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Benchmarks Regulation: EU Council adopts amending regulation on third country foreign exchange and replacement benchmarks

The EU Council has adopted a regulation amending the Benchmarks Regulation ((EU) 2016/1011) regarding the exemption of certain third country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation (2020/0154(COD)).

The regulation will grant the EU Commission power to replace benchmarks if their termination would result in a significant disruption in the functioning of financial markets in the EU. The regulation also extends the transition period so that EU market participants will be able to use benchmarks administered in a country outside the EU until the end of 2023. The EU Commission will be empowered to adopt a delegated act by 15 June 2023 to prolong this extension by a maximum of two years until 31 December 2025.

The regulation is expected to be published in the Official Journal on 12 February and will enter into force on the day following that of its publication.

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Sustainable finance: ESAs publish draft RTS on disclosures under Sustainable Finance Disclosure Regulation

The Joint Committee of the European Supervisory Authorities (ESAs) has published a final report setting out draft regulatory technical standards (RTS) on the content, methodologies and presentation of disclosures under the EU Sustainable Finance Disclosure Regulation (SFDR).

The proposed RTS are intended to strengthen protection for end-investors by improving environmental, social and governance (ESG) disclosures to end-investors regarding the principal adverse effects of investment decisions as well as on the sustainability features of a range of financial products.

The proposals include the following features:

- disclosure of principal adverse effects at entity level; and
- product level disclosures, by which the sustainability characteristics or objectives of financial products would be disclosed.

The RTS have been submitted to the EU Commission for endorsement, which is expected to take place within three months. The ESAs have proposed an application date for the RTS of 1 January 2022.

The ESAs plan to issue a supervisory statement intended to bring about an effective and consistent application of the SFDR's requirements, as well as consistent national supervision. The ESAs also plan to publish a consultation on taxonomy-related product disclosures under the Taxonomy Regulation.

PRIIPs Regulation: ESAs publish final draft KID RTS

The ESAs, comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), have submitted a final report setting out draft RTS on amendments to the Packaged Retail and Insurance-based Investment Products (PRIIPs) Delegated Regulation on the key information document (KID).

The draft RTS relate to the presentation and content of the KID, including methodologies for the calculation and presentation of risks, rewards and costs.

The final report also sets out recommendations for targeted amendments to the PRIIPs (Level 1) Regulation, such as:

- including past performance information within the main contents of the KID;
- avoiding co-existence of the PRIIPs KID and UCITS Key Investor Information Document (KIID) so that UCITS managers no longer have to provide a UCITS KIID to retail investors;
- changing the approach to successive transactions for the same PRIIP to avoid practical challenges; and
- facilitating the non-paper delivery of KIDs.

The final report follows adoption by EIOPA based on a letter from the EU Commission setting out its approach to a broader review of the PRIIPs Regulation. EIOPA had previously withheld its support owing to concerns that a partial revision of the PRIIPs Delegated Regulation was not appropriate

without a comprehensive review of the PRIIPs Regulation itself. In the letter, the EU Commission detailed its intention to thoroughly examine:

- how to achieve better alignment between PRIIPs, IDD and MiFID2 regarding the provisions on costs disclosures;
- the scope of products as foreseen by the PRIIPs Regulation;
- how to ensure that the KID contains key information necessary for retail investors while avoiding too much or too complex information;
- how to allow the creation of a digitalised KID, taking into account the specific challenges for different types of products; and
- the need for a more tailored approach, such as for multi-option products.

The draft RTS have been formally submitted to the EU Commission for adoption. The ESAs intend to consider the need for Level 3 guidance, such as Q&As, to clarify the application of the proposed rules prior to their entry into force.

ESAs consult on amendments to implementing regulations on mapping of ECAIs' credit assessments

The Joint Committee of the ESAs has launched consultations on proposed amendments to the implementing regulations on the mapping of credit assessments of external credit assessment institutions (ECAIs) for credit risk. Under the regulations, only credit ratings issued by ECAIs can be used for calculating capital requirements of financial institutions and insurance undertakings and the regulations set out the ESAs' approach to mapping these credit assessments to the credit quality steps (CQS) defined in the Capital Requirements Regulation (CRR) and Solvency II Directive.

The consultations seek feedback on amendments to reflect:

- the establishment of two additional ECAIs; and
- the outcome of a monitoring exercise on the adequacy of the mappings (namely by changing the CQS allocation for two ECAIs and introducing new credit rating scales for nine ECAIs).

Comments are due by 5 March 2021.

Cross-border distribution of funds: ESMA publishes final ITS

ESMA has published a final report setting out draft implementing technical standards (ITS) under the Regulation on cross-border distribution of funds ((EU) 2019/1156).

The final report includes all relevant ITS required under the Regulation, focusing on:

- the information to be published on the websites of national competent authorities regarding the national rules governing marketing requirements for funds; and
- the regulatory fees and charges levied by NCAs in relation to fund managers' cross-border activities.

