

CLIFFORD CHANCE

INTERNATIONAL REGULATORY UPDATE 25 - 29 JANUARY 2021

- **Coronavirus: EU Commission prolongs and expands State aid Temporary Framework**
- **CSDR: Delegated Regulation postponing entry into force of settlement discipline regime published in Official Journal**
- **EMIR: EU Commission equivalence decision for US SEC-regulated CCPs published in Official Journal**
- **EMIR: EU Commission adopts Delegated Regulations on ESMA supervisory and enforcement powers**
- **Banking Union: EU Commission consults on BRRD/SRMR/DGSD review**
- **BRRD: EBA notifies EU Commission of impaired ability to deliver RTS on internal MREL instrument 'daisy chains'**
- **Banking Union: Eurogroup signs ESM Treaty and SRF amending agreements**
- **ECB publishes SREP results and 2021 supervisory priorities**
- **MiFIR: ESMA publishes report on staffing and resources for supervision of third-country firms**
- **Basel Committee consults on amendments to rules on haircut floors for securities financing transactions**
- **FCA consults on proposals regarding strong customer authentication, contactless payments, and payment and e-money services**
- **HMT publishes call for input on its review of UK funds regime**
- **Brexit: AMF and ACPR set out conditions of continuity of intermediation activities**
- **Bank of Italy consults on new regime for assessing acquisitions and increases of qualifying holdings in regulated sectors**
- **Luxembourg law regulating use of distributed ledger technology for securities issuances published**
- **CSSF launches AML/CTF cross-sector survey for 2020**
- **CNMV issues Q&A on prospectus regime**
- **China issues administrative measures on security of supervisory**

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

To request a subscription to our Alerter: Finance Industry service, please [subscribe to our Client Portal](#), where you can also request access to the Financial Markets Toolkit and subscribe to publications, insights and events.

If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

[Marc Benzler](#) +49 69 7199 3304

[Caroline Dawson](#) +44 207006 4355

[Steven Gatti](#) +1 202 912 5095

[Lena Ng](#) +65 6410 2215

[Gareth Old](#) +1 212 878 8539

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use `firstname.lastname@cliffordchance.com`

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

data for trial implementation

- **FSA announces publication of first report by Working Group on Capital Market Regulations of Financial System Council**
- **Recent Clifford Chance briefings: International fintech trends, UK business interruption insurance test case, and more. Follow this link to the briefings section.**

Coronavirus: EU Commission prolongs and expands State aid Temporary Framework

The EU Commission has [decided](#) to prolong and expand the scope of the State aid Temporary Framework adopted on 19 March 2020 to support the economy in the context of the COVID-19 outbreak.

The Temporary Framework was set to expire on 30 June 2021, except for recapitalisation measures that could be granted until 30 September 2021. The amendment prolongs all measures set out in the Temporary Framework, including recapitalisation measures, until 31 December 2021.

The scope of the Temporary Framework has been expanded by:

- increasing aid ceilings;
- allowing the conversion of certain repayable instruments into direct grants until 31 December 2022; and
- extending the temporary removal of all countries from the list of 'marketable risk' countries under the Short-term export-credit insurance Communication from 30 June 2021 to 31 December 2021.

CSDR: Delegated Regulation postponing entry into force of settlement discipline regime published in Official Journal

[Commission Delegated Regulation \(EU\) 2021/70](#), which amends Delegated Regulation (EU) 2018/1229 to postpone the entry into force of the settlement discipline regime under the Central Securities Depositories Regulation (CSDR), has been published in the Official Journal.

The entry into force of Delegated Regulation (EU) 2018/1229 has been postponed from 1 February 2021 to 1 February 2022.

This follows the European Securities and Markets Authority (ESMA) adopting a report recommending to the EU Commission that the date of entry into force of Delegated Regulation (EU) 2018/1229 should be postponed following input from stakeholders and pressure from the COVID-19 pandemic. The EU Commission endorsed the postponement in October 2020.

EMIR: EU Commission equivalence decision for US SEC-regulated CCPs published in Official Journal

[Commission Implementing Decision \(EU\) 2021/85](#) on the equivalence of the regulatory framework of the US for central counterparties (CCPs) that are authorised and supervised by the US Securities and Exchange Commission (SEC) to the requirements of the European Market Infrastructure Regulation (EMIR) has been published in the Official Journal.

The decision will allow US CCPs to apply for recognition by ESMA in order to provide central clearing services in the EU. It applies to SEC-regulated 'covered clearing agencies' and is conditional on US CCPs having rules in place with respect to certain risk management requirements (i.e. liquidation periods and anti-procyclicality measures). It is intended to complement an existing 2016 equivalence decision for US CCPs regarding the US Commodity Futures Trading Commission (CFTC).

