

INTERNATIONAL REGULATORY UPDATE 13 – 17 MARCH 2023

- **CCP recovery and resolution: EU Commission adopts two RTS**
- **ESAs and ECB publish joint statement on climate change disclosure for structured finance products**
- **FATF reports on countering ransomware financing**
- **BoE publishes report on climate-related risks and regulatory capital frameworks**
- **FCA launches call for input on SME access to Financial Ombudsman Service**
- **FCA publishes Dear CEO letter on priorities for payments firms**
- **PRA consults on non-performing exposures capital deduction**
- **PSR consults on changes to its penalty statements**
- **BaFin applies updated ESMA guidelines on stress test scenarios under MMF Regulation**
- **Italian Government approves legislative decrees implementing various EU acts**
- **Ministry of Finance reports on progress of climate commitments in financial sector**
- **SFC and HKMA jointly consult on changes to OTC derivative clearing rules**
- **MAS publishes circular on observations from inspections of licensed venture capital fund managers**
- **MAS revises code on collective investment schemes**
- **Recent Clifford Chance briefings: Anti-corruption legislation in Asia Pacific, and more. Follow this link to the briefings section.**

CCP recovery and resolution: EU Commission adopts two RTS

The EU Commission has adopted two Delegated Regulations containing regulatory technical standards (RTS) under the Regulation on central counterparty (CCP) recovery and resolution (CCPRRR).

The [first RTS](#) specify the contents of the written arrangements and procedures for the functioning of the resolution colleges and are aimed at ensuring the consistent and coherent functioning of EU resolution colleges.

Clifford Chance's Coronavirus: International Regulatory Update is a weekly digest of significant Coronavirus-related 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

The [second RTS](#) specify the contents of the resolution plan, including the key elements of a resolution plan, material changes to a resolution plan, and the timeframe for implementation of a resolution plan.

The Delegated Regulations will enter into force on the twentieth day following their publication in the Official Journal.

ESAs and ECB publish joint statement on climate change disclosure for structured finance products

The Joint Committee of the European Supervisory Authorities (ESAs) and the European Central Bank (ECB) have published a [joint statement](#) on disclosure on climate change for structured finance products.

The statement encourages the development of disclosure standards for securitised assets through harmonised climate-related data requirements. It summarises how the ESAs and ECB are working towards enhancing disclosure standards for securitised assets by including new, proportionate and targeted climate change related information. The ESAs and the ECB also call on issuers, sponsors and originators of such assets at EU level proactively to collect high-quality and comprehensive information on climate-related risks during the origination process, and to complete the voluntary climate-related fields in the existing securitisation disclosure templates. The call for improved disclosure concerns all funding instruments that are backed by the same type of underlying assets.

The ESAs and the ECB state that:

- enhanced climate related data are needed for securitised assets, as securitisation transactions are often backed by assets that could be directly exposed to physical or transition climate-related risks, such as real estate mortgages or auto loans;
- they are committed to supporting better and targeted disclosures for structured finance products;
- work is underway to provide proportionate, standardised and readily accessible data; and
- they are committed to fostering a level playing field, by promoting consistent and harmonised requirements for similar instruments.

FATF reports on countering ransomware financing

The Financial Action Task Force (FATF) has published a [report](#) on ransomware financing.

The report analyses the methods that criminals use to carry out their ransomware attacks and how payments are made and laundered. It aims to raise global awareness and understanding of the scale of the global ransomware threat, how payments for or related to ransomware are made and how the proceeds related to ransomware attacks are made available to cybercriminals.

The report also identifies challenges and good practices in identifying, investigating, and disrupting ransomware-related financial flows. The FATF proposes a number of actions that countries can take to more effectively disrupt ransomware-related money laundering, including:

- building on and leveraging existing international cooperation mechanisms, given the transnational nature of ransomware attacks and related laundering;
- developing the necessary skills and tools to quickly collect key information, trace the nearly instantaneous financial transactions and recover virtual assets before they dissipate; and
- extending collaboration beyond traditional counterparts to include cybersecurity and data protection agencies, considering the multi-disciplinary nature of ransomware.

