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- **SGX consults on proposed rule changes to aid company restructuring**
- **Recent Clifford Chance briefing: Seeing a way through the new corporate transparency regimes in the US and UK. Follow this link to the briefings section.**

## **Capital Markets Union: EU Council adopts AIFMD2**

The EU Council has adopted the [directive](#) intended to improve the regulatory framework applicable to EU investment funds (AIFMD2).

The EU Commission adopted AIFMD2 as part of the Capital Markets Union (CMU) legislative package in November 2021. The directive amends the Directive on Undertaking for Collective Investment in Transferable Securities (UCITS) and the Alternative Investment Fund Managers Directive (AIFMD).

Among other things, AIFMD2 aims to:

- enhance the integration of asset management markets in Europe and modernise the framework for key regulatory aspects;
- enhance the availability of liquidity management tools, with new requirements for managers to provide for the activation of these instruments;
- increase transparency on delegation rules, by ensuring that supervisors are well-informed about the extent to which fund managers rely on expertise from third parties; and
- establish an EU framework for funds originating loans, i.e. funds that provide credit to companies, supplemented with several requirements to alleviate risks to financial stability and to ensure an appropriate level of investor protection.

The directive will now be published in the EU's Official Journal and enter into force 20 days later. Member States will have 24 months to transpose the rules into national legislation.

## **Capital Markets Union: EU Council adopts regulation on instant payments in euros**

The EU Council has adopted the [regulation](#) on instant credit transfers in euro as part of the CMU. The regulation amends and modernises the Single Euro Payments Area (SEPA) Regulation on standard credit transfers in euro by adding to it specific provisions for instant credit transfers in euro.

The adopted regulation will:

- improve the strategic autonomy of the European economic and financial sector by reducing any excessive reliance on third-country financial institutions and infrastructures;
- allow people to transfer money within ten seconds at any time of the day, including outside business hours, not only within the same country but also to another EU Member State;
- require payment service providers such as banks, which provide standard credit transfers in euro, to offer the service of sending and receiving instant payments in euro;

- grant access for payment and e-money institutions (PEMIs) to payment systems, by changing the Settlement Finality Directive (SFD); and
- require instant payment providers to verify that the beneficiary's IBAN and name match in order to alert the payer to possible mistakes or fraud before a transaction is made.

The regulation will enter into force on the twentieth day following its publication in the Official Journal.

### **Banking Union: EU Parliament adopts directive on 'daisy chain' amendments to BRRD and SRMR**

The EU Parliament has adopted the proposed [directive](#) on targeted amendments to the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRMR) regarding daisy chains.

This follows the Council and Parliament reaching provisional political agreement in December 2023.

The amendments form part of the EU Commission's crisis management and deposit insurance (CMDI) legislative package. They concern certain aspects of the minimum requirement for own funds and eligible liabilities (MREL) that are intended to improve the resolution framework for EU banks. In particular, the proposal gives the resolution authorities the power of setting internal MREL on a consolidated basis subject to certain conditions, and introduces a specific MREL treatment for 'liquidation entities'.

The proposed text still needs to be formally approved by the Council before it can be published in the Official Journal. The directive will enter into force 20 days following its publication in the Official Journal and Member States will then have six months to transpose it into their national laws.

### **EU Parliament reports on legal options for confiscation of Russian state assets to support Ukraine reconstruction**

The EU Parliament has published a [report](#) analysing options under international law for the confiscation of Russian state assets to support the reconstruction of Ukraine.

The report considers four avenues for overcoming Russia's immunity from enforcement:

- avoidance of immunity through purely executive or legislative action;
- justification for the breach of international law on the grounds that it is a countermeasure;
- evolution of international law to lift immunity from enforcement upon, for example, a finding of aggression by a UN principal organ; or
- exception in international law for the enforcement of international judgments.

The report presents risk assessments of different options for using Russian assets to generate compensation for Ukraine, including:

- enforcement of European Court of Human Rights judgments;
- an international treaty setting up a compensation commission;
- taxing windfall contributions;

- placing Russian state assets into an escrow account as collateral;
- identifying Russia as a state sponsor of terrorism; and
- the establishment of an investment common fund.

