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- **Recent Clifford Chance briefings: latest SFDR Q&A and Hong Kong's availability of bankruptcy and insolvency relief in the case of exclusive jurisdiction clauses and disputed debts. Follow this link to the briefings section.**

ESMA publishes letter on reprioritisation of 2023 deliverables

The European Securities and Markets Authority (ESMA) has published a letter to the EU Commission on the reprioritisation of the deliverables outlined in its 2023 annual work programme (AWP).

The letter notes that since the publication of the 2023 AWP, ESMA's workload has been impacted by certain external factors, such as the high concentration of time-critical deliverables under the Digital Operational Resilience Act (DORA) and Markets in Cryptoassets Regulation (MiCA). As such, it has decided to deprioritise or postpone the following deliverables, which are set out in an annex to the letter:

- annual reports under sectoral legislation, including the Central Securities Depositories Regulation (CSDR), Markets in Financial Instruments Regulation (MiFIR), Market Abuse Regulation (MAR), European Market Infrastructure Regulation (EMIR) and the Securities Financing Transactions Regulation (SFTR);
- a request for technical advice on the functioning of European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF); and
- a central counterparties (CCP) annual peer review relating to concentration risk.

IOSCO reports on enhancing SPAC regulations

The International Organization of Securities Commissions (IOSCO) has published its final report on special purpose acquisition companies (SPACs).

IOSCO notes that the rules applied to SPACs are similar to those applied to traditional initial public offerings (IPOs) but differ in critical ways to account for the complexity and uncertainty inherent in SPAC structures.

The report is intended to support or guide regulators as they review, develop, align or improve their SPAC framework, and to help them identify potential risks. Among other things, the report:

- compares the regulation of SPACs and traditional IPOs with respect to disclosure obligations and gatekeeper functions;
- analyses the approaches around the dilution of the value of shareholders' initial investment in a SPAC and outlines how these risks can be addressed through disclosure requirements or mechanisms such as dilution caps;
- identifies how regulatory frameworks may address risks around retail participation in SPACs through restrictions and general or specific investor protection measures;
- outlines the potential issues arising from the significant backlog of SPACs which will be liquidated if they fail to find a target;

- concludes that there is currently no one-size-fits-all model for the regulation of SPACs and that it is too early to assess what the most effective regulatory approaches are, as markets and regulations are still evolving; and
- identifies a set of common approaches and sets out some considerations for designing or fine-tuning SPAC frameworks, covering a range of issues that may arise at the various stages of a SPAC's lifecycle, from the SPAC's initial offering to the combination with a target or its liquidation.

IOSCO intends to transform the SPAC Network, established in 2021 to facilitate the sharing of information and investigate the issues raised around investor protection and market integrity, into a Primary Market Network.

IOSCO reports on good practices for trading ETFs

IOSCO has published its final report on good practices for exchange traded funds (ETFs) for regulators, responsible entities and trading venues.

IOSCO notes that the existing IOSCO Principles for the Regulation of Exchange Traded Funds remain relevant and appropriate. Since the publication of the principles in 2013, ETF markets globally have continued to evolve and exhibit sustained growth in assets under management. IOSCO therefore believes that the principles would benefit from being supported, and further operationalised, by a set of good practices.

The report covers effective product structuring, disclosure, liquidity provision, and volatility control mechanisms. It sets out 11 good practices that encompass the full life cycle of ETF products. The good practices can be broadly categorised under four themes:

- product structuring including range of assets, strategies for ETF offerings, effective arbitrage mechanisms;
- disclosure requirements including on fees and on clear differentiation of ETFs from other exchange traded products and collective investment schemes;
- liquidity provisions, including market monitoring and ensuring orderly trading; and
- volatility control mechanisms including communication between trading venues.

UK Government publishes amendments to Retained EU Law Bill and third iteration of retained EU law dashboard

The UK Government has tabled amendments to the Retained EU Law (Revocation and Reform) Bill as part of an update to its regulatory reform programme.

The proposed amendments seek to replace the current sunset clause broadly revoking EU-derived subordinate legislation and retained direct EU legislation on 31 December 2023 with an express list of legislation to be revoked, which will be set out in a new Schedule to the Bill.