The Decision will enter into force on 17 February 2020.

EMIR: EU Commission adopts Delegated Regulations on ESMA supervisory and enforcement powers

The EU Commission has adopted:

- a Commission Delegated Regulation [supplementing](#) EMIR with regard to rules of procedure for penalties imposed by ESMA on third-country CCPs or related third parties; and
- a Commission Delegated Regulation [amending](#) Delegated Regulation (EU) 667/2014 with regard to the content of the file to be submitted by the investigation officer to ESMA, the right to be heard with regard to interim decisions and the lodging of fines and periodic penalty payments. The amendments result from amendments to EMIR by Regulation (EU) 2019/834 (EMIR REFIT).

The Regulations will enter into force on the day following their respective publication in the Official Journal.

Banking Union: EU Commission consults on BRRD/SRMR/DGSD review

The EU Commission has published a [targeted consultation](#) as part of its review of the bank crisis management and deposit insurance (CMDI) framework set out in the Bank Recovery and Resolution Directive (BRRD), the Single Resolution Mechanism Regulation (SRMR) and the Deposit Guarantee Schemes Directive (DGSD).

The consultation, which follows the publication of the Commission's review roadmap in November 2020, seeks stakeholder views on general objectives and the focus of the review, as well as more technical aspects relating to:

- resolution, liquidation and other available measures for handling banking crises;
- the level of harmonisation of creditor hierarchy in the EU and the impact on the 'no creditor worse off' principle (NCWO); and
- depositor insurance.

The consultation closes on 20 April 2021.

A general, less technical public consultation will be launched in parallel in mid-February 2021.

BRRD: EBA notifies EU Commission of impaired ability to deliver RTS on internal MREL instrument 'daisy chains'

José Manuel Campa, Chairperson of the European Banking Authority (EBA), has [written](#) to John Berrigan, EU Commission Director-General for Financial Stability, Services and Capital Markets Union, explaining the EBA's impaired

ability to deliver regulatory technical standards (RTS) in relation to a mandate under BRRD as a result of apparent inconsistencies between the Capital Requirements Regulation (CRR) and the BRRD.

The EBA letter refers to a mandate under Article 45f(6) of the BRRD to develop RTS further specifying methods in order to avoid disruption to resolution strategy implementation by instruments that are eligible for meeting the minimum requirement for own funds and eligible liability (internal MREL) issued by a subsidiary through an intermediate parent and indirectly subscribed by the resolution entity.

The letter sets out points in relation to the following topics, amongst others:

- discussion of steps taken towards fulfilment of the mandate, including responses received to a consultation paper published in July 2020;
- interactions between the BRRD and CRR and, in particular, the apparent conclusion that the CRR does not allow the application of the prudential treatment needed for the mandate to be fulfilled as originally intended; and
- the EBA's reasoning that the legislative requirements cannot be fulfilled without additional provision via Level 1 text.

Banking Union: Eurogroup signs ESM Treaty and SRF amending agreements

The Eurogroup President, Paschal Donohoe, has issued a [statement](#) announcing that representatives from the Member States have signed the amending agreements for the [European Stability Mechanism \(ESM\) Treaty](#) and the [Single Resolution Fund \(SRF\) Intergovernmental Agreement](#). The amendments, which were agreed upon on 30 November 2020, are intended to:

- strengthen the role and expand the mandate of the ESM, including by equipping it with a more accessible precautionary credit line and granting it a greater part in the design, negotiation and monitoring of financial assistance programmes; and
- advance the entry into force of the common backstop to the SRF, in the form of an ESM credit line which will replace the direct recapitalisation instrument as of the beginning of 2022.

The signing of the agreements launches the ratification procedures in the Member States.

ECB publishes SREP results and 2021 supervisory priorities

The European Central Bank (ECB) has published the results of its [2020 Supervisory Review and Evaluation Process \(SREP\)](#), and its [supervisory priorities for 2021](#).

Based on the SREP analysis and taking into account the COVID-19 pandemic, the ECB has set the following supervisory priorities:

- in relation to credit risk, focusing on the adequacy of banks' credit risk measurement and management, with a view to fostering timely identification, efficient monitoring and the mitigation of procyclicality;

- in relation to capital strength, gauging banks' capital resilience via the EU-wide stress test in addition to the continued supervisory review of banks' capital planning;
- in relation to business model sustainability, continuing to challenge banks' strategic plans and the underlying measures taken to overcome existing structural deficiencies; and
- in relation to internal governance, continuing to focus on the adequacy of banks' crisis risk management frameworks, risk data aggregation, IT and cyber risks, and anti-money laundering risks.