The FATF has also finalised a list of potential risk indicators that can help public and private sector entities identify suspicious activities related to ransomware.

BoE publishes report on climate-related risks and regulatory capital frameworks

The Bank of England (BoE) has published a [report](#) on climate-related risks and the regulatory capital frameworks.

In October 2021, the BoE published the Climate Change Adaptation Report (CCAR), which set out the BoE's early thinking in this area and found that current frameworks already capture climate-related risks to some extent, including through capital models and credit ratings, but that risk capture may be incomplete due to difficulties in estimating climate risks (capability gaps) and there may be challenges in capturing risks in the existing capital regimes (regime gaps).

Following on from the CCAR, the BoE committed to undertaking further work on these topics and engaged with a range of stakeholders to inform this work, including a call for research papers and hosting a high-profile, focused research conference, as well as undertaking internal work. The new report sets out an update and key findings from that work. It does not set out any policy changes but sets out the Bank's thinking and identifies areas for future work which include:

- capability and regime gaps;
- effective risk-management controls within PRA-regulated firms; and
- a call for further research and greater public dialogue around incorporating climate risks.

The BoE will be undertaking further analysis to explore whether changes to the regulatory capital frameworks may be required.

FCA launches call for input on SME access to Financial Ombudsman Service

The Financial Conduct Authority (FCA) has launched a [call for input](#) to inform its review of whether the thresholds for small and medium sized enterprises (SMEs) to be able to refer complaints to the Financial Ombudsman Service remain appropriate. The FCA's policy objective is to provide access to the Ombudsman Service to SMEs it thinks are likely to have insufficient resources to resolve disputes with financial services firms through the legal system.

The call for input closes on 28 April 2023.

FCA publishes Dear CEO letter on priorities for payments firms

The FCA has issued a [Dear CEO letter](#) on its priorities for payments firms.

The FCA is concerned that many payments firms do not have sufficiently robust controls and that as a result some firms present an unacceptable risk of harm to their customers and to financial system integrity. The FCA considers that the risk of customer harm is heightened by the tightening economic conditions and the cost-of-living crisis.

The letter outlines three outcomes that payments firms should aim for:

- to ensure that customers' money is safe;
- to ensure that firms do not compromise financial system integrity; and
- to meet customers' needs, including through high quality products and services, competition and innovation, and robust implementation of the FCA Consumer Duty.

PRA consults on non-performing exposures capital deduction

The Prudential Regulation Authority (PRA) has launched a [consultation](#) (CP6/23) on the non-performing exposures (NPE) capital deduction.

CP6/23 sets out the PRA's proposals to remove the Common Equity Tier 1 (CET1) deduction requirement in the PRA Rulebook regarding NPEs that are treated as insufficiently covered by firms' accounting provisions and to remove the associated reporting requirements for NPE deduction.

The PRA believes that the proposals would further its statutory objective of promoting the safety and soundness of firms through applying a more proportionate, targeted, and risk-based regulatory framework, as removing the NPE deduction requirement would:

- enhance the definition of capital in a way that aligns with international standards;
- increase the scope for the PRA to take a judgement-led approach to the prudential risks associated with NPE under provisioning where necessary; and
- remove a requirement that imposes a potential competitive disadvantage compared to firms in jurisdictions that are not subject to the NPE deduction by reducing all firms' costs of monitoring, compliance, and data gathering in relation to the requirement.

Comments are due by 14 June 2023.

PSR consults on changes to its penalty statements

The Payment Systems Regulator (PSR) has launched a [consultation](#) on changes to its penalty statements. The proposed changes are intended to help firms more easily understand how the regulator determines the amount of any penalty it imposes.

The consultation proposes the following five main changes to the PSR's statements:

- to combine its three penalty statements into one;

- to change the way in which it considers the duration of a compliance failure and how it takes account of revenue when calculating penalties;
- to clarify what it means by senior management;
- to add further clarity when it considers a compliance failure is deliberate or reckless; and
- to reinforce the principle that penalties should disincentivise compliance failures.

Comments are due by 5pm on 27 April 2023.