The draft ITS also include provisions on the communication of information by NCAs to ESMA for the purpose of developing and maintaining a central database on cross-border marketing of AIFs and UCITS.

The draft ITS have been submitted to the EU Commission for endorsement.

Sustainable finance: ESMA writes to EU Commission outlining potential legal framework on ESG ratings and assessment tools

ESMA has published a letter to the EU Commission sharing its views on key challenges in relation to ESG ratings and assessment tools.

ESMA's letter, which builds on its response to the EU Commission's July 2020 consultation on the Renewed Sustainable Finance Strategy, highlights that the ESG ratings and assessment tool market is currently unregulated and unsupervised and may, as a result, increase the risks of greenwashing, capital misallocation, conflicts of interest and product mis-selling.

In order to prevent these, ESMA proposes a potential legal regime inspired by the requirements of the Credit Rating Agencies Regulation, identifying the following key points for consideration:

- the development of a common legal definition for an ESG rating that captures the broad spectrum of assessment tools that are available in the market; and
- the registration and supervision by a public authority of any legal entity whose occupation includes the issuing of these ESG ratings and assessments.

In addition, ESMA suggests that the legal framework should accommodate both large multi-national providers as well as smaller entities.

ESMA publishes letter on ELTIF review

ESMA has published a letter to the EU Commission on its review of the European long-term investment funds (ELTIFs) Regulation ((EU) 2015/760).

Aimed at bringing ELTIFs more in line with the needs of both retail and professional investors, the letter sets out proposed amendments to the Regulation, such as:

- extending and clarifying the scope of the ELTIF's eligible assets and investments;
- removing additional authorisation requirements which supplement the authorisation granted under AIFMD;
- clarifying the conflict of interests prohibition;
- reviewing portfolio composition and diversification thresholds;
- developing a regime allowing an ELTIF of indefinite duration;
- reviewing the disposal of assets disclosure requirement;
- reordering or reducing the amount of mandatory information in prospectuses; and

- removing the obligation for managers to have a local physical presence in each Member State where they intend to market ELTIFs for all ELTIF investors.

The letter also sets out proposals relating to other areas of the ELTIF framework, including:

- derogations or more flexible application of some requirements for professional investors;
- more favourable tax treatment; and
- standardising the eligibility criteria for investors in the EuVECA, EuSEF and ELTIF Regulations.

ESMA also notes that some stakeholders have raised operational issues in relation to the marketing regime, including the marketing of ELTIFs in third countries, and the importance of the provision of investment advice and suitability assessments when distributing ELTIFs.

The EU Commission closed its consultation on the functioning of the ELTIF regime on 1 February 2021 and is expected to submit a report in the context of the Capital Markets Union (CMU) project to the EU Parliament and Council.

MiFID2: ESMA consults on draft appropriateness and execution-only guidelines

ESMA has launched a consultation paper on draft guidelines on certain aspects of the MiFID2 appropriateness and execution-only requirements.

The draft guidelines seek to enhance clarity and foster convergence in the application of requirements by firms providing non-advised services, including:

- information to clients about the purpose of the appropriateness assessment:
- arrangements necessary to understand or warn clients;
- extent of information to be collected from clients;
- reliability of client information;
- relying on up-to-date client information;
- client information for legal entities or groups;
- arrangements necessary to understand investment products;
- arrangements necessary to assess the appropriateness of an investment or else issue a meaningful warning;
- qualifications of firm staff;
- record-keeping;
- determining situations where the appropriateness assessment is required;
- controls; and
- sustainable finance.

The consultation closes on 29 April 2021. ESMA intends to issue final guidelines in Q3 2021.

MiFID2: ESMA launches common supervisory action on product governance

ESMA has launched a common supervisory action (CSA) with national competent authorities (NCAs) on the application of MiFID2 product governance rules across the EU.

The CSA, which is intended to help ensure consistent implementation and application of EU rules and enhance the protection of investors in line with ESMA's objectives, will be conducted during 2021 to assess:

- how manufacturers of financial products ensure that the costs and charges of products are compatible with the needs, objectives and characteristics of their target market and do not undermine the instrument's return expectations;
- how manufacturers and distributors identify and review the target market and distribution strategy of financial products; and
- what, and how frequently, information is exchanged between manufacturers and distributors.

Benchmarks Regulation: ESMA publishes technical advice on supervisory fees for benchmarks administrators

ESMA has published its final report on technical advice regarding supervisory fees for benchmarks administrators under the Benchmarks Regulation (BMR).

The aim of the final report is to advise the EU Commission on fees to be paid by benchmark administrators that will be supervised by ESMA starting in January 2022. The report specifies the type of fees, the services for which fees are due, the amount of the fees and the frequency of payment.

The main fee categories are:

- one-off recognition fees to be paid by third country administrators applying for recognition;
- one-off authorisation fees to be paid by critical benchmark administrators applying for authorisation;
- annual supervisory fees to be paid by third country administrators; and
- annual supervisory fees to be paid by critical benchmark administrators.

