

# CLIFFORD CHANCE

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## **Capital Markets Recovery Package: CRR and Securitisation Regulation Quick Fix amendments published in Official Journal**

[Regulation \(EU\) 2021/557](#) amending the Securitisation Regulation and [Regulation \(EU\) 2021/558](#) amending the Capital Requirements Regulation (CRR) as regards adjustments to the securitisation framework to support economic recovery in response to the coronavirus crisis have been published in the Official Journal.

The two regulations form part of the Capital Markets Recovery Package (CMRP) and include measures intended to facilitate the securitisation of non-performing exposures (NPEs) and a framework of simple, transparent and standardised (STS) securitisation for synthetic transactions in particular. Both regulations entered into force on 9 April 2021.

## **EU Commission consults on possible directive on bank account registry access for law enforcement**

The EU Commission has published for [consultation](#) a roadmap setting out details of a possible legislative initiative on the access of law enforcement authorities to interconnected bank account registries.

In particular, the envisaged directive would be intended to speed up enforcement authorities' access to financial information by providing them with access to the system interconnecting Member States' centralised bank account registries that were established in accordance with the fourth Anti-Money Laundering Directive (AMLD4).

Comments on the roadmap are due by 28 April 2021.

## **ESAs publish joint 2020 annual report**

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities and Markets Authority (ESMA), has published its [2020 annual report](#).

The report provides a detailed account of all the joint work completed over the past year, including:

- ensuring close cooperation among the ESAs in the context of the COVID-19 pandemic and preparing the first cross-sectoral COVID-19 risk assessment;
- continuing to prioritise consumer protection with the finalisation of the Joint Committee's PRIIPS report delivered to the EU Commission;
- contributing to the development of the sustainable finance framework through delivering on the mandates stemming from the Sustainable Finance Disclosure Regulation (SFDR), working on disclosure, and engaging in the Non-Financial Reporting Directive consultation;
- strengthening efforts to facilitate cooperation and coordination on digital finance in response to the emergence of technological innovation and cybersecurity as prominent topics; and
- continuing work in securitisation and financial conglomerates.

### **CRR: EBA consults on draft RTS specifying advanced economies for alternative standardised approach equity risk purposes**

The EBA has published for [consultation](#) draft regulatory technical standards (RTS) specifying a list of countries with advanced economies for the purposes of calculating equity risk under the alternative standardised approach (FRTB-SA). The draft RTS have been developed according to Article 325ap(3) of the CRR.

The list under consultation corresponds to that provided in the Fundamental Review of the Trading Book (FRTB). The EBA is seeking feedback on whether the list is comprehensive, and in particular whether the equity risk in any additional EU countries can be considered similar to that of the advanced economies in the FRTB list. The EBA also seeks views on criteria and sources of data for identifying advanced economies and emerging markets for the purpose of FRTB-SA equity risk own funds requirements.

Comments are due by 2 July 2021.

### **EMIR: ESMA publishes draft RTS on changes to CCP activities and models**

ESMA has published a [final report](#) setting out draft RTS on changes to central counterparties' (CCPs') activities, services, models and parameters under the European Market Infrastructure Regulation (EMIR).

The draft RTS regulate for the following scenarios:

- extensions of authorisation, under which a CCP's additional services or activities are not covered by its initial authorisation;
- changes to a CCP's models and parameters to be considered significant and therefore requiring validation; and
- consulting the CCP college on whether the conditions for the above are satisfied.

ESMA is submitting the draft RTS to the EU Commission for endorsement.

## **EMIR/SFTR: ESMA publishes guidelines for trade repositories' periodic and material change reporting and updates Q&A**

ESMA has published [guidelines](#) on periodic information reporting and material changes notifications to be submitted to ESMA by trade repositories (TRs) supervised under the EMIR or the Securities Financing Transactions Regulation (SFTR). ESMA has also published a [report](#) summarising feedback to its public consultation on the guidelines.

