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EU Commission updates list of high-risk third countries

The EU Commission has adopted a delegated regulation to add Cameroon and Vietnam to table I of the Annex to Delegated Regulation (EU) 2016/1675.

Delegated Regulation (EU) 2016/1675 identifies a number of third countries that have strategic deficiencies in their anti-money laundering (AML) and counter-terrorist financing (CTF) regimes that pose significant threats to the financial system of the EU. Since the last amendment to Delegated Regulation (EU) 2016/1675, the Financial Action Task Force (FATF) updated its list of 'Jurisdictions under Increased Monitoring' to include Cameroon and Vietnam.

The delegated regulation will enter into force 20 days after it is published in the Official Journal.

Financial Conglomerates Directive: ECB consults on guide on reporting of risk concentrations and intragroup transactions

The European Central Bank (ECB) is seeking views on a draft guide on financial conglomerate reporting of significant risk concentrations and intragroup transactions (RC-IGT) in accordance with the Financial Conglomerates Directive (FICOD) and implementing technical standards (ITS) set out in Implementing Regulation (EU) 2022/2454.

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The guide sets out the ECB's approach when appointed as a coordinator in relation to the supplementary prudential supervision of significant credit institutions that head financial conglomerate and is intended to help conglomerates in setting up the internal processes necessary for RC-IGT reporting using the templates provided for in the ITS.

The ITS entered into force on 8 January 2023 and apply from 31 December 2023.

Comments on the draft guide are due by 6 October 2023.

Investment firms: RTS on liquidity measurement under IFD published in OJ

Commission Delegated Regulation (EU) 2023/1651 laying down regulatory technical standards (RTS) on the specific liquidity measurement for investments firms under the Investment Firms Directive ((EU) 2019/2034) (IFD) has been published in the Official Journal.

The RTS, which seek to establish a harmonised approach by competent authorities to setting increased liquidity requirements as a result of an investment firm's supervisory review and evaluation process (SREP), detail how liquidity risk and elements of liquidity risk are to be measured for the purposes of the liquidity risk assessment.

The Delegated Regulation enters into force on 12 September 2023.

IOSCO and CPMI publish report on CCP non-default losses

The International Organization of Securities Commissions (IOSCO) and the Bank for International Settlements' Committee on Payments and Market Infrastructures (CPMI) have published a report on current central counterparty (CCP) practices to address non-default losses (NDLs).

The report follows an August 2022 discussion paper and is intended to facilitate the sharing and common understanding of existing practices that CCPs employ to address NDLs, including how CCPs:

- develop methodologies and practices for identifying scenarios in which NDLs may occur, quantify potential NDLs and assess the adequacy of resources and tools available to address NDLs;
- achieve the operational effectiveness of plans to address NDLs;
- review and test plans; and
- approach governance, transparency and engagement with direct and indirect participants and authorities regarding plans, both in advance of and during a non-default event.

A cover note to the report sets out next steps, which includes an intention by CPMI and IOSCO to consult on further guidance or recommendations aimed at assisting CCPs and other financial market infrastructures (FMIs) to fully implement the Principles for Financial Market Infrastructures (PFMI) and improve overall resilience.

FSMA 2023 (Commencement No. 2 and Transitional Provisions) Regulations made

The Financial Services and Markets Act 2023 (Commencement No. 2 and Transitional Provisions) Regulations (SI 2023/936) have been made.

SI 2023/936 broadly concerns changes introduced by the Financial Services and Markets Act 2023 relating to the regulatory gateway for financial promotions and regulator accountability and objectives.

In relation to the financial promotion regulatory gateway, which authorised firms must pass through before being able to approve the financial promotions of unauthorised firms unless an exemption applies, SI 2023/936 brings into force:

- certain provisions on 6 September 2023 for the purpose of enabling the Financial Conduct Authority (FCA) to give directions and guidance and make rules;
- certain provisions on 6 November 2023 that begin the period for the FCA to receive applications for permission to approve financial promotions; and
- other provisions on 7 February 2024, so far as not already commenced.

In relation to regulators, SI 2023/936, disapplies:

- new accountability requirements and procedural mechanisms that would other otherwise apply to draft rules consulted on by the Prudential Regulation Authority (PRA) in its November 2022 consultation paper on the implementation of Basel 3.1, and other certain rules relating to capital requirements; and
- in relation to any applications received before 29 August 2023, the power of regulators to place conditions on an acquisition or increase in control where it is desirable to do so in order to advance that regulator's objectives.