ESMA consults on fees charged to credit rating agencies

ESMA has launched a consultation on the revision of the Delegated Regulation regarding fees charged to credit rating agencies (CRAs).

The consultation contains proposals to ensure that the supervisory fees charged to CRAs reflect the costs of registration, certification and on-going supervision whilst remaining proportionate to CRAs' turnover.

The main proposals are to charge:

- a single registration fee of EUR 45,000;
- annual supervisory fees of EUR 20,000 to registered CRAs with annual revenues of between EUR 1 million and EUR 10 million;

- an annual endorsement fee of EUR 20,000 to all CRAs endorsing credit ratings for use in the EU; and
- annual fees to all certified CRAs.

ESMA intends to use the feedback received in its preparation of technical advice for the EU Commission on changes to the Delegated Regulation on fees charged to CRAs by 31 June 2021.

Comments are due by 15 March 2021.

EU Commission calls for advice from ESAs on digital finance and related issues

The EU Commission has asked the ESAs to provide technical advice on digital finance and other related issues. The call for advice forms part of the Commission's preparatory work for the review of the financial services legislative framework in the context of its digital finance strategy, which was adopted in September 2020. In particular, the Commission is calling for technical advice on:

- the regulation and supervision of more fragmented or non-integrated value chains;
- the use of platforms and the bundling of various financial services;
- the risks associated with groups combining different activities;
- non-bank lending; and
- the protection of client funds.

The Commission requests that the interim report and final report on the protection of client funds should be submitted by 31 July 2021 and 31 October 2021 respectively; the interim report and final report on value chains, platformisation and mixed activity groups by 31 October 2021 and 31 January 2022 respectively; and the interim report and final report on non-bank lending by 31 December 2021 and 31 March 2022 respectively.

EBA launches 2021 EU-wide stress test exercise

The EBA has launched the 2021 EU-wide stress test and released the macroeconomic scenarios.

The EU-wide stress test will be conducted on a sample of 50 EU banks covering 70% of total banking assets in the EU. The exercise assesses the impact of an adverse macroeconomic scenario on the solvency of EU banks. The stress test enables supervisors to assess if banks' capital buffers are sufficient to cover losses and support the economy in stressed times.

The 2020 exercise was postponed due to the COVID-19 pandemic. The adverse scenario for the 2021 exercise is based on a narrative of a prolonged COVID-19 scenario in a lower for longer interest rate environment, in which negative confidence shocks would prolong the economic contraction.

The EBA expects to publish the results of the exercise by 31 July 2021.

In parallel, the European Central Bank (ECB) plans to conduct its own stress test for 53 banks it directly supervises but are not included in the EBA's EU stress test sample.

The results of both stress tests will be used to assess each bank's Pillar 2 capital needs in the context of the Supervisory Review and Evaluation Process (SREP).

HM Treasury consults on implementation of Investment Firms Prudential Regime and Basel III standards

HM Treasury (HMT) has launched a consultation on its proposed approach to facilitating the implementation of the Investment Firms Prudential Regime (IFPR) and the remaining Basel III standards in the UK.

Under the Financial Services Bill, the Prudential Regulation Authority (PRA) is empowered to introduce requirements in line with the outstanding Basel III standards for credit institutions contained in the revised Capital Requirements Regulation (CRR2). To facilitate this, HMT needs to revoke the sections of the CRR on which the PRA will be issuing its own requirements. HMT is therefore consulting on its intended approach to this revocation and its approach to two issues where it intends to diverge from the approach in CRR2 (namely on eligible liabilities and exposures to units or shares of a collective investment undertaking). Regarding the Basel III standards, it is also seeking feedback on:

- its proposed application of the standardised approach reporting requirements in relation to the Fundamental Review of the Trading Book; and
- the need for amendments to ensure the macroprudential framework is consistent with the new regime.

The Financial Services Bill also grants HMT a limited number of delegated powers to allow it to support the Financial Conduct Authority (FCA) in its implementation of the IFPR. The consultation seeks feedback on HMT's suggested exercise of these powers, with a particular focus on definitions regarding the entities within a group structure to whom the rules may apply on a consolidated basis. It is also seeking feedback on:

- various legislative changes, in particular to the Financial Services and Markets Act (PRA-Regulated Activities) Order 2013 and the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014, to reflect changes to the level of initial minimum capital for investment firms, which will be set out in the FCA's IFPR rules; and
- the applicability of the UK resolution regime under the Banking Act 2009 to FCA investment firms (i.e. those being carved out from the CRR framework).

Comments are due by 1 April 2021.

HM Treasury publishes terms of reference for ring-fencing and proprietary trading reviews

HMT has published the terms of reference for the independent reviews of ring-fencing and proprietary trading.

An independent panel, which has been appointed, is required by the Financial Services (Banking Reform) Act 2013 (FSBRA) to review and make recommendations in relation to ring-fencing legislation and, separately, banks' proprietary trading activities.