In a written ministerial statement, the Government notes that its new approach to retained EU Law (REUL) is intended to reduce legal uncertainty and prioritise meaningful reform. It has also published a policy paper, intended as the first in a series of regulatory reform announcements, setting out, among

other things, changes to its better regulation framework and proposed employment law reforms.

The Government has also published a third iteration of its dashboard providing a catalogue of and statistics on over 4,800 pieces of REUL, an increase of approximately 1,080 since the second iteration published in January 2023, covering 400 policy areas.

The Government notes that the dashboard is not intended to provide a comprehensive account of REUL in general nor REUL that sits within the competence of the Devolved Governments. Further updates are expected throughout 2023.

HM Treasury publishes call for proposals on measuring regulators' new objectives

HM Treasury has published a call for proposals on accountability and transparency mechanisms for the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) in relation to their new secondary growth and competitiveness objectives.

The call for proposals broadly relates to the effective scrutiny of the regulators in relation to these new objectives, which form part of the future regulatory framework and are being introduced through the Financial Services and Markets Bill (FSMB). In particular, comments are sought on:

- the Government's approach to the exercise of its new power under the FSMB to direct the regulators to publish information;
- what specific, additional metrics the FCA and the PRA should publish in relation to their new secondary objectives.

The call for proposals closes on 4 July 2023.

PRA publishes final policy on contingent leverage risks

The PRA has published a policy statement on risks from contingent leverage (PS5/23).

PS5/23 provides feedback to the PRA's October 2022 consultation paper (CP12/22) and sets out its final rules including:

- an updated supervisory statement on the internal capital adequacy assessment process (ICAAP) supervisory review and evaluation process (SREP) (SS31/15);
- amendments to PRA Rulebook: CRR Firms: Leverage Ratio Instrument 2023;
- the introduction of reporting templates on contingent leverage;
- updated instructions for reporting on leverage; and
- an updated supervisory statement on the UK leverage ratio framework (SS45/15).

CP12/22 contained the PRA's proposals to update its supervisory expectations for firms undertaking an ICAAP in relation to the risks from contingent leverage and to introduce a new data reporting requirement for firms subject to a minimum leverage ratio requirement (LREQ).

Following the one response received, the PRA has added a clarification on the business lines and trade structures in scope of the ICAAP expectations, and how to assess the materiality of contingent leverage risks to a firm's business. It has also made some minor changes to the reporting requirement.

The ICAAP expectations took effect on 11 May 2023. The reporting requirement for LREQ firms will take effect on 1 January 2024, with a first reporting reference date of 30 June 2024.

PRA publishes final policy on removing SM&CR forms from PRA rulebook

The PRA has published a policy statement (PS4/23) on the Senior Managers and Certification Regime (SM&CR) forms.

Respondents to the PRA's January 2023 consultation (CP2/23) were generally in favour of its proposals to remove certain SM&CR forms from the PRA Rulebook and to extend the length of employment history required in the long form A. The PRA has decided the implement the changes as proposed in CP2/23. Concerns, observations and requests for clarification have been set out in Chapter 2 of PS4/23.

The rules took effect on 11 May 2023. The PRA has indicated that the SM&CR form A (long form) will be updated to increase the length of employment history in due course and simultaneously with the update of the Connect system.

BaFin consults on general decree on investment firm remuneration notifications

The German Federal Financial Supervisory Authority (BaFin) has launched a consultation on a general decree (Allgemeinverfügung) regarding the remuneration notifications of investment firms for the reporting date 31 December 2022.

The European Banking Authority (EBA) has revised its guidelines setting out the remuneration notification obligations of investment firms under the Investment Firm Directive (IFD), which were implemented in the German Investment Firm Act (WpIG). Since 31 December 2022, large and medium-sized investment firms and supervisory authorities must, for the first time, apply the following new EBA guidelines:

- large investment firms must apply the guidelines on the benchmarking exercises on remuneration practices, the gender pay gap and approved higher ratios under Directive 2013/36/EU (EBA/GL/2022/06), which replace EBA/GL/2014/08;
- medium-sized investment firms must apply the guidelines on the comparison of remuneration practices and the gender pay gap under Directive (EU) 2019/2034 (EBA/GL/2022/07); and
- large and medium-sized investment firms must apply the guidelines on the data collection exercises regarding high earners under Directive 2013/36/EU and under Directive (EU) 2019/2034 (EBA/GL/2022/08), which replace EBA/GL/2014/07.