The guidelines are intended to clarify the format and frequency of different categories of information ESMA expects to receive, amongst other points, and hence TRs' obligations under Articles 55(4) of EMIR and 5(4) of SFTR. They apply from 30 June 2021.

ESMA has also updated its SFTR data reporting [questions and answers](#) (Q&As) document in order to simplify reporting of securities financing transactions (SFTs) when an external portfolio manager is used.

## **MiFID2: ESMA publishes final report on functioning of organised trading facilities**

ESMA has published a [final report](#) on the functioning of organised trading facilities (OTFs). The report is intended to clarify the definition of OTFs, with a particular focus on the definition of a multilateral system and the trading venue perimeter. It sets out ESMA's findings regarding:

- the number of OTFs authorised in the EU and their market share;
- the volume and type of trading on OTFs, including the evolution in volumes since the application of MiFID2;
- OTFs' application of discretion and their use of matched principal trading (MPT); and
- the boundaries of trading venues' authorisation.

It also contains recommendations to the EU Commission designed to clarify the trading venue perimeter, including:

- moving Article 1(7) of MiFID2, which sets out the requirement that all multilateral systems operate under a trading venue authorisation, either as a regulated market, multilateral trading facility (MTF) or OTF, to MiFIR;
- tasking ESMA with producing an opinion on the boundaries of trading venues' authorisation;
- adding a definition of bulletin boards to MiFID2; and
- aligning the provisions regarding the prohibition of the use of MPT amongst different types of trading venues.

## **MiFID2: ESMA publishes final report on SME growth markets**

ESMA has published a [final report](#) on the functioning of the regime for SME growth markets (GMs) under MiFID2. In May 2020, ESMA launched a consultation which sought views on, among other things, proposed initiatives to incentivise the emergence of MTFs as SME GMs and to improve the

attractiveness of the SME GM regime. The final report sets out the findings from this consultation and ESMA's recommendations to the EU Commission.

Overall, ESMA concludes that the EU SME GM regime has been relatively successful, with seventeen MTFs registering as SME GMs to date. However, there is still a need for further incentives to encourage SMEs to access capital markets. Respondents were largely critical of the proposals ESMA set out in its consultation, however, on consideration, ESMA is proceeding with some of its recommendations. It calls on the EU Commission to consider making targeted amendments to the SME GM regime in the MiFID2 framework to:

- increase the harmonisation of admission requirements;
- make the information requested in Article 78(2)(h) of Delegated Regulation (EU) 2017/565 for issuers admitted to trading on an SME GM available up to one year before such admission to trading takes place;
- create a segment targeting micro SMEs with some possible legislative alleviations, although not a full two-tier regime as initially proposed;
- extend the issuer non-objection requirement concerning the admission to trading of an instrument already admitted on SME GMs to any trading venue; and
- introduce a requirement that, in instances where an issuer is trading in a jurisdiction in addition to the jurisdiction of the SME GM in which they were initially admitted, they must ensure the relevant documents are available in the language of the second jurisdiction or in English.

The report has been submitted to the EU Commission and is expected to be used to inform its decisions on further legislative proposals on the MiFID2 SME GM regime.

## **FSB reports to G20 Leaders on unwinding COVID-19 support measures, too-big-to-fail reforms and climate-related financial risks**

The Financial Stability Board (FSB) has submitted to the G20 Leaders a [letter](#) from its Chair providing an update on the unwinding of COVID-19 support measures, the progress made on too-big-to-fail (TBTF) reforms for banks and the FSB's work on climate-related financial risks. The letter notes that:

- the COVID-19 vaccine rollout marks a significant turning point in the pandemic, and the focus of the FSB's work is shifting as a result. Among other things, the FSB is turning its focus to the financial impact and the coordinated unwinding of the pandemic response measures;
- there has been significant progress made on the TBTF reforms for banks, as demonstrated by the FSB's [evaluation](#) published at the end of March 2021. The evaluation concluded that the reforms have reduced systemic risks, enhanced the credibility of resolution and market discipline, and produced net benefits to society, although there remain areas for improvement, particularly on the implementation of total loss absorbing capacity (TLAC) and the transparency of resolution funding mechanisms;
- the FSB intends to address the vulnerabilities associated with non-bank financial intermediation (NBFII), including by submitting to the G20 by July 2021 policy proposals to enhance money market fund resilience; and

- the FSB is currently working on three climate-related workstreams, covering data, disclosures and regulatory and supervisory practices, and it intends to submit to the G20 two reports on ways to promote consistent, high-quality climate disclosures and on the data necessary for the assessment of financial stability risks and related data gaps, as well as a roadmap to address climate-related financial risk.

Alongside the letter, the FSB has published a [report](#) on the factors to be considered when deciding whether, when and how to extend, amend or end COVID-19 economic and financial support measures. The report notes that there are risks associated with both withdrawing support too early and allowing it to remain in place too long, although, on balance, the former could inflict greater damage.

The report recommends that authorities manage these trade-offs by following a flexible, state-contingent approach and that they adjust support by:

- ensuring that measures are targeted at those most affected;
- requiring that beneficiaries opt in to receive support rather than receiving it automatically;
- making the terms under which support is provided progressively less generous; and
- sequencing the withdrawal of support measures rather than withdrawing them all at once.

The report also notes that further work is needed to understand and address the risks of harmful cross-border and cross-sector spillovers, including possible feedback loops.

### **FSB seeks feedback on template questionnaire on continuity of access to FMIs for firms in resolution**

The FSB has launched a [survey](#) seeking feedback on its common template for collecting information on continuity of access to financial market infrastructures (FMIs) for firms in resolution. The template questionnaire was published in August 2020 and is intended to alleviate the 'many-to-one' nature of resolution planning inquiries as well as to streamline the provision of such information by FMIs to firms and authorities.

The FSB encourages responses to its survey from FMIs, firms subject to a resolution planning requirement and bank resolution authorities. Comments are due by 3 May 2021.

### **G20 Finance Ministers and Central Bank Governors issue communiqué**

The G20 Finance Ministers and Central Bank Governors have published a [communiqué](#) following their second official meeting under the Italian G20 Presidency. In particular, the communiqué sets out the G20's views and commitments over the coming months with regard to:

- improving data availability and provision and harnessing the wealth of data produced by digitalisation, while ensuring compliance with data protection and privacy legal frameworks, to better inform decisions;



- asking the International Monetary Fund (IMF), the Inter-Agency Group on Economic and Financial Statistics (IAG) and the FSB, to prepare a concept note on a possible new Data Gaps Initiative;
- mobilising sustainable finance and the transition towards greener, more resilient and inclusive economies, including the FSB reporting on the availability of data and data gaps on climate-related financial stability risks and ways to improve climate-related financial disclosures in July 2021;
- building on the recommendations of the FSB's task force on climate-related financial disclosures and welcome growing private sector participation;
- re-establishing the Sustainable Finance Study Group and upgrading it to a working group which will develop an initial, evidence-based and climate-focused G20 sustainable finance roadmap;
- extending the Debt Service Suspension Initiative (DSSI) for the final time to the end of December 2021 in the hope that the private sector will take part in the DSSI on comparable terms and beneficiary countries will be able to move to a more structural approach to address debt vulnerabilities, including through an upper credit tranche quality IMF-supported programme;
- implementing the Common Framework for Debt Treatments in a coordinated manner;
- addressing the gaps in reform identified in the FSB's evaluation report on the effectiveness of TBTF reforms for systemically important banks and working to strengthen the resilience of the NBFIs sector with a systemic perspective;
- implementing the G20 roadmap to enhance cross-border payments in a timely and efficient manner and discussing the cross-border use of central bank digital currencies and wider implications for the international monetary system; and
- continuing to tackle all sources, techniques and channels of money laundering (ML), terrorist financing (TF) and proliferation financing (PF) – with particular attention to COVID-19-connected financial crimes – and supporting the Financial Action Task Force (FATF) as the global standard-setting body for preventing and combating ML, TF and PF and its current work on opportunities and challenges of digital transformation in tackling financial crime.