The ring-fencing review is aimed at assessing the effectiveness of the ring-fencing regime, taking into account the wider context of changes to banking regulation, such as the introduction of the banking resolution regime, as well as assessing the impact of ring-fencing legislation on:

- competition in the banking sector;
- competition in the UK mortgage market;
- international competitiveness of the UK banking sector; and
- the provision of finance and related financial services to the economy.

The proprietary trading review requires the panel to review the PRA's statutory report published in September 2020, assess whether risks are appropriately mitigated and consider any consequences from the evolution of proprietary trading.

The panel consists of Keith Skeoch as chair and John Flint, Patrick Honohan, Betsy Nelson, Preben Prebensen and Linda Yueh as members.

The panel is expected to finalise its written reports to HMT within one year of the beginning of the reviews. HMT will then lay the reports before Parliament.

FCA sets out approach to international firms' authorisation and supervision

The FCA has published details of its approach for authorising and supervising international firms, together with a feedback statement (FS 21/3) following responses to a consultation published last year on the same topic (CP 20/20).

The approach document sets out how the FCA will assess international firms when they apply for authorisation to operate in the UK, including considerations in relation to the following topics:

- an expectation that firms seeking authorisation will have an active place of business in the UK;
- choice of form of legal presence, such as between branch and subsidiary; and
- mitigation of the risks of harm which arise as a result of the way international firms are structured and operate.

Working Group on Sterling Risk-Free Reference Rates consults on successor rate to GBP LIBOR in legacy bonds

The Working Group on Sterling Risk-Free Reference Rates has published a consultation paper on proposals to issue a recommendation on a successor rate to GBP LIBOR for bonds upon the occurrence of a permanent cessation event or a pre-cessation event. In particular the Working Group is seeking feedback on whether it would be helpful for it to issue a recommendation, and, if it is, whether the preferred successor rate should be overnight SONIA, compounded in arrears, or term SONIA.

Comments are due by 16 March 2021.

Brexit: Draft bill ratifying ordinance on insurance, collective investments and equity savings plans submitted to Council of Ministers

A draft bill to ratify, without amendment, Ordinance No. 2020-1595 of 16 December 2020 (which came into force on 1 January 2021) on insurance, collective investment schemes and equity savings plans has been submitted to the Council of Ministers.

Ordinance No. 2020-1595 grants between 9 and 12 months (as the case may be) to savers and portfolio management companies to divest UK financial securities that would have lost their eligibility on 1 January 2021 for use in equity savings plans (PEAs and PEA-SMEs) or as assets in private equity funds. It also secures the execution of insurance and reinsurance contracts underwritten by UK insurance companies before Brexit. These contracts remain valid but may not be extended or renewed, nor give rise to any transaction that would involve new commitments from the UK insurer. UK insurers may run off existing contracts to the end of the insurance period or transfer their French portfolios to an authorised insurance carrier.

The Draft bill has been submitted to the National Assembly (Assemblée nationale) and sent to the Finance Committee (Commission des finances).

BaFin consults on general decree on information obligations regarding ineffective interest rate adjustment clauses in premium savings contracts

The German Federal Financial Services Supervisory Authority (BaFin) has launched a consultation on a general decree on the obligation of credit institutions to inform premium savings customers about ineffective interest rate adjustment clauses. The contract clauses affected are those used between 1990 and 2010, which gave banks the right to unilaterally change the guaranteed interest rate and which were declared invalid by the German Federal Court of Justice (BGH) in 2010.

The proposed obligation to provide information relates both to the type of interest rate adjustment clause used and to the disclosure of interest income that is too low as a result of an ineffective interest rate adjustment. Institutions must also offer to close any contractual gaps that have arisen by irrevocably promising customers a recalculation based on the interpretation of the contract that is still expected from the civil courts or, alternatively, by offering an individual amendment contract with an effective interest rate adjustment clause.

Comments on the intended general decree may be submitted to BaFin until 26 February 2021.

CSSF announces one year delay of ESEF requirements for listed companies

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a press release to inform listed companies that, following the agreement of the EU Parliament and Council on an amendment of Directive 2004/109/EC, Member States are allowed to delay the application of the European Single Electronic Format (ESEF) requirements in relation to annual financial reports by one year.

The CSSF has indicated that, for issuers subject to the Luxembourg law of 11 January 2008 on transparency requirements (as amended) (Transparency Law), Luxembourg will make use of the one-year postponement option for the ESEF requirements. These requirements will therefore apply to the annual financial reports for periods beginning on or after 1 January 2021. For periods preceding that date, issuers may already apply the ESEF requirements on a voluntary basis.

Initially, the RTS on the ESEF (Commission Delegated Regulation (EU) 2019/815) were intended to apply to all annual financial reports drawn up in accordance with article 3 of the Transparency Law for financial years beginning on or after 1 January 2020. Further to the above-mentioned decision, Member States have been granted the possibility to defer the mandatory application to the annual financial reports for periods beginning on or after 1 January 2021.

In this context, the CSSF reminds issuers that, as of the application of the ESEF requirements, the entire annual financial report shall be drawn up in accordance with the RTS on ESEF. As such, it shall be prepared in XHTML format and, where annual financial reports include IFRS consolidated financial statements, issuers shall mark up those consolidated financial statements using eXtensible Business Reporting Language (XBRL).

