instruments.

Investment firms: Bank of Italy publishes new regulation

The Bank of Italy has [published](#) its new regulation on the supervision of investment firms, which completes the implementation of the IFD/IFR. The new regulation introduces a simplified supervisory regime and strengthens the principle of proportionality for investment firms. The new supervisory provisions apply to class 2 and class 3 SIMs (securities investment firms) and extend, to the extent compatible, to branches in Italy of third country firms other than banks. The changes relate in particular to corporate governance, remuneration policies and internal controls in the provision of investment services and activities.

CSSF issues communiqué on enforcement of 2022 annual reports published by issuers subject to Transparency Law

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [communiqué](#) to announce the details of the enforcement of the 2022 annual reports published by issuers subject to the Law of 11 January 2008 on transparency requirements for issuers.

The CSSF draws the attention of those issuers preparing their financial statements in accordance with IFRS and/or their non-financial report in accordance with the Law of 23 July 2016, as well as of their auditors, to a number of topics and issues that will be the subject of specific monitoring during the CSSF's enforcement campaign planned for 2023.

As in previous years, the European Securities and Markets Authority (ESMA), together with the European national accounting enforcers, including the CSSF, has identified [European common enforcement priorities](#) for the 2022 annual reports, to which particular attention will be paid when monitoring and assessing the application of the relevant reporting requirements.

The priorities related to IFRS financial statements are:

- Priority 1: Climate-related matters;
- Priority 2: Direct financial impacts of Russia's invasion of Ukraine; and
- Priority 3: Macroeconomic environment.

In the context of Priority 1, it is noted that boilerplate disclosures on climate related topics are not sufficient for users of financial statements. Rather, they require specific and relevant information on how climate risks have been factored into the financial statements.

The priorities related to non-financial statements are:

- Priority 1: Climate-related matters;
- Priority 2: Disclosures relating to Article 8 of the Taxonomy Regulation; and
- Priority 3: Reporting scope and data quality.

The CSSF notes that the financial year 2022 is the first year for which non-financial undertakings are required to disclose not only the taxonomy eligibility, but also the alignment of their economic activities with climate change mitigation and adaptation objectives as provided by the Taxonomy Regulation. It will continue to examine the information published under Article 8 of the

Taxonomy Regulation by issuers that are covered by that regulation and will challenge issuers on the outstanding issues and recommendations made and resulting from the observations made by the CSSF in 2022. Issuers are also directed to the new FAQs published by the EU Commission in December 2022.

Finally, the CSSF has highlighted certain matters related to Alternative Performance Measures and the use of European Single Electronic Format.

Grand Ducal Regulation on fees to be levied by CSSF published

The [Grand Ducal Regulation of 23 December 2022](#) relating to the fees to be levied by the CSSF has been published in the Luxembourg official journal (Mémorial A).

The Grand Ducal Regulation mostly retains the existing structure on fee imposition by the CSSF under the amended Grand Ducal of 21 December 2017 on the same subject, but makes certain changes, including:

- an increase of most of the lump sum fee amounts to be levied;
- the introduction of fees to be levied in respect of certain changes of qualifying participations or reference shareholders;
- a distinction between investment firm classes following the implementation of the new investment firm regime introduced by the Investment Firms Directive and Regulation (IFD/IFR) in respect of the annual fee to be levied for their supervision;
- the levying of fees on reporting of transactions with financial instruments in accordance with Article 26 of MiFIR (base fee and variable add-on depending on the number of transaction reports, their annulment or correction, subject to a cap on the add-on amount);
- the introduction of fees for authorisation, ongoing supervision and onsite inspections of crowd funding service providers; and
- certain further distinctions on the fees to be levied in relation to the supervision of investment fund managers.

The Grand Ducal Regulation entered into force on 1 January 2023 and repealed the 2017 Regulation.

Luxembourg Ministry of Finance issues general authorisations pursuant to Article 5c(1)(f) of EU Council Regulation on restrictive measures

The Luxembourg Ministry of Finance has issued two general authorisations pursuant to article 5c(1)(f) of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, as amended.