## **Coronavirus: Bank of England publishes statement on regulatory treatment of Recovery Loan Scheme**

The Bank of England (BoE) has published a [statement](#) on the regulatory treatment of the Recovery Loan Scheme (RLS) launched by the Government as part of its coronavirus support for UK businesses.

The statement sets out the PRA's observations on whether the guarantees provided by the Secretary of State for Business, Energy and Industrial Strategy under the RLS are eligible for recognition as unfunded credit risk mitigation (CRM) under the UK CRR.

The statement is not intended to provide an exhaustive description of the prudential requirements that apply to loans extended under the RLS, nor a comprehensive description of the regime under which CRM techniques impact

the calculation of risk-weighted exposure amounts. The BoE encourages firms to review relevant articles of the CRR and relevant PRA rules and guidance and to seek independent advice where necessary. The BoE also continues to expect lenders to use their judgement on what information is required to make credit decisions.

## **FCA, BoE and PRA provide evidence on future of financial services**

The Financial Conduct Authority (FCA), the BoE and the Prudential Regulation Authority (PRA) have published their responses to the call for evidence on the future of financial services by the House of Commons Treasury Committee.

The call for evidence forms part of an [inquiry](#) by the House of Commons Treasury Committee into how financial services regulations should be made and scrutinised by Parliament, how regulators are funded and the extent to which financial services regulation should be consumer-focussed and include wider public policy issues following the end of the Brexit transition period.

In its response, the [FCA](#) focuses on:

- opportunities for the UK's financial services sector after EU withdrawal;
- the development and scrutiny of financial services policy making after EU withdrawal; and
- current challenges facing regulators.

In their response, the [BoE and the PRA](#) focus on:

- the future regulatory framework for the UK;
- the UK's position as a global financial centre and its relationships with other jurisdictions; and
- how the UK regulatory regime can support innovation, competition and proportionality.

## **PRA consults on economic downturn specification in IRB approach to credit risk**

The PRA has launched a [consultation](#) on its proposed approach to implementing new requirements relating to the specification of the nature, severity, and duration of an economic downturn in the internal ratings based (IRB) approach to credit risk.

The PRA's proposals add a new part to the PRA rulebook on economic downturn and credit risk and amend expectations in supervisory statement (SS) 11/13 on IRB approaches. The PRA is also proposing to make additional minor changes to SS 11/13 to reflect the UK's exit from the EU. The PRA is welcoming feedback on the proposals and on the expected impact of the proposals on capital requirements.

The proposals are relevant to UK banks, building societies, and PRA-designated UK investment firms. Comments are due by 7 July 2021.

## **PRA consults on proposed fees for 2021/22**

The PRA has launched a [consultation](#) (CP8/21) on its proposed fees for 2021/22.



The proposals would make amendments to the Fees Part of the PRA Rulebook (Appendix). The proposals include:

- the fee rates to meet the PRA's 2021/22 annual funding requirement (AFR);
- fees applicable to firms in the temporary regimes;
- changes to new firm authorisation fees and variation of permission (VoP) regulatory transaction fees;
- how the PRA intends to distribute a surplus from the 2020/21 AFR; and
- the retained penalties for 2020/21.

Comments are due by 20 May 2021.

The PRA proposes to publish the changes resulting from CP8/21 on 6 July 2021 and they are expected to be effective from 8 July 2021.