MiFIR: ESMA publishes report on staffing and resources for supervision of third-country firms

ESMA has published a [report](#) assessing its staffing and resources needs arising from the assumption of powers and duties in accordance with the revised MiFIR regime for third-country firms introduced by the Investment Firms Regulation (IFR).

Among other things, the revised regime includes a significant reporting flow from third-country firms to ESMA on an annual basis, as well as additional powers granted to ESMA to request information.

In the absence of an equivalence decision triggering the regime, ESMA's assessment of its staffing and resources needs is based on a hypothetical equivalence decision adopted by the EU Commission in relation to the UK, and estimates:

- a total cost of EUR 8.7M per year for 47 full time equivalents (FTEs) monitoring 880 firms; and
- a total cost of EUR 5.9M per year for 30 FTEs monitoring 550 firms.

The report has been submitted to the EU Parliament, Council and Commission.

Basel Committee consults on amendments to rules on haircut floors for securities financing transactions

The Basel Committee on Banking Supervision (BCBS) has launched a [consultation](#) on proposed technical amendments to the calculation of minimum haircut floors for securities financing transactions (SFTs). The first amendment is intended to address an interpretative issue relating to collateral upgrade transactions. Specifically, the BCBS is proposing to revise CRE56.4 to clarify that banks are exempt from haircut floors on collateral upgrade transactions if the recipient of the securities (rather than the bank itself) is unable to re-use, or provides representations that they will not re-use, the securities received as collateral against the securities lent. The second amendment corrects a misstatement of the formula used to calculate haircut floors for netting sets of SFTs.

Comments are due by 31 March 2021.

FCA consults on proposals regarding strong customer authentication, contactless payments, and payment and e-money services

The Financial Conduct Authority (FCA) has launched a [consultation](#) on proposed changes to its guidance and requirements to remove identified barriers to growth, innovation and competition in the UK payments and e-money sectors and to reflect the changes arising from the UK's withdrawal from the EU and the establishment of the temporary permissions regime (TPR).

In particular, the FCA is proposing to:

- add a new exemption from strong customer authentication for when customers access their account information through an account information service provider;
- mandate the use of dedicated interfaces (such as application programming interfaces) by account servicing payment service providers (ASPSPs) to facilitate third party provider access to retail and SME customers' payment accounts;
- amend requirements for publishing interface technical specifications, the availability of testing facilities, and fallback mechanisms by account providers;
- treat ASPSPs with deemed authorisation under the TPR as exempt from the requirement to set up a fallback interface, where the ASPSP has an exemption from its home state competent authority;
- increase the single and cumulative transaction thresholds for contactless payments from GBP 45 up to GBP 100 (or potentially a maximum of GBP 120) and from GBP 130 to GBP 200 respectively;
- consolidate and finalise the recent temporary guidance issued by the FCA containing its expectations of firms' prudential risk management and safeguarding requirements in light of coronavirus; and
- update its guidance to reflect the end of the transition period and to include certain industry guidance issued by the European Banking Authority and EU Commission prior to 31 December 2020, which the FCA has determined retains relevance for the UK.

Responses on the questions relating to contactless payments are due by 24 February 2021 and for the remaining questions by 30 April 2021.

HMT publishes call for input on its review of UK funds regime

HM Treasury (HMT) has published a [call for input](#) on its review of the UK funds regime.

The call for input, which follows the Budget 2020 announcement of the review, seeks to inform specific proposals aimed at growing the UK asset management industry. Among other things, views are sought on possible changes to the UK's approach to funds taxation, funds regulation and any opportunities for wider reform.

In relation to funds regulation and wider reform, views are sought on:

- fund authorisation;
- the Qualified Investor Scheme (QIS) structure;
- enhancing the appeal of the UK as a place to establish new funds;
- whether proposals should focus on enhancing the UK's reputation as a location for AIFs targeting international markets rather than retail funds;
- generating fund administration jobs outside of London;
- enhancing existing funds structures, such as the Investment Trust Companies (ITC) structure;
- the distribution of capital; and
- new fund structures, such as a Long-Term Asset Fund (LTAF) structure, and unauthorised fund vehicles, such as corporate, limited partnership and contractual structures.

Certain areas are not in scope of the call for input. Among other things, the Government does not intend to make any changes to onshored EU legislation such as UCITS and AIFMD at this time. Further, any legislative proposals relating to the Sustainable Finance Disclosure Regulation will be taken forward separately.

Responses are requested by 20 April 2021.