These reporting obligations and the draft general decree do not apply to small investment firms.

As national supervisors are obliged to provide EBA with the information required under the new guidelines by 31 October 2023, but the process of incorporating the new requirements into the WpIG and the future German Investment Firm Notification Ordinance (WpI–AnzV) will extend beyond that date, BaFin plans to issue a general decree.

Comments are due by 8 June 2023.

Consob and Banca d'Italia comply with ESMA guidelines on standard forms, formats and templates to apply for permission to operate DLT market infrastructure

The Bank of Italy and the Commissione Nazionale per le Società e la Borsa (Consob) have, as competent authorities under Regulation (EU) 2022/858, confirmed their intention to comply with the ESMA guidelines on standard forms, formats and templates to apply for permission to operate a distributed ledger technology (DLT) market infrastructure, incorporating them into their respective supervisory practices.

Entities intending to submit an application for a specific authorisation to operate a DLT market infrastructure are required to comply with the above guidelines, which are applicable from 23 March 2023.

Considering the division of responsibilities between the Bank of Italy and Consob pursuant to Article 29 of Decree-Law No. 25 of 17 March 2023, applications for specific authorisation to operate a DLT infrastructure must be submitted to the Bank of Italy:

- for DLT MTFs – in all cases of wholesale DLT MTFs for government securities, or when the applicant simultaneously applies for authorisation pursuant to Article 19(4) of the Italian Financial Act or Article 20-bis.1 of the Italian Financial Act, or is already authorised pursuant to the same articles; and
- for DLT TSS – in all cases of wholesale DLT TSS of government securities.

Entities interested in obtaining a specific authorisation to operate a DLT market infrastructure that are not already authorised to provide the service of managing multilateral trading facilities and/or as central depositories, will be required to apply at the same time under the MiFID2 framework and/or the CSDR.

Bank of Spain consults on amending Circular 2/2016 on supervision and solvency of credit entities and Circular 1/2022 on liquidity, prudential rules and reporting obligations of credit financial institutions

The Bank of Spain has launched a public consultation on amendments to Circular 2/2016, of 2 February, to credit entities, on supervision and solvency and Circular 1/2022, of 24 January, to credit financial institutions, on liquidity, prudential rules and reporting obligations.

In particular, the Bank of Spain is proposing to:

- amend Circular 2/2016 to align it with the amendments introduced in Law 10/2014, of 26 June, on regulation, supervision and solvency of credit

entities by Law 18/2022, of 28 September, in connection with activities in Spain without a branch by non-EU entities; and

- amend Circular 2/2016 and Circular 1/2022 to align the reporting obligations on remuneration for credit entities and credit financial institutions to adapt these reporting requirements to the latest guidelines published by the EBA.

Comments are due by 30 May 2023.

SFC, PBoC and HKMA announce launch of Swap Connect

Swap Connect, a new mutual access programme between Hong Kong and Mainland China's interbank interest rate swap markets, has commenced on 15 May 2023.

In July 2022, the People's Bank of China (PBoC), the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) announced their agreement for China Foreign Exchange Trade System (National Interbank Funding Center) (CFETS), Shanghai Clearing House (SHCH) and OTC Clearing Hong Kong Limited (OTC Clear) to collaborate in developing Swap Connect.

The programme will begin with Northbound Trading, which allows overseas investors from Hong Kong and other countries and regions to participate in the Mainland interbank financial derivatives market through a connection between financial infrastructure institutions in the two markets.

To facilitate a smooth launch of Northbound Trading of Stock Connect, the regulators have set out certain guidance concerning the trading and clearing arrangements, the principles and arrangements for cross-boundary regulatory cooperation between the PBoC, the SFC and the HKMA. CFETS, SHCH and OTC Clear are expected to perform their respective duties under Swap Connect in accordance with applicable laws and regulations and engage with market participants to facilitate the orderly operation of Northbound Trading businesses.

Clearing members are expected to comply with relevant regulatory requirements and operational rules, strengthen internal controls, prevent and manage risks, enhance investor education and services, and effectively safeguard the legitimate rights and interests of investors. Investors are expected to familiarise themselves with the differences in laws, regulations, operational rules and practices between the Mainland and Hong Kong markets, assess and control risks, and invest rationally.