The CSSF further states that statutory auditors are required to check the compliance of the financial statements with the requirements and to provide an audit opinion on whether the financial statements comply with them.

Bank of Spain issues new circular on information to determine calculation bases of contributions to Deposit Guarantee Fund for Credit Institutions

Further to the amendments made to Royal Decree 217/2008, the Bank of Spain has approved Circular 2/2021, of 28 January, amending Circular 8/2015.

The circular establishes how to capture the new information to be submitted and made available to the Bank of Spain by credit institutions and branches assigned to the Deposit Guarantee Fund for Credit Institutions, the Fondo de Garantía de Depósitos de Entidades de Crédito (DGF). The information must be collected in the statement entitled 'Information to determine the calculation bases for contributions to the Deposit Guarantee Fund' and in the 'Register detailing the deposits received', which are included in Annexes 1 and 2 of Circular 8/2015 respectively.

The circular also provides for additional reporting requirements for the institutions and branches assigned to the DGF, aimed at ensuring the correct fulfilment of the DGF's cooperation obligations established at European level and deriving from the current regulatory framework. In particular, the entities will facilitate the information which the DGF periodically reports on the aggregate volume of deposits of each depositor in the context of cross border payment systems.

The circular will enter into force on 30 June 2021.

Bank of Spain amends circulars on Central Credit Register and banking service transparency and responsible lending

The Bank of Spain has issued Circular 1/2021, of 28 January 2021, amending Circular 1/2013 on the Central Credit Register and Circular 5/2012 on banking service transparency and responsible lending. In particular, it adapts the two earlier circulars to the changes introduced in the regulation of the Central Credit Register (CCR) and in the official reference rates, respectively, by Order ETD/699/2020, of 24 July, regulating revolving credits and amending Order ECO/697/2004, of 11 March, Order EHA/1718/2010, of 11 June, and Order EHA/2899/2011, of 28 October (Revolving Credit Order).

The Revolving Credit Order, published on 27 July, is intended to improve the information available to loan providers in order to assess the solvency of potential borrowers and avoid over-indebtedness that could trigger defaults in repayment. As a result, the scope of entities providing information has been broadened, lowering the threshold of data collected by the Bank of Spain to declaring entities and intermediaries of real estate credit and increasing the volume and detail of information as well as advancing the date for such reporting. Consequently, the circular introduces the following changes:

- increased reporting requirements – Circular 1/2013 is amended to include: (i) changes introduced in the regulation of the CCR by the Revolving Credit Order; (ii) new information requested from reporting entities as a result of the crisis caused by COVID-19; and (iii) clarifications in Annex 2 to improve the reporting and management of the information.
- reference rate alternatives – Circular 5/2012 is amended to increase the official reference rate options available to entities to be used when granting loans and to be offered as substitutes in loan agreements.

Circular 1/2021 entered into force on 31 January 2021, without prejudice to the Second Final Provision of the Revolving Credit Order

CRR/CRD 4: Bank of Spain consults on amendments to Circular 2/2016 to supplement transposition

The Bank of Spain has launched a public consultation on a draft circular amending Circular 2/2016 of 2 February 2016, to credit institutions on supervision and solvency, which supplements the transposition of CRR/CRD 4 into Spanish law.

The draft circular is intended to:

- further develop certain aspects of the macro-prudential tools made available to the Bank of Spain under current legislation;
- adapt Circular 2/2016 to the new wording of Article 45.1 of Law 10/2014, which allows the Bank of Spain to require a counter-cyclical buffer for all the exposures of the institution or group, and, additionally or alternatively, for exposures to a certain sector; and
- specify the procedures, contractual terms and ratios which may be subject to the draft circular concerning the establishment of the sectoral concentration limits and lending conditions, among other transactions.

The draft circular will be subject to public consultation until 23 February 2021.

FINMA recognises various UK trading venues for trading Swiss equity securities

The Swiss Financial Market Supervisory Authority (FINMA) has recognised various United Kingdom trading venues for the purposes of trading Swiss equity securities.

Since 1 January 2019, foreign trading venues where Swiss equity securities are traded or that facilitate trading in such equity securities must first be recognised for supervisory purposes by FINMA. One of the conditions of recognition is that the trading venue is not based in a jurisdiction which restricts its market participants from trading Swiss equity securities. On 3 February 2021, the Swiss Federal Department of Finance removed the United Kingdom from the list of such jurisdictions. As a result, FINMA was able to grant its recognition to various trading venues in the United Kingdom.

The list of authorised trading venues is available on the FINMA website.

China's central bank issues guidelines on AML and CTF for cross-border banking business

The People's Bank of China (PBoC) and the State Administration of Foreign Exchange (SAFE) have jointly released the 'Guidelines on Anti-Money Laundering (AML) and Counter-Financing of Terrorism (CFT) for Cross-border Business of Banks (For Trial Implementation)', stipulating AML and CFT requirements on cross-border payment and receipts of RMB and foreign exchange (FX) and onshore FX business conducted by onshore and offshore institutions or individuals (cross-border business).