Therefore, by way of derogation from Articles 5b(1) and (2) and pursuant to Article 5c(1)(f) of Regulation (EU) No 833/2014, the Minister of Finance authorises acceptance of a deposit:

- where the acceptance of such a deposit is necessary for the transport of natural gas and oil, including refined petroleum products, unless prohibited

by Regulation (EU) No 833/2014, from or through Russia into the Union ([General Authorisation Ref: 841x4f813](#)); or

- where the acceptance of such a deposit is necessary for the payment of debt due to an operator established in the EU for non-prohibited cross-border trade in goods and services between the Union and Russia ([General Authorisation Ref: 841x4fe1d](#)).

There are specific conditions attached to the application of the general authorisations with which every person using a general authorisation would need to comply. Further details are provided for in the text of the general authorisations, but these include obligations of the applicant in relation to record keeping, certain general obligations (e.g. proper licensing, compliance with other laws, including of other territories) as well as obligations to report to the Ministry of Finance.

Both general authorisations are valid until 30th June 2023 inclusive.

China issues new regulations on medium and long-term foreign debt

The National Development and Reform Commission (NDRC) has issued the '[Administrative Measures for the Review and Registration of Medium and Long-Term Foreign Debt of Enterprises](#)', which will take effect from 10 February 2023 and replace the 'Circular on Promoting the Reform of the Filing and Registration Regime for Issuance of Foreign Debt by Enterprises' (2044 Circular).

The Measures provide further clarity in respect of regulatory requirements in connection with medium and long-term foreign debt incurred by PRC enterprises (including foreign debt incurred by overseas enterprises or branches controlled by such PRC enterprises and foreign debt directly and indirectly incurred by such PRC enterprises).

Under the Measures, foreign debt will be subject to 'review and registration' by the NDRC rather than only 'filing and registration' as prescribed by the 2044 Circular. The relevant PRC enterprise is required to submit application materials through the online platform operated by the NDRC.

With respect to the types of enterprises covered by the Measures, there is clarification that an overseas enterprise will be considered to be directly or indirectly 'controlled' by a PRC enterprise if the PRC enterprise either controls more than half of the voting rights in such overseas enterprise or is capable of directing the operation, finance, human affairs, technology and other important matters of such overseas enterprise.

Further clarity is given on the types of financing which constitute foreign debt. These include (but are not limited to) senior debt, perpetual bonds, capital bonds, medium term notes, convertible bonds, financial leasing and commercial loans.

The Measures will also apply to the indirect incurrence of foreign debt by a PRC enterprise. Pursuant to the Measures, a PRC enterprise would be considered as indirectly incurring foreign debt if its primary business activities are located in the PRC and it incurs debt outside of the PRC through an overseas enterprise 'in reliance on' equity interests in and/or assets, income or other similar rights of that PRC enterprise.

If, following the original registration, there is any change of currency or form of instrument representing the foreign debt; any material change to the use of proceeds; or (iii) any other circumstance requiring material adjustments to the content of the NDRC approval, then the relevant enterprise shall apply for an amendment to the original registration with the NDRC prior to the occurrence of such change.

The Measures also set out certain additional compliance obligations for market participants, including:

- limitation on use of proceeds - the use of proceeds shall be subject to restrictions set out under the Measures, including not to cause harm to the economic development of China, and not to facilitate the increase of direct or indirect debt incurred by local governments; and
- reporting obligations - the relevant PRC enterprise shall file a report with the NDRC including details such as its major business indicators and the status of utilisation of the foreign debt within ten working days after each utilisation, within ten working days after the expiry of the NDRC approval, and within five working days prior to the end of January and July of each calendar year.

The Measures expressly stipulate that service providers (such as underwriters, law firms and accounting firms, etc.) and the relevant responsible persons will be liable for providing services when being aware of (or where they should have been aware of) the fact that the foreign debt borrowing activities are conducted in violation of the Measures, and concealing any facts or giving any fraudulent or misleading statements or material omissions when issuing the review opinion/report and/or disclosure statement.

HKMA issues circular on FAQs on climate-related financial risks

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) on Basel Committee on Banking Supervision (BCBS) responses to a number of frequently asked questions (FAQs) to clarify how climate-related financial risks may be captured in the existing Basel framework.