### **Bank of Italy publishes guidelines on governance and control arrangements for retail banking products**

The Bank of Italy has published a set of [guidelines](#) on governance and control arrangements for retail banking products. In particular, the guidance draws the attention of supervised institutions to the importance of having a governance and control process that is coherent with the needs and characteristics of their clients. The guidance is also intended to address the needs of financial inclusion, in order to raise awareness of potential risks of financial exclusion of customers from certain products and services, particularly with respect to digital products and services.

Moreover, the Bank of Italy encourages market operators to consider the needs of the most vulnerable customers starting from the product manufacturing phase, in accordance with the objectives set out by Directive 2019/882/EU on the accessibility requirements for products and services, and to ensure accessibility of websites and apps also for customers with disabilities, in line with the national legislation.

### **CSSF issues circular on survey of covered deposits held on 31 March 2021**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued CSSF-CPDI [circular](#) 21/25 dated 6 April 2021 regarding the survey on the amount of covered deposits held on 31 March 2021.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL) (in particular to all credit institutions incorporated under Luxembourg law, to the POST Luxembourg, and to Luxembourg branches of non-EU/EEA credit institutions), and reminds them that the CPDI collects the amount of covered deposits on a quarterly basis in order to identify the trends and changes in the relevant indicators of deposit guarantee throughout the year.

The new circular further draws members' attention to the provisions of the CSSF-CPDI circular 16/02, notably as regards the exclusion of structures assimilated to financial institutions and the treatment of omnibus and fiduciary

accounts. The volume of eligible and covered deposits in omnibus and fiduciary accounts and the number of beneficiaries (ayants droit) are to be reported where credit institutions wish to ensure deposit protection for relevant beneficiaries and in order to allow the CPDI to prepare the FGDL for the reimbursements of such deposits.

FGDL members are requested to provide the data at the level of their legal entity, comprising branches located within other Member States, by 30 April 2021 at the latest.

In order to transmit these data, institutions are requested to complete the table attached to the circular, which is also available on the CSSF website. The file shall respect the special surveys naming convention, as defined by CSSF circular 08/344, and shall be submitted over secured channels (E-File/SOFiE).

A member of the authorised management, i.e. the member in charge of the FGDL membership in accordance with CSSF circular 13/555, must review and approve the file prior to its transmission to the CSSF.

### **CSSF issues regulation on setting of countercyclical buffer rate**

The CSSF has issued a new [regulation](#) (21-01) on the setting of the countercyclical buffer rate for the second quarter of 2021. The regulation was published in the Luxembourg official journal (Mémorial A) on 6 April 2021.

The regulation follows the Luxembourg Systemic Risk Committee's recommendation of 12 March 2021 (CRS/2021/001) and maintains the countercyclical buffer rate for relevant exposures located in Luxembourg at 0.5% for the second quarter of 2021. This rate has been applicable since 1 January 2021.

The Regulation entered into force on 6 April 2021.

### **CNMV consults on future circular on cryptoassets advertising**

Following the authorisation made pursuant to Royal Legislative Decree 5/2021 granting the Comisión Nacional del Mercado de Valores (CNMV) control over the advertising of cryptoassets and other assets and instruments which are not regulated under the Securities Market Law and which are offered as an investment option, CNMV has published a [consultation](#) regarding the future draft circular on cryptoassets advertising.

This consultation precedes the usual public consultation process that the CNMV will undertake on its specific proposals for the circular.

The consultation ends on 16 April 2021.

### **Revisions to Japan's Corporate Governance Code and Guidelines for Investor and Company Engagement published for consultation**

The Financial Services Agency (FSA) and the Tokyo Stock Exchange (TSE) have [published](#) draft revisions to the Corporate Governance Code and Guidelines for Investor and Company Engagement for public consultation. The proposed revisions include, among other things:

- enhancing board independence by increasing the number of independent outside directors of companies in the prime market, establishing a nomination committee and a remuneration committee, disclosing a skill matrix of board members conforming to the company's business strategy, and appointing independent directors having managerial experiences at other companies;
- promoting diversity by setting policies and voluntary and measurable goals for ensuring diversity in the promotion of women, foreigners and mid-career hires to managerial positions and disclosing human resource development policies ensuring diversity, including the status of implementation of the policies;
- attention to sustainability and environmental, social and governance by developing a basic policy and disclosing initiatives on the company's sustainability; and enhancing the quality and quantity of climate-related disclosure;
- enhancing corporate disclosure of the companies, in English, in the prime market by having their annual securities reports and notices of convocation of the general shareholders' meetings translated into English; and
- promoting the establishment of electronic voting platforms of the companies in the prime market.