Brexit: AMF and ACPR set out conditions of continuity of intermediation activities

The Autorité des marchés financiers (AMF) and the Autorité de contrôle prudentiel et de résolution (ACPR) have issued a [statement](#) noting that, since 1 January 2021, with the loss of European passporting rights, entities based in the UK are no longer authorised to provide investment services in the EEA, unless they have set up an authorised branch or subsidiary in the EEA. The statement emphasises that entities that have relocated to the EEA must have sufficient personnel to ensure prudent risk management and effective supervision of their activities. The ACPR and AMF have also stressed that entities must complete on-going relocation plans as soon as possible and finalise the transfer of any persons yet to be relocated, noting that any entity that provides investment services in the EEA without the appropriate authorisation would face administrative or criminal proceedings under the laws of each Member State.

Bank of Italy consults on new regime for assessing acquisitions and increases of qualifying holdings in regulated sectors

The Bank of Italy has launched a [consultation](#) process on updating the existing provisions governing assessments of acquisitions and increases of qualifying holdings in regulated sectors. In particular, the new regulation deals with the set of information and documents to be submitted to the regulator in the context of authorisation procedures relating to qualifying shareholdings in banks, financial intermediaries, e-money institutions, payment institutions, and investment managers.

These provisions are intended to implement Article 19 of Legislative Decree no. 385 of 1 September 1993 (Italian Banking Act), Article 15 of Legislative Decree no. 58 of 24 February 1998 (Italian Financial Act), and the European Supervisory Authorities' (ESA) Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors and the applicable ECB policies.

The consultation will end on 22 March 2021.

Luxembourg law regulating use of distributed ledger technology for securities issuances published

A new law of 22 January 2021 ([DLT Law](#)) amending the law of 6 April 2013 on dematerialised securities (2013 Law) and the law of 5 April 1993 on the financial sector has been published in the Luxembourg official journal (Mémorial A).

The 2013 Law regulates the issuance of dematerialised debt or equity securities under Luxembourg law, and in particular provides for the use of a single issuance account (compte d'émission) to record the issuance (or conversion) of such securities. The issuance account holding institution, known as the central account holder (teneur de compte central) or liquidation institution (organisme de liquidation), then opens securities accounts (comptes-titres) for its clients and the registration in such securities accounts represents the relevant security. The security can then be transferred by way of book entry from one securities account to another. The issuance account serves to reconcile the securities held in the securities accounts with the number of securities registered in the issuance account.

The DLT Law updates the 2013 Law by expressly recognising the possibility of using secured electronic recording systems (dispositifs d'enregistrement électroniques sécurisés), including distributed electronic ledgers or databases, for dematerialised securities. In particular, the DLT Law defines the term issuance account (compte d'émission) by specifying that such an account may be held and the securities records therein may be effected within or by virtue of a secured electronic recording system (dispositif d'enregistrement électronique sécurisé).

The DLT Law entered into force on 26 January 2021.

CSSF launches AML/CTF cross-sector survey for 2020

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [circular](#) to remind the professionals under its supervision that its annual AML/CTF cross-sector online survey for the year 2020 will be launched on 15 February 2021. The CSSF will be collecting standardised key information concerning money laundering and terrorist financing risks to which these professionals are exposed and the implementation of related risk mitigation and targeted financial sanctions measures.

The circular is addressed to the boards of directors and management boards of the following Luxembourg-based professionals which are under the CSSF's supervision for AML/CTF purposes:

- credit institutions;
- investment firms;

- payment institutions and electronic money institutions;
- specialised professional of the financial sector;
- central securities depositories; and
- investment fund managers (including registered AIFMs and self-managed UCITS/internally managed AIFs and investment funds which have not designated an investment fund manager).

It is also addressed to Luxembourg branches of the above professionals having their registered office in the EU or in a third country.

CNMV issues Q&A on prospectus regime

The Spanish Securities Market Commission, the Comisión Nacional del Mercado de Valores (CNMV), has published a [Q&A document](#) on the regime for prospectuses to be published in public offerings and admissions to trading on regulated markets. The document is intended to facilitate the implementation of Regulation 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, which has applied from July 2019 and repealed the previous regulatory framework set out in Directive 2003/71/EC.

China issues administrative measures on security of supervisory data for trial implementation

The China Banking and Insurance Regulatory Commission (CBIRC) has issued the '[Administrative Measures on the Security of Supervisory Data \(For Trial Implementation\)](#)', which are intended to establish a coordinated management mechanism under the cybersecurity law framework for the protection of supervisory data.