BaFin applies updated ESMA guidelines on stress test scenarios under MMF Regulation

The German Federal Financial Supervisory Authority (BaFin) has [announced](#) that it will apply the German translation of the European Securities and Markets Authority (ESMA) guidelines on stress test scenarios under Regulation (EU) 2017/1131 on money market funds (MMF Regulation), which were published on 27 January 2023, in its supervisory practice.

The purpose of the guidelines is to ensure a common, uniform and coherent application of Article 28 of the MMF Regulation. In particular, the guidelines establish common reference parameters of the stress test scenarios to be included in the stress tests as required by Article 28 para 7 of the MMF Regulation.

According to Article 28 para 7 of the MMF Regulation, ESMA shall update the guidelines at least every year, taking into account the latest market developments. Managers of MMFs thereby have the information needed to fill in the corresponding fields in the reporting template referred to in Article 37 of the MMF Regulation, as specified by Commission Implementing Regulation (EU) 2018/708. This information includes specifications on the types of stress tests and their calibration.

Italian Government approves legislative decrees implementing various EU acts

The Italian Council of Ministers has [approved](#):

- a legislative decree intended to implement Directive (EU) 2021/2261 amending Directive 2009/65/EC as regards the use of key information documents (KIIDs) by companies managing undertakings for collective investment in transferable securities (UCITS);
- a legislative decree intended to adapt national legislation to the provisions of Regulation (EU) 2020/1503 on crowdfunding service providers for businesses, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937; and
- a legislative decree intended to implement Directive (EU) 2021/338, amending Directive 2014/65/EU (MiFID2) as regards disclosure requirements, product governance and position limits, and Directives 2013/36/EU (CRD4) and (EU) 2019/878 as regards their application to investment firms, to support recovery from the COVID-19 crisis.

These decrees will shortly be published in the Italian Official Gazette.

Ministry of Finance reports on progress of climate commitments in financial sector

The Minister of Finance, Sigrid Kaag, has [reported](#) on the progress of climate commitments by financial sector participants. With the signing of the climate commitment in July 2019, banks, pension funds, insurers and asset managers committed to contributing to the implementation of the Paris Climate Agreement and the Dutch Climate agreement. The current progress report concerns the agreement by the signatories to develop action plans, including reduction targets by 2030, by 2022 at the latest, in respect of their financings and investments.

While acknowledging that financial institutions have taken a step forward, the Ministry notes that action plans should become more concrete and comparable, in order to assess whether financial institutions are contributing to the Paris goals effectively. According to the Ministry, an acceleration of the climate transition is also necessary, and it is investigating whether new legislation for the financial sector could contribute to accelerating the climate transition.

Instruments that the Ministry might consider, whether or not in conjunction with each other, include:

- a best efforts obligation to align financing and investments with the objectives of the Paris Climate Agreement;
- an obligation to draw up a climate plan, with clear rules on its content and the obligation to implement the plan; and
- an extension of legal requirements for engagement policies.

The Minister stressed that these subjects are just the current lines of thought and the Ministry welcomes input from the sector, science, regulators and society.

SFC and HKMA jointly consult on changes to OTC derivative clearing rules

The Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) have launched a [joint consultation](#) on proposed changes to the types of transactions subject to clearing obligations under the clearing rules for over-the-counter (OTC) derivatives.

The consultation sets out the proposed changes to the mandatory clearing regime, which is governed by the Securities and Futures (OTC Derivative Transactions – Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules. The consultation proposes to remove the requirement to clear certain OTC derivative transactions referencing interbank offered rates that are or will no longer be published or considered representative by the relevant regulators and administrators, and instead to require clearing of those that reference alternative reference rates as identified by the relevant regulators in the jurisdictions concerned.

Comments on the consultation are due by 11 April 2023.

MAS publishes circular on observations from inspections of licensed venture capital fund managers

The Monetary Authority of Singapore (MAS) has published a [circular](#) (dated 6 January 2023) setting out its observations from inspections of licensed venture capital fund managers (VCFMs).