Comments on the consultation on both the drafts are due by 7 May 2021.

## **MAS revises FAQs on Payment Services Act 2019**

The Monetary Authority of Singapore (MAS) has updated its set of [frequently asked questions](#) (FAQs) on the Payment Services Act 2019 (PS Act).

Amongst other things, the FAQs have been updated to:

- amend Question 16 to clarify that the PS Act does not impose duplicative requirements for safeguarding of funds in transit, where a licensee provides a combination of domestic money transfer, cross border money transfer and merchant acquisition services in a single payment transaction;
- add Question 22 which provides guidance to digital payment token (DPT) service providers that carry on a business of dealing in DPTs, on the requirements they need to satisfy before offering tokens for sale on DPT exchanges, as well as DPT service providers that carry on a business of facilitating the exchange of DPTs on the requirements they need to satisfy before allowing new tokens to be traded on DPT exchanges established or operated by them;
- add Question 37 to clarify that an event of insolvency in section 23(6) of the PS Act refers to an event which triggers the commencement of winding-up;
- revise Question 45 to clarify that licensees are prohibited from lending to individuals that carry on business as sole proprietors, given that a sole proprietorship owned and controlled by an individual does not have any separate legal personality apart from the individual carrying on the business;
- add Question 49 to specify that when calculating the daily average e-money float of a Standard Payment Institution, the value of e-money that has already been spent by the payment service user is excluded. Further,

the total annual value of the e-money float is to be divided by the total number of days in a calendar year, and not only for the days when there was e-money issuance; and

- add Question 50 to explain how the MAS would handle multi-currency accounts with existing balances below the stock cap that may still inadvertently cross the SGD 5,000 stock cap due to currency fluctuations.

## **MAS revises notice on exposures and credit facilities to related concerns**

The MAS has revised its [notice](#) on Exposures and Credit Facilities to Related Concerns (MAS Notice 643A) to amend the list of exempt exposures set out in Appendix 4 to the Notice.

The revised MAS Notice 643A is effective from 1 July 2021.

## **ASIC outlines expectations regarding new internal dispute resolution requirements**

The Australian Securities and Investments Commission (ASIC) has outlined its expectations regarding [Regulatory Guide 271: Internal dispute resolution \(RG 271\)](#), which was released in July 2020. RG 271 supersedes Regulatory Guide 165 Licensing: Internal and external dispute resolution, and is intended to raise internal dispute resolution (IDR) standards in the industry by encouraging firms to address systemic issues that may exist across their business.

ASIC believes that there are significant legal issues to be addressed in ensuring that trustees meet the RG 271 obligations and it intends to assist in the transition to meet the new requirements. RG 271 includes the following:

- reduced timeframes for responding to complaints, including a reduction to a new maximum of 45 days for superannuation complaints (other than complaints about death benefit distributions);
- further guidance on the information that funds must include in written IDR responses to allow consumers to understand complaint outcomes and decide whether to escalate their complaint; and
- a greater focus on identifying, investigating and, where relevant, resolving possible systemic issues raised by complaints.

The updated obligations are more comprehensive than existing requirements and focus with more granularity on the internal operations of the financial service provider. ASIC expects trustees to keep the member journey front of mind when reviewing and implementing their IDR processes.

ASIC also anticipates that the new IDR standards may require trustees to invest in skilled staff and systems, for which trustees will need to rethink their structure delegations. It encourages organisations to introduce sophisticated machine learning technologies to their complaints handling systems to make full use of the insights from complaints data.