Amongst other things, the following requirements contained in the guidelines are worth noting:

- due diligence on clients – banks should conduct due diligence on their clients when opening FX accounts or onboarding clients for cross-border business. The client information to be identified by the bank includes but is not limited to the risk level of money laundering and financing of terrorism; records of non-compliance with regulators and banks or other disciplinary records; operating status; shareholders or actual controllers; beneficial owners; major affiliates and trading counterparties; credit records; financial indicators; sources and uses of money; purpose and nature of onboarding; purpose of and rationale for transactions; foreign related operations and cross-border payment and receipts; and whether or not a political figure is involved. The guidelines provide detailed guidance for in-scope institutions to carry out such due diligence to identify risks;
- risk classification of clients and business – banks are required to determine the AML and CFT risk level of clients and cross-border business, and keep tracking, assessing, and identifying such risk;
- enhanced due diligence measures – with regard to clients or business with high risk, banks should take enhanced due diligence measures such as verification with information from additional sources, onsite visits, and investigation through correspondence banks or upstream and downstream banks;
- reporting and record keeping – banks are obliged to (a) establish and implement systems for reporting large-value transactions and suspicious

transactions, and (b) establish client profiles for all types of cross-border business and keep records of transactions and clients' identity; and

- internal control – banks should establish a sound internal control system and clarify the allocation of AML and CTF responsibilities. The management of AML and CTF in cross-border business should be examined in internal inspections and audits, and banks should conduct regular monitoring and inspection.

In addition to banks, the guidelines also apply to the cross-border business of other institutions with AML obligations (such as non-bank financial institutions, non-bank payment institutions, and clearing institutions) by reference. The guidelines will take effect on 20 February 2021.

FSC to promote role of securities firms in corporate financing and venture capital market

The Financial Services Commission (FSC) has decided to implement measures to promote the role of securities firms in providing corporate financing and venture capital to innovative small and medium-sized enterprises (SMEs).

The key measures include:

- making adjustments to the rules on comprehensive financial investment business entities' capital exposure limits;
- diversifying corporate financing services by easing the prudential regulation on net capital ratio for early stage middle market enterprises and qualified innovative firms;
- increasing the total number of designated SME specialised firms from six to eight and working to strengthen their role in providing support for Korea New Exchange listing; and
- lowering the listing requirements to promote successful early stage initial public offerings (IPOs) for promising businesses.

The FSC has encouraged underwriters to play a more active role, from the process of selecting companies for IPOs to accurately predicting market demand and setting prices to post-IPO management.

Electronic Transactions (Amendment) Bill passed by Singapore Parliament

The Electronic Transactions (Amendment) Bill was moved for its second reading in the Singapore Parliament and subsequently passed. The Bill is intended to amend the Electronic Transactions Act (ETA), and make consequential and related amendments to the Bills of Lading Act and the Contracts (Rights of Third Parties) Act.

To facilitate electronic transactions for businesses and citizens in Singapore and help businesses benefit from more convenient and secure electronic transactions, the Ministry of Communications & Information (MCI) and the Infocomm Media Development Authority (IMDA) have amended the ETA to adopt the United Nations Commission on International Trade Law Model Law on Electronic Transferable Records with modifications into Singapore law, and for the ETA to apply to transferable documents or instruments such as Bills of Lading. The ETA amendments are also intended to ensure that reliable

methods will be used to ensure the authenticity and reliability of electronic transferable records.

The Singapore Government has indicated that it will continue to work closely with the industry to study the feasibility of extending the applicability of the ETA to more types of items which are currently excluded.

The Bill will come into operation on a date that the Minister appoints by notification in the Gazette.

APRA releases policy and supervision priorities for 2021

The Australian Prudential Regulation Authority (APRA) has released its policy and supervision priorities for the year 2021. In line with APRA's strategic objectives detailed in its Corporate Plan, a key focus is to further enhance the resilience and crisis readiness of Australia's financial system.

APRA notes that delivering its proposed policy and supervision priorities for the coming 12 to 18 months requires working closely with peer regulators to deliver efficient, proportionate regulation that facilitates a resilient, competitive and innovative financial sector, able to support the recovery from the impact of COVID-19. APRA's key policy priorities include:

- finalising and implementing a revised prudential standard on remuneration, a key Royal Commission recommendation that remains outstanding;
- strengthening crisis preparedness taking into account the lessons and learnings of the past 12 months;
- updating prudential standards on operational risk, governance and risk management, and consulting with industry on guidance for climate change financial risk;
- completing the ongoing review of the capital framework for authorised deposit-taking institutions to fully implement 'unquestionably strong' capital ratios and the Basel III reforms;
- progressing a range of enhancements recommended by APRA's post-implementation review of the original superannuation prudential framework introduced in 2013; and
- continuing work on strengthening the capital framework for private health insurers.