Singapore and China establish Green Finance Taskforce

The Monetary Authority of Singapore (MAS) and the People's Bank of China (PBC) have announced the establishment of the China-Singapore Green Finance Taskforce (GFTF).

The GFTF aims to deepen bilateral cooperation in green and transition finance between Singapore and China by facilitating public-private sector exchanges to better mobilise private capital for sustainable development needs, and collaborating on standards, financing solutions, data collection, and technology enablers to enhance green investment opportunities in China and the ASEAN region.

In particular, the GFTF will establish three initial workstreams to focus on the following priority areas:

- taxonomies and definitions, where the MAS and the PBC will work together under the International Platform on Sustainable Finance (IPSF) to achieve interoperability between the Singapore and China taxonomies, and will collaborate subsequently to enhance the use of the IPSF's Common Ground Taxonomy;
- products and instruments, where the Singapore Exchange and the China International Capital Corporation will establish a workstream to strengthen sustainability bond market connectivity between China and Singapore, including the issuances of and mutual access to green and transition bond products in China and Singapore; and
- technology, where the Metaverse Green Exchange and Beijing Green Exchange will establish a workstream that leverages technology to facilitate sustainable finance adoption, including piloting of digital green bonds with carbon credits.

First phase of Financial Services and Markets Act 2022 comes into effect

The first phase of the Financial Services and Markets Act 2022 (FSMA), an omnibus legislation intended to enhance the MAS's agility and effectiveness in addressing financial sector-wide risks, has come into effect. The FSMA was passed by Parliament on 5 April 2022, and is being implemented in phases, with the first phase effective from 28 April 2023. In particular, the first phase relates to the porting of the following provisions from the Monetary Authority of Singapore Act 1970:

- general powers over financial institutions, including inspection powers, offences and other miscellaneous provisions (Parts 2, 10, 11 and 12 (except section 183 of Part 12) of the FSMA);
- AML/CFT framework (Part 4 of the FSMA); and
- financial dispute resolution schemes framework (Part 6 of the FSMA).

The remaining phases are set to be implemented between the second half of 2023 and 2024.

In addition to the FSMA, the Singapore Government has gazetted the Financial Services and Markets (Dispute Resolution Schemes) Regulations 2023 in order to implement the provisions set out under Part 6 (dispute resolution schemes) of the FSMA.

In connection with Part 4 of the FSMA, the Singapore Government has also gazetted the following regulations, mainly with a view to discharging or facilitating the discharge of obligation(s) binding on Singapore by virtue of decision(s) of the United Nations Security Council (UNSC) (as set out under the relevant sections of the FSMA):

- Financial Services and Markets (Freezing of Assets of Persons – Democratic Republic of the Congo) Regulations 2023 – to give effect to UNSC Resolution 1596 (2005);
- Financial Services and Markets (Freezing of Assets of Persons – South Sudan) Regulations 2023 – to give effect to UNSC Resolution 2206 (2015);

- Financial Services and Markets (Freezing of Assets of Persons – Sudan) Regulations 2023 – to give effect to UNSC Resolution 1591 (2005);
- Financial Services and Markets (Freezing of Assets of Persons – Yemen) Regulations 2023 – to give effect to UNSC Resolution 2140 (2014);
- Financial Services and Markets (Sanctions and Freezing of Assets of Persons – Democratic People's Republic of Korea) Regulations 2023 – to give effect to UNSC Resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017), 2375 (2017) and 2397 (2017);
- Financial Services and Markets (Sanctions and Freezing of Assets of Persons – Iran) Regulations 2023 – to give effect to UNSC Resolution 2231 (2015);
- Financial Services and Markets (Sanctions and Freezing of Assets of Persons – Libya) Regulations 2023 – to give effect to UNSC Resolutions 1970 (2011), 1973 (2011), 2009 (2011) and 2146 (2014); and
- Financial Services and Markets (Sanctions and Freezing of Assets of Persons – Somalia) Regulations 2023 – to give effect to Resolution 1844 (2008).