The new IDR requirements will be effective from 5 October 2021, but ASIC has emphasised the need for timely preparations as the standards in RG 271 will likely require trustees thoroughly to review existing processes, systems and resources, and some of the necessary changes may take time to implement. ASIC has indicated that it will check in with industry at various

stages of implementation and assess whether its expectations about preparation are being met.

## **New York Governor signs USD LIBOR legislation**

New York Governor Cuomo has signed into law [legislation](#) that aims to reduce risks associated with the transition away from US dollar (USD) LIBOR. The text of this legislation is consistent with a proposal published in March 2020 by the Alternative Reference Rates Committee (ARRC). It will apply to legacy contracts that use USD LIBOR, are governed by New York law, mature after the relevant tenor of USD LIBOR ceases to be published or is no longer representative, and do not include adequate fallback provisions to replace USD LIBOR. For such legacy contracts, this legislation will provide, by operation of law, a replacement benchmark recommended by the Federal Reserve Board, the Federal Reserve Bank of New York or the ARRC following the discontinuation of USD LIBOR, to include a spread adjustment and any recommended conforming changes.

In addition, this legislation minimizes legal uncertainty for these contracts by:

- overriding any existing fallback provisions that provide for a replacement rate based on or otherwise involving a poll, survey or inquiries for quotes or information concerning interbank lending rates or any interest rate based on LIBOR;
- prohibiting parties from refusing to perform their obligations or declaring a breach of contract as a result of the discontinuance of LIBOR or the use of a replacement;
- establishing that the replacement is a commercially reasonable substitute for and a commercially substantial equivalent to LIBOR; and
- providing a safe harbour from litigation for the use of the recommended benchmark replacement.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **The European Commission expands its remit for merger control review**

The European Commission has published its long-anticipated guidance on its revised approach to the referral mechanism under Article 22 of the EU Merger Regulation.

The new approach means that a national competition authority of an EU Member State (NCA) can initiate a referral of a merger to the Commission, for review under the EU Merger Regulation, even if that transaction is not notifiable under the NCA's own merger control laws, or indeed those of any other EU Member State. The guidance represents a material departure from the Commission's previous practice and is expected to have significant ramifications for certain types of transactions.

This briefing discusses the guidance.

<https://www.cliffordchance.com/briefings/2021/04/the-european-commission-expands-its-remit-for-merger-control-rev.html>

## **Launch of the UK Digital Markets Unit – predictions for the new regime**

On 7 April 2021, the UK Government launched the Digital Markets Unit (DMU) within the Competition and Markets Authority (CMA) to oversee a new pro-competition regulatory regime in respect of digital activities.

While its long-term impact will no doubt be significant, substantial questions remain regarding the powers and processes of the new unit, which launched in 'shadow form'.

This briefing discusses the new regime.

<https://www.cliffordchance.com/briefings/2021/04/launch-of-the-uk-digital-markets-unit--predictions-for-the-new-r.html>

## **New regulations to restrict disposals to connected persons in insolvent administrations**

From 30 April 2021, an administrator of an insolvent company may not make a substantial disposal within the first eight weeks of an administration to anyone connected to the insolvent company unless he has either the creditors' consent or an independent evaluator's report provided by the purchaser.

The report must provide that the evaluator is satisfied that the consideration provided for the property and grounds for the disposal are reasonable in the circumstances (referred to as 'case made opinion'). If the report indicates that the evaluator is not satisfied as to the consideration and basis for the disposal, an administration may still proceed with the sale, but the administrator must explain why the sale has gone ahead and include that explanation when sending a copy of the report to creditors.

This briefing discusses the new regulations.

<https://www.cliffordchance.com/briefings/2021/04/new-regulations-to-restrict-disposals-to-connected-persons-in-in.html>



# C L I F F O R D C H A N C E

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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