Regulations partially commencing Gibraltar Authorisation Regime made

The Financial Services Act 2021 (Commencement No. 5) Regulations 2023 (SI 2023/934) have been made.

SI 2023/934 partially brings into force provisions added to the Financial Services and Markets Act 2000 (FSMA) by the Financial Services Act 2021 which provide for regulation-making powers to implement the new Gibraltar Authorisation Regime (GAR) for Gibraltar-based persons wishing to operate in the UK.

The provisions come into force on 1 September 2023.

Luxembourg bill introducing merger control regime published

Bill No. 8296 introducing a national regime on the control of concentrations between undertakings in Luxembourg has been lodged with the Luxembourg Parliament. This Merger Control Bill provides for a set of rules (notification process and procedural rules as well as concentration analysis rules) which are largely inspired by the EU merger control regime and the ones in other European countries, including France and Belgium.

As a general rule, pursuant to the Merger Control Bill, a concentration, which does not fall under the EU merger control regime provided for under EU Regulation 139/2004, must be notified to the Luxembourg Autorité de la concurrence and the parties are subject to a stand-still obligation, if the following thresholds are met:

- the combined turnover of the undertakings or group of physical or legal persons concerned in Luxembourg exceeds EUR 60 million (excl. taxes); and
- at least two of the undertakings or group of physical or legal persons concerned each generate a turnover in Luxembourg of at least EUR 15 million (excl. taxes).

Alternatively, the Autorité de la concurrence may also refer cases to itself.

In particular, the Merger Control Bill takes into consideration the significant cross-border nature of the Luxembourg activity and the importance of its financial sector. In relation to this latter point:

- with respect to the abovementioned thresholds, the Merger Control Bill provides specific guidance as to how these thresholds should be calculated in the context of undertakings from the insurance and financial sectors (Article 1) and excludes from the scope of the notification obligation certain entities, in particular when they trade or own interests on a temporary basis under strict conditions governing the exercise of voting rights (Article 2):
- the Merger Control Bill provides for specific rules in case of a merger with entities in the financial or insurance sectors that are subject to early intervention, recovery or resolution measures (Articles 47 and 48); and
- coordination rules between the Autorité de la concurrence and the Luxembourg financial sector supervisory authorities, i.e. the Commission de Surveillance du Secteur Financier (CSSF, financial sector other than insurance) and the Commissariat aux Assurances (CAA, insurance sector) are provided (Article 12).

The lodging of the Merger Control Bill with the Luxembourg Parliament constitutes the start of the legislative procedure.

Financial Holding Companies (Levy) Regulations 2023 gazetted

The Singapore Government has gazetted the Financial Holding Companies (Levy) Regulations 2023.

In particular, the Regulations provide for the following:

- the meaning and references of consolidated financial statements, consolidated total assets, the Monetary Authority of Singapore Notices, and ‘relevant sum’ in relation to a designated financial holding company (FHC);
- the annual levy payable by a designated FHC in a year for the purposes of Section 9(1) of the Financial Holding Companies Act 2013 (Act), to be: SGD 55,000, when the relevant sum is less than SGD 70 billion; SGD 210,000, when the relevant sum is SGD 70 billion or more; and

- the respective formulae to calculate the amount of annual levy payable by the designated FHC for the purposes of Section 9(1) of the Act when it is designated before, on and after 22 August 2023, as applicable.

The Regulations are effective from 22 August 2023.

MAS issues revised frequently asked questions on Notice on Business Conduct Requirements for Corporate Finance Advisers

The Monetary Authority of Singapore (MAS) has issued revised frequently asked questions (FAQs) on the Notice on Business Conduct Requirements for Corporate Finance (CF) Advisers (CF Notice).

The FAQs have been updated primarily to add Question 24A on whether CF advisers may rely on 'comfort letters' (e.g. in the style of a US 10-b-5) issued by third party service providers when conducting an IPO, RTO or business combination by a special purpose acquisition company, in discharging their due diligence obligations under the CF Notice.

The MAS has clarified that comfort letters are not a requirement and the existence of such a letter, by itself, is insufficient to establish that a CF adviser has met its due diligence obligations in the CF Notice. The MAS has further stated that undue weight should not be placed on such letters, noting that they may give rise to concerns that a CF adviser has over-relied on the third party service provider during the due diligence process.