Consequently, the above regulations revoke the following regulations:

- Monetary Authority of Singapore (Freezing of Assets of Persons – Democratic Republic of the Congo) Regulations 2006;
- Monetary Authority of Singapore (Freezing of Assets of Persons – South Sudan) Regulations 2015;
- Monetary Authority of Singapore (Freezing of Assets of Persons – Sudan) Regulations 2006;
- Monetary Authority of Singapore (Freezing of Assets of Persons – Yemen) Regulations 2015;
- Monetary Authority of Singapore (Sanctions and Freezing of Assets of Persons – Democratic People's Republic of Korea) Regulations 2016;
- Monetary Authority of Singapore (Sanctions and Freezing of Assets of Persons – Iran) Regulations 2016;
- Monetary Authority of Singapore (Sanctions and Freezing of Assets of Persons – Libya) Regulations 2011; and
- Monetary Authority of Singapore (Sanctions and Freezing of Assets of Persons – Somalia) Regulations 2010.

The following legislation has also been gazetted, mainly to update legislative references consequential to the commencement of the FSMA:

- Variable Capital Companies (Sanctions and Freezing of Assets of Persons) (Amendment) Regulations 2023;
- United Nations (Miscellaneous Amendments) Regulations 2023;
- Legal Profession (Prevention of Money Laundering and Financing of Terrorism) (Amendment) Rules 2023; and
- Insolvency, Restructuring and Dissolution (Prescribed Companies and Entities) (Amendment) Order 2023.

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Insolvency, Restructuring and Dissolution (Insolvency Practitioners) (Amendment) Regulations 2023 gazetted

The Singapore Government has gazetted the Insolvency, Restructuring and Dissolution (Insolvency Practitioners) (Amendment) Regulations 2023.

Amongst other things, the regulations amend Regulation 5 of the Insolvency, Restructuring and Dissolution (Insolvency Practitioners) Regulations 2020 to stipulate requirements which an applicant must satisfy to be eligible for the grant or renewal of a licence to act as an insolvency practitioner in relation to a company, or foreign company, that is the subject of any proceedings relating to corporate insolvency, restructuring or dissolution in the Singapore International Commercial Court. Essentially, the applicant must hold and have held for a minimum of three continuous years the equivalent of an insolvency practitioner's licence in a foreign jurisdiction, and have acted as the equivalent of a licensed insolvency practitioner in relation to a corporation under any foreign law in respect of corporate insolvency proceedings that are international and commercial in nature.

The Regulations are effective from 1 May 2023.

MAS launches Finance for Net Zero Action Plan

The MAS has announced the launch of Finance for Net Zero (FiNZ) Action Plan at the opening of the Sustainable and Green Finance Institute of the National University of Singapore.

The FiNZ Action Plan sets out the MAS' strategies to mobilise financing to catalyse Asia's net zero transition and decarbonisation activities in Singapore and the region. It expands the scope of the MAS' Green Finance Action Plan launched in 2019 to include transition finance.

In particular, the FinZ Action Plan aims to achieve strategic outcomes in the following four areas:

- data, definitions and disclosures, where the MAS will continue to promote consistent, comparable, and reliable climate data and disclosures to guide decision making by financial market participants, and safeguard against greenwashing risks;
- climate resilient financial sector, where the MAS will continue to engage financial institutions (FIs) to foster sound environmental risk management practices and deepen climate scenario analysis and stress testing to identify climate-related financial risks, and incorporate evolving international best practices in the supervision of FIs' transition planning;
- credible transition plans, where the MAS will engage international partners to support the development of credible regional sectoral decarbonisation pathways to support FIs' adoption of science-based transition plans; and
- green and transition solutions and markets, where the MAS will promote innovative and credible green and transition financing solutions and markets to support decarbonisation efforts and climate risk mitigation, which includes, amongst others expanding the scope of its sustainable

bond and loan grant schemes to include transition bonds and loans, with safeguards in place to mitigate the risk of 'transition-washing' and ensure alignment with internationally recognised taxonomy and transition finance principles, extending the Insurance-Linked Securities (ILS) Grant Scheme until the end of 2025 to support the continued growth of catastrophe bonds and additional climate risk financing instruments such as sidecars and collateralised reinsurance arrangements, and scaling blended finance, in partnership with the private sector and philanthropic foundations, to mobilise financing for the decarbonisation of carbon-intensive sectors.

To enable the above outcomes, the MAS will continue to grow and scale Green FinTech solutions. The MAS will also continue investing to develop the skills and capabilities of the Singapore workforce.