## **EMIR: ESMA publishes final advice on annual fees for Tier 1 third-country CCPs**

The European Securities and Markets Authority (ESMA) has published a [final report](#) setting out technical advice to the EU Commission on the annual fees charged to Tier 1 third-country central counterparties (TC-CCPs).

The report contains ESMA's updated technical advice on the revision of Commission Delegated Regulation (EU) 2929/1302, which specifies the types and amount of fees and the manner in which they are to be paid by Tier 1 and Tier 2 central counterparties (CCPs). The revisions are intended to ensure that the annual fees charged to TC-CCPs under the European Market Infrastructure Regulation (EMIR 2.2) are proportionate and accurately reflect the differences in size and activities across all Tier 1 TC-CCPs. The updated framework:

- allows ESMA to adapt the allocation of the annual fees among all recognised Tier 1 TC-CCPs using a weighting factor dependant on their global turnover, while leaving the EUR 50,000 recognition fee unchanged;
- introduces a basic minimum and maximum annual fee per Tier 1 TC-CCP. Following feedback to its consultation on proposed fees, ESMA has reduced the minimum annual fee to EUR 40,000 and maintained the proposed maximum annual fee of EUR 250,000; and
- introduces an incentive scheme for Tier 1 TC-CCPs failing to submit annual audited turnover figures. Following feedback, ESMA has revised the scheme so that, where audited figures have not been provided by the Tier 1 TC-CCP due to the relevant applicable laws, ESMA will attribute to the CCP either the turnover weight applied to the CCP the previous year, or the lowest turnover weight, where no turnover weight has been applied the previous year. In the absence of such reasons, ESMA will attribute the maximum turnover weight to the CCP.

## **Basel Committee agrees on revisions to Basel Core Principles**

The Basel Committee on Banking Supervision (BCBS) has published a [press release](#) following its meeting on 28–29 February 2024.

Following inputs received from a wide range of stakeholders, the Committee has approved the final revisions to the core principles for effective banking supervision, which draw on supervisory insights and structural changes to the banking system since the previous update in 2012. The Committee intends to publish a consultation paper and an accompanying working paper summarising the empirical analyses in April 2024. It has also agreed to publish a working paper on an assessment of the G-SIB score dynamics over the past decade.

The final standard will be published following the International Conference of Banking Supervisors on 24–25 April 2024.

## **FATF consults on revisions to its recommendation on payment transparency**

The Financial Action Task Force (FATF) has launched a [consultation](#) on revisions to its Recommendation 16 on payment transparency, its interpretive note and the related glossary of specific terms, to adapt them to the changes in payment business models and messaging standards.

The proposed revisions are intended to ensure that the FATF standards remain technology-neutral and follow the principle of 'same activity, same risk, same rules'. They are also intended to help make cross-border payments faster, cheaper, more transparent and inclusive whilst remaining safe and secure.

Among other things, the FATF is seeking views on:

- additional transparency requirements on exemption for purchase of goods and services using cards;
- removal of the withdrawal or purchase of cash or a cash equivalent from Recommendation 16 exemption, subject to certain conditions;
- improving the content and quality of basic originator and beneficiary information in payment messages;
- obligations on beneficiary financial institutions to check alignment of beneficiary information in payment messages; and
- definition of payment chain and conditions for net settlement.

Comments are due by 3 May 2024.

## **FSB Chair writes to G20 finance ministers and central bank governors on global financial stability issues and 2024 workplan**

The Chair of the Financial Stability Board (FSB), Klaas Knot, has written a [letter](#) to G20 finance ministers and central bank governors ahead of their meeting on 28-29 February 2024.