Amongst other things, the following points contained in the Measures are worth noting:

- supervisory data – under the Measures, 'supervisory data' refers to numbers, ratios, reports, text and other information that are regularly collected, recorded, generated and stored by the regulatory data systems during the CBIRC's performance of its duties or otherwise identified by the CBIRC;
- collection and usage of supervisory data – the Measures clarify that supervisory data should be collected in a manner that avoids duplication and collection of excessive data, and impose certain security duties on the CBIRC. The supervisory data shall be used by the CBIRC only for the purpose of performing its regulatory duties. The traceability of supervisory data shall be ensured by way of management methods and technical means;
- supervision and management of supervisory data – the Measures require each department/bureau of the CBIRC and outsourcing service provider to conduct regular self-inspections and take immediate remedial actions if any data security risk/incident is identified. The CBIRC Statistics and Information Department shall regularly carry out assessments and inspections as well; and
- reporting mechanism – any serious security incident relating to supervisory data shall be reported to the CBIRC Statistics and Information Department within 48 hours.

The Measures are part of the CBIRC's efforts to implement cybersecurity legal requirements in the banking and insurance sector. More implementing rules, including those applicable to banking and insurance institutions are expected to be issued accordingly.

FSA announces publication of first report by Working Group on Capital Market Regulations of Financial System Council

On 23 December 2020, the Financial Services Agency (FSA) announced that the Working Group on Capital Market Regulations of the Financial System Council had compiled and published its '[First Report – Regulatory Policy: Toward an International Financial Hub](#)', which is intended to enhance the functioning of Japan's capital market as an international financial hub. An English summary version of the report has now also been published.

The report primarily sets out the following two schemes to facilitate the entry of overseas investment managers (OIM) that are fit and proper and have an established business office in Japan:

- pre-registration entry scheme – under which OIMs can be, with notification, qualified to conduct business for up to 5 years as a pre-registration period if they are under supervision by regulatory authorities and have a proven track record in specified foreign jurisdiction; and
- simplified entry scheme for general partner (GP) managers of limited partnerships with overseas investors – under which OIMs can be, with notification, qualified to conduct business as fund GPs if they can fulfil the requirement regarding management of funds mainly provided by overseas qualified investors.

RECENT CLIFFORD CHANCE BRIEFINGS

Fintech in 2021 – five trends to watch

The COVID-19 crisis has brought technology use to the fore in the financial sector and beyond, with businesses seeing two or three years' expected progress compressed into two or three months last year. The pandemic's impact on fintech businesses and regulatory agendas is ongoing, coupled with pressure from both consumers and businesses to get tech regulation right. What does this mean for global fintech in 2021?

This briefing discusses five predicted developments for key fintech areas including AI, data, payments and crypto.

<https://www.cliffordchance.com/briefings/2021/01/fintech-in-2021--five-trends-to-watch0.html>

Coronavirus – Supreme Court judgment in landmark business interruption insurance test case

On 15 January 2021, the Supreme Court handed down its judgment in the appeal of the landmark test case brought by the FCA about business interruption (BI) insurance coverage for insureds who have suffered loss as a result of the COVID-19 pandemic. The overall result represents a repeat – and indeed slight improvement – of the broad success policyholders won at first instance. However, the different approach in the Supreme Court's

reasoning will have wider implications for the market beyond the scope of BI insurance.

This briefing discusses the judgment.

https://www.cliffordchance.com/insights/thought_leadership/coronavirus/sector-focus/2021/01/coronavirus--supreme-court-judgment-in-landmark-business-interru.html

Spanish Financial Markets in 2021 – perspectives after COVID-19

The world ground to a halt in 2020, hitting Spain's economy particularly hard. But after a tumultuous year that saw financial markets dip in the Spring and then grow to record heights in the fall, the financial outlook for Spain in 2021 is bright. The debt rally of 2020 is poised to continue through the first half of the year, helping companies bridge gaps in revenue caused by an endless string of lockdowns and travel restrictions, refinance existing debt at record-low interest rates and support businesses particularly hard-hit by the pandemic.

This briefing discusses Spain's financial outlook.

<https://www.cliffordchance.com/briefings/2021/01/spanish-financial-markets-in-2021--perspectives-after-covid-19-.html>

Hong Kong insurance group-wide supervision framework to commence on 29 March 2021

The Insurance (Amendment) (No. 2) Ordinance 2020 amends the Insurance Ordinance to provide for the regulation and supervision of insurance groups by the Insurance Authority (IA) through exercising direct regulatory powers over their Hong Kong-incorporated holding companies. The new group-wide supervision framework in Hong Kong will come into effect on 29 March 2021.

This briefing discusses the new framework.

<https://www.cliffordchance.com/briefings/2021/01/hong-kong-insurance-group-wide-supervision-framework-to-commence.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.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2021

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.