MAS consults on proposals to enhance safeguards for prospecting and marketing of financial products

The MAS has launched two public consultations with proposals to enhance safeguards for prospecting and marketing of financial products. The enhancements are intended to raise industry standards by requiring financial institutions (FIs) to put in place additional controls when engaging in prospecting and marketing activities through both physical and digital means.

The consultation paper on Enhancing Safeguards for Proper Conduct of Digital Prospecting and Marketing Activities proposes to, among other things:

- issue a set of new Guidelines on Standards of Conduct for Digital Prospecting and Marketing Activities, to formalise the MAS' supervisory expectations on FIs to put in place safeguards to ensure proper conduct of digital prospecting and marketing of all financial products. The safeguards are intended to cover selecting appropriate digital media for prospecting and marketing financial products and services, assessing specificities and limitations of digital media, and addressing risks associated with its use, including by providing important and prominent disclosures, providing clear guidance and proper training to representatives on appropriate digital prospecting and marketing practices, monitoring digital prospecting and marketing activities conducted by representatives and third-party service providers, and taking appropriate disciplinary actions against representatives and their supervisors for malpractices, and deterring errant conduct relating to digital prospecting and marketing;
- enhance the requirements in the advertisement regulations (i.e. regulations 22 to 22D of the Financial Advisers Regulations (FAR) and regulations 46 and 46AA to 46AD of the Securities and Futures (Licensing and Conduct of Business) Regulations), to address risks posed by misleading non-product advertisements and anonymous advertisements. In particular, the MAS plans to subject non-product advertisements to similar approval processes and vetting controls as product advertisements, and require FIs and their representatives to state their identities in anonymous advertisements, particularly the FI's name as set out in the Financial Institutions Directory, and the representative's name and number as set out in the Register of Representatives; and
- enhance requirements in Notice FAA-N01 on Appointment and Use of Introducers by Financial Advisers in relation to FIs' use of digital lead generation firms, which constitutes an introducing activity under the FAR.

The consultation paper on Enhancing Safeguards for Proper Conduct of Prospecting Activities at Public Places and Telemarketing proposes to, among other things:

- enhance safeguards and address conduct risks and issues associated with public prospecting activities. In particular, the MAS plans to strengthen the safeguards set out in the Guidelines on Standards of Conduct for Marketing and Distribution Activities, by legislating them as requirements in new Notice(s) applicable to investment products and long-term accident and health policies, introduce additional safeguards to ensure that FIs and their representatives inform customers of their motive and obtain their consent before commencing the prospecting activity, provide adequate time for customers to make properly considered purchase decisions, not to use or mention gift offers to entice customers to purchase financial products or make larger purchases, and conduct PPAs in proper and conducive settings, and in a responsible and professional manner;
- apply some of the additional safeguard measures to telemarketing of financial products and services; and
- address the influence that gift offers pose on consumers' decisions to purchase financial products.

The MAS is also considering providing a transition period of six to nine months for FIs to comply with the enhanced safeguards, i.e. the new Notices, updated Regulations and revised Guidelines, as applicable, will be effected six to nine months from their issuance date.

Comments on both the consultation papers are due by 30 June 2023.

MAS consults on proposed amendments to Payment Services Regulations 2019, existing notices applicable to payment service providers, and proposed new regulations on exemptions for a specified period

The MAS has launched a consultation on its proposed amendments to the Payment Services Regulations 2019 (PSR) and existing notices applicable to payment service providers, as well as new proposed regulations on exemptions for a specified period. The proposals in the consultation paper will operationalise the proposed amendments to the Payment Services Act 2019 (PSA) under the Payment Services (Amendment) Act 2021 (PS(A)A).

The PS(A)A was passed in Parliament on 4 January 2021. When it comes into operation, the PS(A)A will, among other things, expand the scope of digital payment token (DPT) services under the PSA to beyond the services of dealing in DPT and facilitating the exchange of DPT, to align with the enhanced standards adopted by the Financial Action Task Force Standards applicable to DPT service providers on money laundering and terrorism financing risks.

