

INTERNATIONAL REGULATORY UPDATE 14 – 18 AUGUST 2023

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FSB consults on money market fund reforms

The Financial Stability Board (FSB) is [seeking feedback](#) as part of its thematic peer review of measures adopted by FSB member jurisdictions to enhance money market fund (MMF) resilience.

A summary [terms of reference](#) sets out the objectives, scope and process for the review, which is intended to take stock of the progress made in assessing and addressing MMF vulnerabilities in domestic markets since the publication of the FSB's 2021 policy proposals.

Feedback is sought on issues such as:

- how MMF vulnerabilities differ across jurisdictions depending on MMF structure, investor composition, asset profile, or other factors;
- the steps authorities have taken or plan to take to address MMF vulnerabilities; and
- operational and other challenges faced by the industry in implementing MMF reforms.

Comments are due by 8 September 2023. The FSB intends to publish its peer review report by the end of 2023.

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HM Treasury, BoE and FCA announce access to cash policy

HM Treasury, the Bank of England (BoE) and the Financial Conduct Authority (FCA) have published statements setting out their approaches to access to cash deposit and withdrawal services for personal and business current accounts in the UK.

The documents follow amendments relating to access to cash introduced by the Financial Services and Markets Act 2023 (FSMA 2023), which include allowing HM Treasury to designate firms to be subject to FCA oversight for the purpose of ensuring the continued provision of cash access services, and BoE powers to oversee the wholesale cash industry.

The [HM Treasury policy statement](#) is intended to inform the FCA's approach, including in relation to what constitutes 'reasonable provision' of cash access services in the UK.

The [FCA statement](#) notes an intention to introduce new rules aimed at focussing designated firms' efforts in local areas where deficiencies in cash access would be likely to have a significant impact, including requiring designated firms to conduct assessments of the reasonableness of cash provision when certain significant changes in local access occur or are proposed, such as branch closures. The FCA intends to consult on proposals in due course and for new rules to have taken effect by summer 2024.

The [BoE statement of policy](#) sets out its supervisory approach to the exercise of its powers in relation to the oversight of participants in the wholesale cash distribution market, including overarching principles to which recognised firms must have regard in performing relevant functions, and an intention to issue binding codes of practice covering information gathering, third-party arrangements, and cash centre closure and market exit.

FCA requests information from politically exposed persons

The FCA has published a [press release](#) providing an update on its review of its guidance on politically exposed persons (PEPs) and a letter requesting information from PEPs on their experiences of how financial services firms have applied the PEPs regime.

The FCA is reviewing its guidance as required under section 78 of the FSMA 2023 and notes that it is proactively contacting parliamentarians, chairs of political parties and other UK PEPs, including senior civil servants and senior ranks of the armed forces, for their experiences relating to the extra checks that firms are required to undertake on political figures, their families and known close associates.

The FCA intends to publish full terms of reference for the review in September 2023 and to report its conclusions and any next steps in June 2024.

The FCA notes that the review is separate from its recent request for data on bank account closures.

FCA sets out expectations for UK cryptoasset businesses complying with Travel Rule

The FCA has published a [statement](#) setting out its expectations for cryptoasset businesses that need to comply with the Travel Rule from 1 September 2023.

The Travel Rule, a recommendation of the Financial Action Task Force (FATF) and introduced in the UK through amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, requires cryptoasset businesses to collect, verify and share information about cryptoasset transfers.

Amongst other things, the FCA expects firms to:

- take all reasonable steps and exercise all due diligence to comply with the Travel Rule;
- fully comply with the Travel Rule when sending or receiving a cryptoasset transfer to a firm that is in the UK, or any jurisdiction that has implemented the Travel Rule; and
- regularly review the implementation status of the Travel Rule in other jurisdictions and adapt business processes as appropriate.

The FCA has emphasised that firms remain responsible for achieving compliance with the Travel Rule even when using third-party suppliers.

The FCA has also set out its expectations for firms when sending a cryptoasset transfer to, or receiving a cryptoasset transfer from, a jurisdiction without the Travel Rule.