In relation to its supervision activities, APRA's priorities include:

- maintaining financial system resilience through increased action on crisis readiness;
- increased scrutiny of entities' cyber security capabilities;
- embedding the new remuneration standard, conducting a risk culture survey, undertaking a range of governance, culture, remuneration and accountability related supervisory reviews and deep dives, and working to close risk governance issues currently requiring capital overlays; and
- addressing areas of MySuper underperformance, taking enforcement action where appropriate and providing greater transparency through the expansion of the heatmaps to include Choice products.

APRA publishes year in review for 2020

APRA has published its year in review for 2020, which provides an overview of how APRA went about fulfilling its mandate as safety regulator for Australia's financial system. The review provides APRA's view on the financial environment and details its key activities for the year across the banking, insurance and superannuation industries, conducted in alignment with the strategic objectives outlined in APRA's Corporate Plan. It also contains metrics for APRA-regulated industries, including analysis of industry composition, profitability and financial strength. The year in review supplements APRA's annual report and financial statements which are submitted to the Australian Government after the end of each financial year.

RECENT CLIFFORD CHANCE BRIEFINGS

LIBOR transition and aircraft lease financings

This is the third in our series of briefings examining the implications of LIBOR cessation for aviation transactions. Since summer 2020 and in the midst of the ongoing Coronavirus pandemic, there has been considerable and laudable progress by regulators, national working groups and institutions on LIBOR transition and broader global benchmark reform. The ARRC's recommendation that USD LIBOR is replaced by SOFR brings some welcome clarity for the industry, given that most cross-border aircraft transactions are USD denominated. However, remaining uncertainties and divergence between products and markets mean that the work to ensure a smooth and balanced transition for commercial parties is only just beginning.

This briefing summarises aspects which are considered crucial for industry participants to address in their internal planning, documentary due diligence and negotiations with counterparties.

https://www.cliffordchance.com/briefings/2021/01/libor-transition-and-aircraft-lease-financings.html

Payments trends 2021 – what will the new year mean for regulation and enforcement?

There has been a renewed focus on the payments sector and its regulation. COVID-19 and its impact on spending habits and the Wirecard scandal are two of the contributing factors. But what's next?

This briefing explores five themes likely to drive regulatory change for payments, as well as shape the enforcement policies of global regulators over the next 12 months.

https://www.cliffordchance.com/briefings/2021/01/payments-trends-2021--what-will-the-new-year-mean-for-regulation.html

High yield outlook 2021 – the phoenix rising

Leveraged finance markets, and the European high yield bond market in particular, have entered 2021 on fire with 25 issuances reaching EUR 12.63 billion during the first month of the year. This burn looks poised to continue as positive momentum coming out of a challenging and volatile year continues to build in 2021.

This briefing discusses what to expect in 2021.

https://www.cliffordchance.com/briefings/2021/02/high-yield-outlook-2021--the-phoenix-rising.html

Trade in 2021 – five trends to watch

2021 will be an important year in international trade. States continue to grapple with the COVID-19 pandemic and the resulting economic downturn. A new US administration has just taken office. Questions remain about tensions in the US-China relationship. High on the agenda are also digital services trade, trade and the environment, and the future of multilateralism.

This briefing considers five trends in international trade for clients to watch in 2021.

https://www.cliffordchance.com/briefings/2021/02/trade-in-2021--five-trends-to-watch.html

Brexit and securitisation – the rubber hits the road

The UK formally left the EU on 31 January 2020, but the Brexit implementation period delayed most of the practical effects of that until after 31 December 2020.

This briefing examines how, a month into the new regime, securitisation markets are changing in response to this new reality, offers solutions to some of the issues that have come up and identifies key areas where market practice has yet to settle.

https://www.cliffordchance.com/briefings/2021/02/brexit-and-securitisation---the-rubber-hits-the-road.html

Woolard Review – conclusions and impact on regulation in the UK 'buy-now-pay-later' industry

In Q4 2020, the FCA in the United Kingdom instructed Christopher Woolard (former interim Chief Executive of the FCA) to carry out a review into the unsecured consumer credit market, with a particular focus on the 'buy-now-pay-later' (BNPL) market. Currently, the majority of BNPL lending is carried out on an unregulated basis in reliance on an exemption under Art. 60F(2) of the FSMA (Regulated Activities) Order 2001 (RAO), on the basis that (i) the agreements are borrower-lender-supplier agreements for fixed-sum credit; (ii) the number of payments made by borrowers is less than 12; (iii) those payments are made within a period of 12 months or less; and (iv) the credit is provided without interest or other charges. Accordingly, a number of the major BNPL providers in the UK are not regulated by the FCA, as their lending falls within this RAO exemption.