Amongst other things, the MAS has observed that:

- as required, the VCFMs inspected did not carry out any regulated activities other than the management of ‘venture capital funds’. The MAS has reminded VCFMs to ensure their core business remains focused on managing venture capital funds, and where incidental activities are carried out, potential conflicts of interest are mitigated;
- while the VCFMs inspected were not found to be in breach of the requirements in relation to permissible clientele and the cap on non-qualifying investments, a number of VCFMs failed to maintain documentation evidencing that investors satisfied the ‘accredited investor’ definition, complete customer due diligence on investors prior to onboarding, and/or obtain the accredited investor ‘opt-in’ from their investors;
- some VCFMs inspected had not made the requisite disclosures to all investors that the VCFM is not subject to the conduct of business requirements and financial requirements that apply to other licensed fund management companies;
- a few VCFMs did not have formalised policies and procedures in certain areas. The MAS encourages VCFMs to consider formalising policies and procedures in key areas of their operations; and
- VCFMs are required to have positive level of base capital (i.e., minimally SGD 0), but a few had negative base capital. The MAS has reminded VCFMs to monitor their base capital on an ongoing basis and ensure positive base capital at all times.

In addition, the MAS has reminded all regulated fund management companies of their requirement to mitigate conflicts of interests through segregation of duties, having formalised policies on conflict management and establishing governance committees to deliberate issues involving potential conflicts of interest.

MAS revises code on collective investment schemes

The MAS has issued a [revised version](#) of the Code on Collective Investment Schemes (CIS), which has been revised to amend Chapter 10.

The amended Chapter 10 provides that a scheme (whether constituted in or outside Singapore) to be offered under the ASEAN CIS framework must satisfy the ASEAN SRFS where it seeks to qualify as an ASEAN Sustainable and Responsible Fund.

The ASEAN SRFS refers to the ASEAN Sustainable and Responsible Funds Standards (as may be amended from time to time) as agreed amongst the ASEAN Capital Markets Forum members.

RECENT CLIFFORD CHANCE BRIEFINGS

A Guide to Anti-Corruption Legislation in Asia Pacific – 7th edition

Businesses need to ensure that they are compliant with applicable anti-corruption laws in each of the countries in which they operate as well as with applicable international anti-corruption legislation with extraterritorial reach, such as the US Foreign Corrupt Practices Act and the UK Bribery Act. The need for such compliance is more acute now than ever. Anti-bribery sentiment across Asia Pacific has increased during the pandemic, which has in turn increased the political impetus to clamp down on bribery.

To assist businesses to navigate their way through the different anti-corruption regimes, this latest edition of the Guide to Anti-Corruption Legislation in Asia Pacific sets out the legislative anti-bribery framework in thirteen major jurisdictions across Asia Pacific and, in Annexures 1 and 2 respectively, summarises the provisions of the US Foreign Corrupt Practices Act and UK Bribery Act, which are major pieces of anti-bribery legislation that have extraterritorial reach. For each jurisdiction, the guide offers insight and analysis in relation to the enforcement of the relevant legislation.

<https://www.cliffordchance.com/briefings/2023/03/a-guide-to-anti-corruption-legislation-in-asia-pacific-7th-edition.html>

Code is law – unless to Court of Appeal says there is a realistic argument that it is not

The recent Court of Appeal decision in *Tulip Trading Limited v van der Laan and Others* [2023] EWCA Civ 83 has generated significant interest in the Bitcoin community and the wider digital asset sector. The claimant asks the English court to order software developers alleged to control various Bitcoin blockchains to modify source code to restore the claimant's control over a substantial amount of bitcoin for which its private key has been stolen. The case has generated unease in some quarters because the notion of a national court requiring the modification of a decentralised ledger is contrary to two of the key tenets of DLT, namely that the information recorded on the ledger is immutable and there should be no central governing authority. Undermine those principles, some say, and the value of digital assets, and Bitcoin in particular, may collapse.

Nothing has been finally decided yet (this was just an appeal of a jurisdiction challenge) but the case shows that the English courts are willing to engage fully with difficult legal issues arising from DLT and illustrates how the law is continuing to develop in this area.

This briefing discusses the case.

<https://www.cliffordchance.com/briefings/2023/02/code-is-law--unless-the-court-of-appeal-says-there-is-a-realistic-argument-that-it-is-not.html>

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.