In the letter, the Chair warns of the challenging outlook for global financial stability, including issues around debt service, exposures to impacted sectors, such as commercial real estate, stretched asset valuations, and abrupt shifts in market pricing. The letter also sets out the work the FSB will undertake in 2024 to monitor and address vulnerabilities in the financial system. This includes:

- working to ensure the international framework provided by the FSB Key Attributes of Effective Resolution Regimes is implemented effectively;
- addressing the financial stability risks stemming from leverage in non-bank financial intermediation (NBFIs);
- analysing the financial stability implications of tokenisation and artificial intelligence;
- designing and consulting upon a format for cyber incident reporting exchange;

- continuing to coordinate international work through the FSB roadmap to address financial risks from climate change and the G20 roadmaps for enhancing cross-border payments and on cryptoassets; and
- delivering a stocktake on regulatory and supervisory initiatives related to identifying and assessing nature-related financial risks.

## **Bank of England Levy (Amount of Levy Payable) Regulations 2024 published**

[The Bank of England Levy \(Amount of Levy Payable\) Regulations 2024](#) (SI 2024/252) have been made and published.

The SI provides the calculation that the Bank of England (BoE) must use when determining the amount of the BoE levy that an eligible institution is required to pay for a levy year. The SI makes provision for institutions that are not required to pay any levy, and how the total levy will be shared between institutions who are required to pay. It also makes provision for discretions the BoE can use and for the information and liabilities that will be relevant.

The SI comes into force on 1 March 2024.

## **The Economic Crime and Corporate Transparency Act 2023 (Commencement No. 2 and Transitional Provision) Regulations 2024 made**

[The Economic Crime and Corporate Transparency Act 2023 \(Commencement No. 2 and Transitional Provision\) Regulations 2024](#) have been made and published.

These Regulations are the second commencement regulations made under the Economic Crime and Corporate Transparency Act 2023, and they commence certain provisions in Parts 1 to 5 of the Act. The majority of sections covered by the Regulations will come into force on 4 March 2024, with some additional provisions coming into force on 5 March 2024 and 26 April 2024.

Transitional provisions are also set out for the requirements under section 853BA (duty to confirm lawful purpose) of the Companies Act 2006 and for any overseas entity which was allocated an overseas entity ID under section 5 of the Economic Crime (Transparency and Enforcement) Act 2022 before 4 March 2024.

## **Draft FSMA 2000 (Disapplication or Modification of Financial Regulator Rules in Individual Cases) Regulations 2024 laid**

[The draft Financial Services and Markets Act 2000 \(Disapplication or Modification of Financial Regulator Rules in Individual Cases\) Regulations 2024](#) have been laid in Parliament according to the affirmative procedure.

The draft statutory instrument (SI) is intended to provide the Prudential Regulation Authority (PRA) with greater flexibility to disapply or modify the applications of its rules in relation to individual firms either upon an application by a firm or, if the firm consents, by the PRA itself. It also introduces consequential procedural requirements.

The SI is being made using new legislative powers introduced by the Financial Services and Markets Act 2023 (FSMA 2023) relating to the repeal and

replacement of assimilated law (also known as retained EU law (REUL)) and the implementation of the Smarter Regulatory Framework (SRF) for financial services.

Subject to approval, the SI comes into force on 30 June 2024.

## **House of Commons Treasury Committee launches inquiry into effectiveness of UK's financial sanctions on Russia**

The House of Commons Treasury Committee has [launched](#) an inquiry into the effectiveness of the UK's programme of financial sanctions against Russia following its invasion of Ukraine. In particular, the inquiry is seeking responses on:

- whether the UK's financial sanctions on Russia are complete and effective in terms of the entities that have been designated and those that have to comply with the rules;
- whether the assets frozen under the sanctions should be confiscated, and, if so, whether there are legal precedents for this action;
- whether the sanctions should be widened to include those who purchase Russian oil and gas;
- the effectiveness of the work of the Office of Financial Sanctions Implementation (OFSI), including its guidance, licensing regime, enforcement work and international cooperation;
- the effectiveness of the financial sanctions' designation system, particularly in how it relates to the implementation of financial sanctions;
- the implementation of the sanctions by each part of the financial sector (including the insurance sector), and the maritime sector; and
- the mitigation of any unintended consequences of the sanctions.