BaFin publishes updated circular on high-risk jurisdictions for money laundering and terrorist financing

The German Federal Financial Supervisory Authority (BaFin) has issued a [new anti-money laundering circular](#) (Circular 07/2023 (GW)) on due diligence requirements with respect to high-risk jurisdictions that have strategic deficiencies in their systems to counter money laundering and terrorist financing, which pose significant risks for the international financial system. Circular 07/2023 is addressed to all entities obligated under the Money Laundering Act (Geldwäschegesetz) and supersedes previous circulars on EU and FATF high risk jurisdictions country lists relating to deficiencies in combating money laundering, terrorist financing and financing of proliferation.

Circular 07/2023 (GW) takes into consideration:

- Delegated Regulation (EU) 2016/1675 as amended by Delegated Regulation (EU) 2023/1219, which relates to the Democratic People's Republic of Korea, the Islamic Republic of Iran, Afghanistan, Barbados, Burkina Faso, the Democratic Republic Congo, Gibraltar, Haiti, Jamaica, Yemen, Jordan, Cayman Islands, Mali, the Republic of Mozambique, Myanmar, the Federal Republic of Nigeria, Panama, Philippines, Senegal, the Republic of South Africa, South Sudan, Syria, the United Republic of Tanzania, the Republic of Trinidad and Tobago, Uganda, the United Arab Emirates and Vanuatu;

- the FATF statement on High-risk Jurisdictions subject to a Call for Action of 23 June 2023 relating to the Democratic People's Republic of Korea, the Islamic Republic of Iran and Myanmar; and
- the FATF report of 23 June 2023 on jurisdictions under increased monitoring relating to Albania, Barbados, Burkina Faso, the Democratic Republic Congo, Gibraltar, Haiti, Jamaica, Yemen, Jordan, Cayman Islands, Mali, Mozambique, the Federal Republic of Nigeria, Panama, Philippines, Senegal, the Republic of South Africa, South Sudan, Syria, the United Republic of Tanzania, Turkey, Uganda, the United Arab Emirates, the Republic of Cameroon, the Republic of Croatia and the Socialist Republic of Vietnam.

In Circular 07/2023 (GW) BaFin specifies legal consequences and anti-money laundering due diligence requirements under the Money Laundering Act, namely:

- the requirements with respect to the Democratic People's Republic of Korea and the Islamic Republic of Iran, with an explicit reference to BaFin's related general decrees;
- continued enhanced due diligence requirements with respect to Afghanistan, Barbados, Burkina Faso, the Democratic Republic Congo, Gibraltar, Haiti, Jamaica, Yemen, Jordan, Cayman Islands, Mali, the Republic of Mozambique, Myanmar, the Federal Republic of Nigeria, Panama, Philippines, Senegal, the Republic of South Africa, South Sudan, Syria, the United Republic of Tanzania, the Republic of Trinidad and Tobago, Uganda, the United Arab Emirates and Vanuatu, emphasising that the application of such measures with respect to Myanmar should not disrupt flows of funds for humanitarian assistance, legitimate NPO activity and remittances;
- that with respect to Albania, the Republic of Cameroon, the Republic of Croatia, the Socialist Republic of Vietnam and Turkey, which are listed as jurisdictions under increased monitoring by the FATF but are not included in the Delegated Regulation, no additional requirements are to be observed but their individual country situation is to be considered; and
- calling to additionally take into account the financial sanctions published on the website of the Deutsche Bundesbank, in particular with respect to Russia, as well as the overview of cross-border threats set out in annex 4 of the National Risk Analysis.

CSSF publishes FAQs on virtual asset service providers

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a set of [frequently asked questions](#) (FAQs) regarding virtual asset service providers (VASPs).

The FAQs are of interest to persons and entities already registered in the CSSF register as VASPs, as defined in Article 1 (20c) of the Luxembourg law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (the AML/CTF Law), or willing either to be established or to offer virtual asset (VA) services in Luxembourg.

The FAQs have been drawn up based on the current legal framework on anti-money laundering and countering terrorist financing (AML/CTF) applicable to

VASPs and do not take into account the evolution of the framework related to VAs at EU level, i.e. the Markets in Cryptoassets Regulation (MiCA).