Amongst other things, the MAS is seeking comments on proposals relating to:

- exemptions from safeguarding requirements under the PSR – existing requirements under the PSR will apply to the newly scoped-in payment services. The MAS proposed to amend the PSR to exempt a major payment institution (MPI) from section 23 of the PSA in respect of relevant money received by the MPI for the provision of a service that falls within the expanded scope of cross-border money transfer service, subject to

certain conditions; revising Notice PSN01 Prevention of Money Laundering and Countering the Financing of Terrorism – Specified Payment Services and Notice PSN02 Prevention of Money Laundering and Countering the Financing of Terrorism – Digital Payment Token Service to apply the AML/CFT requirements in these notices to the newly scoped-in payment services; require licensees and exempt payment service providers which are incorporated in Singapore to develop and implement group-wide AML/CFT policies; introduce requirements relating to agency arrangements of DPT service providers under Notice PSN02, and exclude wire transfers that flow from a transaction carried out using a charge card, credit card, debit card, prepaid card or electronic wallet for the purchase of goods or services from the requirements set out under paragraph 15 of Notice PSN01;

- applying the data collection requirements in Notice PSN04 Notice on Submission of Regulatory Returns to the newly scoped-in payment services;
- revising Notices PSN07 Notice on Conduct and PSN08 Notice on Disclosures and Communications to apply the requirements in these notices to the newly scoped-in payment services; provide flexibility in the money transmission requirements in Notice PSN07; enhance the risk disclosure statements under Notice PSN08 concerning the unregulated status of certain services provided by licensed DPT service providers; and
- the new Payment Services (Exemption for Specified Period) Regulations 2023, which exempt, for a specified period, entities that need to be licensed, or that need to vary their licence, under the PS Act arising from the broadened scope of cross-border money transfer services, domestic money transfer services and DPT services.

Comments on the consultation are due by 8 June 2023.

Contributed by Clifford Chance Asia, a Formal Law Alliance in Singapore between Clifford Chance Pte Ltd and Cavenagh Law LLP.

ASIC publishes report on greenwashing interventions

The Australian Securities and Investments Commission (ASIC) has published a report on the regulatory interventions it made in relation to greenwashing concerns between 1 July 2022 and 31 March 2023.

During the period, ASIC made 35 interventions aimed at promoting fair and transparent markets so that retail investors and financial consumers are well informed and not misled on the 'green credentials' of investments and listed companies. ASIC's interventions resulted in:

- 23 corrective disclosure outcomes;
- 11 infringement notices issued; and
- the commencement of civil penalty proceedings in one case.

The report also provides examples of ASIC's regulatory interventions with reference to the following themes:

- net zero statements and targets;
- use of terms such as 'carbon neutral', 'clean' or 'green';
- fund labels; and

- scope and application of investment exclusions and screens.

ASIC has encouraged issuers and advisers preparing disclosures to consider the report alongside the Information Sheet 271 (INFO 271) on how to avoid greenwashing when offering or promoting sustainability-related products. Issued in June 2022, INFO 271 sets out the current regulatory settings for communications about sustainability-related products and poses nine questions for issuers to ask themselves to avoid misleading and deceptive greenwashing practices.

ASIC plans to continue investigating entities in relation to suspected greenwashing and anticipates further enforcement action.

RECENT CLIFFORD CHANCE BRIEFINGS

SFDR – Latest European Commission Q&A published

On 14 April 2023, the European Commission's responses to a series of fundamental SFDR-related questions were published.

The responses confirm that it is for firms to determine whether investments qualify as 'sustainable investments' and remind firms of their duties to exercise caution when making this determination. The responses also provide helpful clarifications regarding a number of other interpretational points.

This briefing paper discusses the Q&A.

https://www.cliffordchance.com/briefings/2023/05/sfdr--latest-european-commission-q-a-published.html

Availability of bankruptcy and insolvency relief in the case of exclusive jurisdiction clauses and disputed debts

In the judgment of *Re Guy Kwok-Hung Lam* [2023] HKCFA 9 handed down on 4 May 2023, the Court of Final Appeal in Hong Kong unanimously upheld the majority decision of the Court of Appeal that in an ordinary case where the underlying dispute over the petition debt is subject to an exclusive jurisdiction clause in favour of a foreign court, the Hong Kong court should decline bankruptcy or insolvency jurisdiction unless there are strong reasons to the contrary.

This has important implications for parties who wish to invoke the Hong Kong court's bankruptcy or insolvency jurisdiction and parties will need to carefully consider their jurisdiction and dispute resolution clauses and think through the forum(s) for enforcement before entering into their contracts.

This briefing paper discusses the judgment.

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