Comments are due by 28 March 2024.

## **FCA consults on proposed changes to improve transparency around enforcement cases**

The Financial Conduct Authority (FCA) has published a [consultation paper](#) (CP24/2) setting out proposed changes to the way it publishes information on enforcement cases.

Under the current approach, the FCA only announces investigations into suspected misconduct or other failings in very limited circumstances. In CP24/2, it proposes to start publishing more information about these investigations, using a flexible public interest framework to decide on a case-by-case basis whether and what to announce. Information published may include the identity of the subject of the investigation, if the FCA believes it is in the public interest to do so and if there are no compelling legal or other reasons not to. It may also include updates on the progress of investigations and on the closing of cases when they have not led to regulatory or other action.

The proposals will be implemented through changes to the FCA Enforcement Guide (EG). The FCA is also proposing various amendments to the EG to

remove redundant material, relocate information that could be better placed elsewhere and revise out of date information.

Comments are due by 16 April 2024.

### **FCA publishes Quarterly Consultation No. 43**

The FCA has published its latest [quarterly consultation paper](#) (CP24/3) on proposed amendments to the FCA Handbook.

It is seeking feedback on its proposals to:

- insert 'B fee-block' into FEES 3 Annex 9R(1)(a) and delete FEES 3 Annex 9(1)(e) to allow special project fees for restructuring (SPFRs) to be chargeable to firms in the B fee-block in the circumstances set out in FEES 3 Annex 9R(2);
- publish a new Statement of Policy (SoP) setting out the FCA's approach to using the enforcement powers under the new regime for the oversight of critical third parties (CTPs) introduced by the Financial Services and Markets Act 2023 (FSMA 2023); and
- amend the training and competence (TC) sourcebook to, among other things, introduce an annual consultation cycle on qualification-related elements.

Comments on the FEES 3 Annex are due by 11 March 2024 and comments on the SoP and TC sourcebook are due by 8 April 2024.

### **FCA reports on use of power in relation to 3-month synthetic sterling LIBOR**

The FCA has published a [report](#) setting out its review of whether the use of its power under Article 23D(2) of the Benchmarks Regulation with respect to 3-month synthetic sterling LIBOR has advanced its statutory objectives.

In November 2022, the FCA announced that it intended to require ICE Benchmark Administration (IBA) to publish the 3-month sterling LIBOR setting in synthetic form until end-March 2024. The 3-month synthetic sterling LIBOR setting will cease permanently on 28 March 2024 and is the last remaining synthetic sterling LIBOR setting.

The FCA has concluded that the way in which it exercised its power to require IBA to publish 3-month sterling LIBOR under a changed, synthetic methodology for the period between 1 January 2022 and 1 January 2024 has advanced its consumer protection and integrity objectives.

The FCA has also reminded market participants that US dollar synthetic LIBOR is expected to cease at end-September 2024.

### **Asset management: Decree allowing issuance and admission to trading of actively managed ETFs in France published**

A [decree](#) amending the Monetary and Financial Code to authorise the issuance and admission to trading on a regulated market or on a multilateral trading facility (MTF) of units or shares of actively managed ETFs in France has been published in the Official Journal.

Until now, units or shares of a collective investment scheme could be listed in France only where such a scheme had a systematic and non-discretionary



management objective. The decree amends articles D. 214-22-1 and D. 214-32-31 of the Monetary and Financial Code in order to remove the condition relating to the systematic and non-discretionary management objective of the relevant scheme.

The decree entered into force on 1 March 2024.

## **BaFin updates MaComp**

The German Federal Financial Supervisory Authority (BaFin) has published an updated version of its [Circular 05/2018](#) (WA) on minimum requirements for the compliance function and additional requirements governing rules of conduct, organisation and transparency (MaComp).

The update relates to the incorporation of ESMA guidelines on certain aspects of the MiFID2 remuneration requirements (ESMA/35-43-3565), which have replaced the ESMA guidelines on remuneration policies and procedures (MiFID) (ESMA/2013/606). BaFin has now incorporated the new guidelines into Special Part (BT) 8 of MaComp unchanged.