This briefing focuses on the key points from the Woolard Review Report.

https://www.cliffordchance.com/briefings/2021/02/woolard-review-_-conclusions-and-impact-on-regulation-in-the-uk-.html

Coronavirus – Supreme Court judgement in business interruption insurance test case – real estate impact

The English Supreme Court has substantially allowed the appeal by the FCA on behalf of policyholders and dismissed the insurers' appeals in the business interruption (BI) insurance test case brought by the FCA. The result is more BI policies will respond to claims by policyholders who have suffered loss due

to the COVID-19 pandemic and the losses recoverable under responding policies may in some cases be greater.

This briefing considers what this means for landlords and tenants and future lease negotiations.

https://www.cliffordchance.com/briefings/2021/02/coronavirus--supreme-court-judgement-in-business-interruption-in.html

Employee incentives and Brexit – an update

Many companies have asked us over the last 18 months about what Brexit would mean for their employee incentives and share plans. Now that the EU/UK Trade and Co-operation Agreement has been agreed, it's a good time to take stock, and it should be good news for the vast majority of companies as far as incentives are concerned.

Broadly speaking, there is little immediate change to the operation of incentives. There are steps that are worth considering at this point to make sure your participant documents are in good shape but no amendments or changes in operation should be needed to incentive plans themselves in the short term.

This briefing sets out the headline points.

https://www.cliffordchance.com/briefings/2021/01/employee-incentives-and-brexit--an-update.html

Spain introduces post-Brexit rules for UK financial firms

The Spanish Government has published a new Royal Decree-Law intended to protect the interests of citizens and businesses who may be affected by the end of the transitional period on 31 December 2020 and the UK becoming a third country for all purposes as of 1 January 2021.

Among the measures included are some specifically related to the financial sector and financial entities that have been put in place in order to strengthen legal certainty and customer protection and to avoid any risk to financial stability.

This briefing discusses these measures.

https://www.cliffordchance.com/briefings/2021/02/spain-introduces-post-brexit-rules-for-uk-financial-firms-.html

The Japan-Georgia bilateral investment treaty

On 29 January 2021, Japan and Georgia signed a bilateral investment treaty titled the Agreement between Japan and Georgia for the Liberalisation, Promotion and Protection of Investment (Japan-Georgia BIT or BIT). This is the first BIT signed by either Japan or Georgia since the outbreak of the COVID-19 pandemic. It is expected that the BIT will enter into force later this year once it has been through the requisite ratification procedures in Japan and Georgia.

Upon signing the BIT, Georgia's Minister of Economy was reported to have said 'We will do our best to bring as many Japanese investors as possible into various fields of the Georgian economy to create new jobs especially in the post-COVID period, when we need active investments'. This builds upon a steady increase of Japanese investment into Georgia particularly in the energy

sector. For example, last year a major Japanese utility company acquired a significant stake in a Georgian hydropower company.

The Japan-Georgia BIT contains wide-ranging investment protections for investors from Georgia and Japan. In summary, consistent with its own aims, and the emerging Japanese 'standard form' for investment treaties, the Japan-Georgia BIT is favourable from an investor's perspective. Importantly, the treaty has 'teeth' in the form of an investor-State dispute settlement (ISDS) mechanism.

This briefing looks at the provisions of the treaty, providing further detail on who is covered and how these rights may be used, as well as highlighting some of its limitations and exclusions.

https://www.cliffordchance.com/briefings/2021/02/the-japan-georgia-bilateral-investment-treaty.html

US Federal Trade Commission announces annual revisions to the HSR Act's thresholds and thresholds pertaining to the prohibition against interlocking directorates

On 2 February 2021, the US Federal Trade Commission announced the annual revisions to the jurisdictional thresholds of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. Barring an exemption, parties to a transaction meeting these thresholds must make pre-closing notifications to the US antitrust authorities and abide by a mandatory waiting period. The revised thresholds also dictate the relevant filing fee the parties must pay when submitting their HSR filings. The new thresholds will apply to any transaction that closes 30 days after the new thresholds are published in the Federal Register. The maximum civil penalty amounts for premerger notification violations under the HSR Act increased, effective on 13 January 2021. The FTC also announced on 21 January 2021 revisions to the jurisdictional thresholds of Section 8 of the Clayton Antitrust Act of 1914, which places restrictions on interlocking directorates.

This briefing discusses the revised thresholds.

https://www.cliffordchance.com/briefings/2021/02/US-Federal-Trade-Commission-Announces-Annual-Revisions-to-the-SR-Acts-Thresholds.html

Second Circuit reaffirms that Section 10(b) does not apply to predominantly foreign transactions

On 25 January 2021, the Court of Appeals for the Second Circuit held, in Cavello Bay Reinsurance Ltd. v. Stein, that an off-shore securities transaction structured to avoid US registration requirements was 'so predominantly foreign' as to fall beyond the territorial reach of the general antifraud provision of the federal securities laws, even though the alleged fraud concerning investment contracts governed by US state law took place on US shores. Cavello is the latest decision from the federal appeals court in New York to identify geographic restraints on US lawsuits concerning cross-border securities transactions.

This briefing discusses the Cavello decision.

https://www.cliffordchance.com/briefings/2021/02/second-circuit-reaffirms-that-section-10b-does-not-apply-to-pred.html

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