The responses to the FAQs are intended to facilitate a globally consistent interpretation of existing Pillar 1 standards given the unique features of climate-related financial risks and are not to be interpreted as changes to the standards. The responses are consistent with the BCBS' principles for the effective management and supervision of climate-related financial risks.

Areas covered in the FAQs include the following:

- calculation of risk-weighted assets (RWA) for credit risk;
- calculation of RWA for operational risk;
- calculation of RWA for market risk; and
- liquidity coverage ratio.

The HKMA intends to incorporate the responses to the FAQs into its supervisory framework and expects authorised institutions to take note of them when considering how to incorporate climate-related financial risks in their interpretation and application of the existing Basel framework.

HKMA updates SPM module on complaints handling and redress

Following a consultation with two industry associations, the HKMA has issued an [updated supervisory policy manual](#) (SPM) module on complaints handling and redress (IC-4) as a statutory guideline under Section 7(3) of the Banking Ordinance.

The updated IC-4 is intended to align the requirements of the HKMA with the latest global best practices in financial consumer protection. It takes into account the recently updated G20/Organisation for Economic Co-operation and Development High-Level Principles on Financial Consumer Protection, which are the international standards for effective and comprehensive financial consumer protection frameworks.

Under the enhanced complaints handling framework, the HKMA expects authorised institutions to:

- follow up and monitor any issues of concern or control deficiencies as identified from handling of customer complaints, to achieve improved financial consumer protection on an ongoing basis; and
- proactively make use of alternate dispute resolution channels, such as mediation and arbitration services of the Financial Dispute Resolution Centre, when complaints involving monetary disputes referred by the HKMA could not be resolved through authorised institutions' internal mechanisms.

The HKMA expects authorised institutions to implement the updated IC-4 by 5 April 2023.

Securities and Futures (Offers of Investments) (Exemption for Depository Receipts) Regulations 2023 gazetted

The Singapore Government has gazetted the [Securities and Futures \(Offers of Investments\) \(Exemption for Depository Receipts\) Regulations 2023](#).

Among other things, the Regulations:

- define depository receipts, rights issue depository receipts, specified exchange, and underlying securities; and
- exempt an offer of depository receipts from subdivisions (2) and (3) of Division 1 of Part 13 (other than section 257) to the [Securities and Futures Act 2001](#), subject to certain conditions.

The Regulations took effect on 9 January 2023.

Korea-Singapore Digital Partnership Agreement enters into force

The Korea-Singapore Digital Partnership Agreement (KSDPA), signed between the Republic of Singapore and the Republic of Korea on 21 November 2022, [enters into force](#) on 14 January 2023.

The KSDPA is intended to allow both countries to work together to establish a seamless digital trading environment and facilitate greater collaboration in the digital economy between businesses from both jurisdictions.

As part of the ongoing bilateral efforts to develop cooperative projects to implement the KSDPA, both countries have also signed three memoranda of understanding (MoUs) to implement the Korea-Singapore Digital Economy Dialogue, facilitate the electronic exchange of data, and enhance cooperation in artificial intelligence.

RECENT CLIFFORD CHANCE BRIEFINGS

FTC proposes rule to prohibit noncompete clauses

On 5 January 2023, the Federal Trade Commission published a Notice of Proposed Rulemaking that would prohibit employers from entering into or imposing noncompete clauses on their employees. The lengthy proposed rule comes one day after the FTC obtained three settlements from companies over their use of noncompetes, arguing these clauses constitute an unfair method of competition under Section 5 of the FTC Act. The FTC voted 3-1 to publish the proposed rule with Commissioner Wilson dissenting. The proposed rule continues the FTC's focus on labor issues; however, it runs counter to decades of court decisions where noncompetes have been evaluated on a case-by-case basis, considering the reasonableness of the clause's duration, geographic scope, and business justifications.

This briefing paper discusses the proposed rule.

<https://www.cliffordchance.com/briefings/2023/01/ftc-proposes-rule-to-prohibit-noncompete-clauses.html>

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