The ESMA guidelines contain requirements for remuneration. They are intended to avoid conflicts of interest and ensure rules of conduct and good corporate governance.

## **Ministry of Finance publishes draft act on cryptoassets**

The Ministry of Finance has [submitted](#) a draft act for public consultation, which sets out the organisation and exercise of supervision over offerors, persons applying for admission to trading, issuers of asset-linked tokens and e-money tokens, and cryptoasset service providers.

The act is intended to ensure the application of the Markets in Cryptoassets Regulation (MiCA) and of the Regulation on information accompanying transfers of funds and certain cryptoassets.

## **Switzerland introduces Limited Qualified Investor Fund**

The Swiss Financial Market Supervisory Authority (FINMA) has [announced](#) that, as of 1 March 2024, Switzerland will introduce a new fund category that does not require approval, the Limited Qualified Investor Fund (L-QIF).

Amongst other things:

- institutions that manage L-QIFs are themselves responsible for complying with the regulations applicable to L-QIFs;
- there is no requirement for approval by FINMA, and FINMA will neither supervise nor issue regulations on L-QIFs; and
- the Federal Department of Finance (FDF) will keep a public register of all L-QIFs.

At the same time, the Federal Council is adapting the Collective Investment Schemes Ordinance (KKV) in order to implement international standards, taking into account market developments and increase legal certainty.

## **SGX consults on proposed rule changes to aid company restructuring**

The Singapore Exchange Regulation (SGX RegCo) has launched a [consultation](#) on proposed rule changes intended to facilitate the restructuring

process for SGX-listed companies under the Insolvency, Restructuring and Dissolution Act 2018 (IRDA).

SGX RegCo has proposed changes to the SGX Listing Rules (Mainboard) and the SGX Listing Rules (Catalist) to aid issuers undergoing restructuring and set out the applicability of the existing Listing Rules in respect of these issuers.

The proposals relate primarily to situations where an application has been filed with the court for an issuer to be under a court-supervised moratorium proceeding involving a compromise or arrangement between the issuer (or any of its subsidiaries) and its creditors.

In particular, SGX RegCo is seeking comments on proposals that would:

- require a financially distressed issuer to make an immediate announcement when it or any of its subsidiaries undergo a court-supervised moratorium;
- allow a financially distressed issuer to, in certain specified instances, provide quarterly (rather than monthly) updates on its financial situation;
- allow a financially distressed issuer under moratorium pursuant to the IRDA or the Companies Act 1967 of Singapore (CA) to announce its first half financial statements rather than its quarterly financial statements;
- eliminate the shareholder approval requirement where a judicial manager or liquidator is seeking to dispose of an issuer's assets and such disposal is classified as a major transaction under the Listing Rules; and
- require suspension of trading of an issuer's listed securities if the issuer or a significant subsidiary is seeking judicial management by way of a creditor's resolution, or the issuer is a financially distressed issuer under moratorium.

SGX RegCo also intends to provide guidance on how a financially distressed issuer can apply for a waiver of trading suspension, together with proposed amendments that would streamline the process of applying for the resumption of trading.

Finally, SGX RegCo will make a technical amendment to Rule 210(8) of the Mainboard Rules to clarify that life science companies are not required to record operating revenue in the latest completed financial year and will make an editorial amendment in relation to when funds from institutional and accredited investors must be raised prior to listing.

Comments on the consultation are due by 22 March 2024.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Seeing a way through the new corporate transparency regimes in the US and UK**

Corporate transparency has, in recent years, become a focus point for governments and regulators across the globe that are keen to prevent abuse of their corporate registration frameworks, whilst at the same time ensuring that their jurisdictions remain an efficient place to do business.

This briefing paper explores the new transparency regimes that have recently been introduced in both the US and the UK, and what the future may hold for this increasingly important topic.

<https://www.cliffordchance.com/briefings/2024/02/seeing-a-way-through-the-new-corporate-transparency-regimes-in-us-and-uk.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.

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