Amongst other things, the FAQs clarify the concept of VA, as well as the persons and entities who are required to register with the CSSF as VASPs, including registration requirements applicable to non-Luxembourg entities which provide VA services in Luxembourg. Some practicalities with regard to the registration as a VASP are also addressed, such as the timing for registration, passporting, and fees levied by the CSSF. Certain questions covered by the FAQs are specific to certain types of persons and entities, such as credit institutions, undertakings for collective investment or providers which solely offer the technology to support VA services, while other questions provide more general guidance on the application of AML/CTF requirements by VASPs.

MAS finalises stablecoin regulatory framework

The Monetary Authority of Singapore (MAS) has [announced](#) the features of a new regulatory framework for stablecoins issued in Singapore. The regulatory framework takes into account the feedback the MAS received to its October 2022 public consultation on the proposed regulatory approach for stablecoin-related activities.

The MAS has confirmed that it will introduce 'Stablecoin Issuance Service' as a new regulated activity under the Payment Services Act 2019 (PS Act). The new stablecoin regulatory framework will apply to single-currency stablecoins (SCS) pegged to the Singapore Dollar or any Group of Ten (G10) currency that are issued in Singapore. Issuers of such SCS will have to fulfil requirements relating to:

- value stability – SCS reserve assets will be subject to requirements relating to their composition, valuation, segregation and custody, independent attestation and audit;
- capital and other prudential requirements – issuers must maintain minimum base capital and liquid assets to reduce the risk of insolvency and enable an orderly wind-down of business if necessary, and not undertake other activities that introduce additional risks such as lending, dealing or fund management services;
- redemption at par – issuers must return the par value of SCS to holders within five business days from a redemption request;
- disclosure – issuers must provide appropriate disclosures to users, including information on the SCS' value stabilising mechanism, rights of SCS holders, as well as the audit results of reserve assets; and
- AML/CFT, technology and cyber risk – issuers must comply with existing requirements on AML/CFT, technology and cyber risk management standards applicable to DPT service providers or banks (as the case may be).

Only stablecoin issuers that fulfil all requirements under the framework can apply to the MAS for their stablecoins to be recognised and labelled as 'MAS-regulated stablecoins'. Any person who misrepresents a token as a 'MAS-regulated stablecoin' may be subject to penalties and imprisonment (in the case of individuals), and placed on the MAS' Investor Alert List.

The MAS has clarified that it does not intend to subject non-bank SCS issuers with SCS in circulation not exceeding SGD 5 million to the requirements under the SCS framework. For bank SCS issuers, the MAS intends to exclude tokenised bank liabilities from the SCS framework.

The MAS has also clarified that other types of stablecoins (such as SCS issued outside of Singapore or pegged to other currencies or assets) will not be prohibited from being issued, used or circulated within Singapore. Such stablecoins will continue to be subject to the existing digital payment token regulatory regime under the PS Act. The MAS has indicated that it will continue to monitor developments in the stablecoin landscape, with a view to bringing other types of tokens into the SCS framework.

RECENT CLIFFORD CHANCE BRIEFINGS

EU Foreign Subsidies Regulation – procurement notification regime finalised

On 10 July 2023, the European Commission published the final Implementing Regulation and notification forms for the EU Foreign Subsidies Regulation (FSR).

With the final rules in place, bidders that participate in high-value EU procurement procedures should act quickly to prepare ahead of the new regime commencing on 12 October 2023 in order to avoid exclusion from future procurement processes or fines for non-compliance.

This briefing paper provides an overview of the reporting obligations to assist bidders with their preparations. The briefing focuses on procurement aspects of the FSR and follows our review of the draft Implementing Regulation and procurement notification form published for consultation earlier this year ([see here](#)).

<https://www.cliffordchance.com/briefings/2023/08/eu-foreign-subsidies-regulation--procurement-notification-regime.html>

Ukraine – the latest global sanctions and export controls

The US, EU, UK, Poland, 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 12pm GMT, 16 August 2023.

<https://www.cliffordchance.com/briefings/2023/08/ukraine--the-latest-global-sanctions-and-export-controls-16-august-2023.html>

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